

Queensland



**JUSTICE AND OTHER
LEGISLATION
(MISCELLANEOUS
PROVISIONS) BILL 1998**

Queensland



JUSTICE AND OTHER LEGISLATION (MISCELLANEOUS PROVISIONS) BILL 1998

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1998

A BILL

FOR

**An Act to amend various Acts administered by the Attorney-General
and Minister for Justice, and for other purposes**

*Justice and Other Legislation (Miscellaneous
Provisions)*

The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

3

Clause **1.** This Act may be cited as the *Justice and Other Legislation (Miscellaneous Provisions) Act 1998*.

4

5

Commencement

6

Clause **2.(1)** Parts 1, 2, 4 to 7 and 10, and schedules 1 and 2 commence on the day of assent.

7

8

(2) However, schedule 1, FAIR TRADING ACT 1989, item 3 is taken to have commenced on the assent of the *Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997*.¹

9

10

11

(3) The remaining provisions commence on a day to be fixed by proclamation.

12

13

Amended Acts—schedules

14

Clause **3.** Schedules 1 and 2 amend the Acts mentioned in them.

15

PART 2—AMENDMENT OF BAIL ACT 1980

16

Act amended in pt 2

17

Clause **4.** This part amends the *Bail Act 1980*.

18

¹ The *Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997* was assented to on 5 December 1997.

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Amendment of s 10 (General powers as to bail)

Clause	5. Section 10(1), after ‘charge of an offence’—	2
	<i>insert—</i>	3
	‘, or in connection with a criminal proceeding,’.	4

Insertion of new ss 19B–19F

Clause	6. Part 2, after section 19A—	6
	<i>insert—</i>	7

‘Review of certain bail decisions

	‘ 19B.(1) This section does not apply to the following decisions about bail—	9
		10

(a)	a decision by the Supreme Court;	11
-----	----------------------------------	----

(b)	a decision under section 10(2); ²	12
-----	--	----

(c)	a decision by a magistrate acting as a reviewing court under this section.	13
		14

	‘ (2) If a decision has been made about bail for a defendant, the defendant or the Crown may apply to the reviewing court for a review of the decision.	15
		16

	‘ (3) The reviewing court is—	17
--	--------------------------------------	----

(a)	for a decision by a police officer or justice—a Magistrates Court constituted by a magistrate;	18
		19

(b)	for any other decision—the Supreme Court constituted by a judge.	20
		21

	‘ (4) On the review, the reviewing court may make any decision the reviewing court considers appropriate about bail for the defendant.	22
		23

	‘ (5) The person or court that made the decision under review must give the reviewing court any documents in the person’s or court’s possession that may be relevant to the review.	24
		25
		26

² Section 10 (General powers as to bail)

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‘(6) The reviewing court must decide an application under this section as soon as possible.	1 2
‘Telephone review by magistrate of decision on bail made by police officer or justice	3 4
‘19C.(1) This section applies if—	5
(a) a decision is made by a police officer or justice about bail for a defendant; and	6 7
(b) the defendant wishes to apply for a review of the decision under section 19B; and	8 9
(c) there appears to be no magistrate in the vicinity immediately available to constitute a Magistrates Court to review the decision.	10 11
‘(2) The defendant may apply in writing to the police officer or justice to contact a magistrate by telephone to have the magistrate review the decision.	12 13
‘(3) On receiving the application, the police officer or justice must inform a magistrate of the application.	14 15
‘(4) The police officer or justice must—	16
(a) explain to the magistrate the circumstances relevant to the bail decision; and	17 18
(b) tell the magistrate what the decision was and the reasons for it.	19
‘(5) The magistrate must then speak with—	20
(a) the defendant (or the defendant’s lawyer if the defendant wants the magistrate to speak to the lawyer instead); and	21 22
(b) anyone else the magistrate considers the magistrate should speak with to ensure the magistrate has enough information to decide the application.	23 24 25
‘(6) If—	26
(a) the decision under review was made by a justice; and	27
(b) a police officer appeared before the justice; and	28
(c) the police officer wishes to speak to the magistrate for the	29

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purposes of the review;	1
the magistrate must then speak with the police officer.	2
‘(7) On the review, subject to subsection (9), a magistrate may make any decision the magistrate considers appropriate about bail for the defendant.	3 4
‘(8) The magistrate must inform the police officer or justice who made the decision under review of the decision.	5 6
‘(9) The police officer or justice must grant or refuse bail in accordance with the decision.	7 8
‘(10) This section does not apply to a bail decision made by a police officer on the arrest of a defendant, if the defendant can be brought before a court (other than a Magistrates Court constituted by justices) not later than 4 p.m. on the day after the day of arrest.	9 10 11 12
‘(11) Nothing in this section compels a person (other than the police officer or justice who decided the application) to speak, or continue speaking, with the magistrate.	13 14 15
‘Review by Supreme Court of magistrate’s decision on a review	16
‘19D.(1) If a decision is made by a magistrate on a review of a bail decision, the defendant or the Crown may apply to the Supreme Court as constituted by a judge for a review of the magistrate’s decision.	17 18 19
‘(2) The decision may be reviewed only with the court’s leave.	20
‘(3) On the review, the court may make any decision the court considers appropriate about bail for the defendant.	21 22
‘Stay of release on application for review	23
‘19E.(1) This section applies if a decision is made, other than by the Supreme Court, to release a person on bail.	24 25
‘(2) If a police officer or a person appearing on behalf of the Crown immediately indicates to the person or court making the decision that an	26 27

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application for review of the decision will be made under section 19B,³ the
release must be deferred. 1
2

‘(3) The deferral ends on whichever of the following events happens
first— 3
4

(a) the review is completed; 5

(b) a police officer, or a person appearing on behalf of the Crown,
gives the person or court that made the decision a written notice
that the Crown does not wish to proceed with the review; 6
7
8

(c) the end of 72 hours from when the decision was made. 9

‘(4) If a person is released under section (3)(b) or (c), the conditions of
bail are those that would have applied had the person’s release not been
deferred. 10
11
12

‘**Review provisions do not affect other powers** 13

‘19F. Sections 19B to 19E do not affect a power of the Supreme Court
under section 10,⁴ or any other power of a court to grant, enlarge, vary or
revoke bail under other provisions of this or any other Act.’. 14
15
16

PART 3—AMENDMENT OF COOPERATIVES ACT 17 **1997** 18

Act amended in pt 3 19

Clause 7. This part amends the *Cooperatives Act 1997*. 20

Amendment of s 14 (Trading cooperatives) 21

Clause 8.(1) Section 14(2)— 22

³ Section 19B (Review of certain bail decisions)

⁴ Section 10 (General powers as to bail)

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omit, insert— 1

‘(2) A trading cooperative is a cooperative whose rules allow it to give
returns or distributions on surplus of share capital to members.’. 2
3

(2) Section 14(3)(c), after ‘5’— 4

insert— 5

‘(or a lesser number prescribed under a regulation)’. 6

Amendment of s 15 (Non-trading cooperatives) 7

Clause 9. Section 15(1), ‘must not give’— 8

omit, insert— 9

‘is a cooperative whose rules prohibit it from giving’. 10

Amendment of s 16 (Formation meeting) 11

Clause 10. Section 16(3)(c), after ‘5’— 12

‘(or a lesser number prescribed under a regulation)’. 13

Amendment of s 17 (Approval of disclosure statement) 14

Clause 11.(1) Section 17(8)— 15

renumber as section 17(9). 16

(2) Section 17— 17

insert— 18

‘(8) The registrar may approve a disclosure statement with or without
conditions.’. 19
20

**Amendment of s 19 (Application for registration of proposed
cooperative)** 21
22

Clause 12. Section 19(1)(c)(ii), after ‘5’— 23

‘(or a lesser number prescribed under a regulation)’. 24

*Justice and Other Legislation (Miscellaneous
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Amendment of s 68 (Carrying on business with too few members)

- | | | |
|--------|---|--------|
| Clause | 13. Section 68(3)(b), after ‘5’— | 1
2 |
| | ‘(or a lesser number prescribed under a regulation)’. | 3 |

Amendment of s 72 (Entry fees and regular subscriptions)

- | | | |
|--------|---|--------|
| Clause | 14. Section 72— | 4
5 |
| | <i>insert—</i> | 6 |
| | ‘(1A) A member’s regular subscription may be based on the business done with the cooperative.’. | 7
8 |

Amendment of s 76 (Repayment of shares on expulsion)

- | | | |
|--------|--|----------------------------|
| Clause | 15.(1) Section 76(1), from ‘must’— | 9
10 |
| | <i>omit, insert—</i> | 11 |
| | ‘must, within 1 year after the date of expulsion— | 12 |
| | (a) repay to the former member the amount paid up on the shares held by the member at the date of expulsion, less any amount owed by the former member to the cooperative at the date of expulsion under the rules of the cooperative or any contract or otherwise; or | 13
14
15
16
17 |
| | (b) apply the amount under subsection (1A) if— | 18 |
| | (i) the board considers repayment would adversely affect the financial position of the cooperative; or | 19
20 |
| | (ii) the board and the former member so agree. | 21 |
| | ‘(1A) The amount under subsection (1)(b) may be applied as follows— | 22 |
| | (a) if the cooperative is a deposit-taking cooperative—the cooperative may apply the amount as a deposit by the former member with the cooperative (subject to the requirements of section 133 ⁵ as to interest on the deposit); | 23
24
25
26 |

⁵ Section 133 (Interest on deposits and debentures)

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(b) the cooperative may allot or issue debentures of the cooperative to the former member in satisfaction of the amount; 1
2

(c) the cooperative may appropriate the amount as a donation to the cooperative, but only if the former member consents in writing to the donation.’. 3
4
5

(2) Section 76(4)— 6

omit. 7

Amendment of s 133 (Interest on deposits and debentures) 8

Clause 16. Section 133(1), after ‘section’ (second mention)— 9

insert— 10

‘76 or’. 11

Amendment of s 135 (Register of cancelled memberships) 12

Clause 17. Section 135, ‘in the approved form’— 13

omit. 14

Amendment of s 143 (Disclosure to members) 15

Clause 18.(1) Section 143, heading, after ‘members’— 16

insert— 17

‘**and proposed members**’. 18

(2) Section 143(1), from ‘a member’— 19

omit, insert— 20

‘a member or proposed member of the cooperative a disclosure statement before shares are issued to the member or proposed member.’. 21
22

(3) Section 143(2)(b), after ‘section 242’— 23

insert— 24

‘(unless the report is the same as the report, a copy of which has already been given to the member or proposed member under this Act)’. 25
26

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Amendment of s 149 (Members may be required to take up additional shares)

Clause **19.** Section 149—

insert—

‘(7) To avoid any doubt, it is declared that this section does not apply to the issue of bonus shares to a member under section 266.⁶’.

Amendment of s 170 (Purchase and repayment of shares)

Clause **20.(1)** Section 170(5)—

renumber as section 170(6).

(2) Section 170—

insert—

‘(5) A cooperative must not purchase shares or repay amounts paid up on shares if—

(a) the cooperative is likely to become insolvent because of the repurchase of the shares or because of the repayment of amounts paid up on the shares; or

(b) the cooperative is insolvent.’.

Insertion of new s 179A

Clause **21.** After section 179—

insert—

‘Effect of sale etc. of shares

‘**179A.** A member of a cooperative who has sold or transferred, or disposed of the beneficial interest in, the member’s shares, or agreed to do any of those things, is not entitled to vote.’.

⁶ Section 266 (Distribution of surplus or reserves to members)

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Insertion of new s 192A

Clause 22. Part 8, division 2, after section 192—

insert—

‘Resolution by circulation of document—fewer than 50 members

‘192A.(1) This section applies to a resolution by a cooperative that is required or permitted by this Act or the rules of the cooperative to be passed at a general meeting of a cooperative.

‘(2) If all the members of a cooperative have signed a document containing a statement that they are in favour of a resolution to which this section applies in terms set out in the document, a resolution in those terms is taken to have been passed at a general meeting of the cooperative—

(a) held on the day on which the document was signed at the time at which the document was last signed by a member; or

(b) if the members signed the document on different days—on the day on which, and at the time at which, the document was last signed by a member.

‘(3) The cooperative is taken to have held a general meeting at that time on that day and the document is taken to constitute a minute of that meeting.

‘(4) This section does not apply in relation to a document unless the document has been signed by each person who was a member of the cooperative at the time the document was last signed.

‘(5) For subsection (2), 2 or more separate documents containing statements in identical terms each of which is signed by 1 or more members are together to be taken to constitute 1 document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents.

‘(6) Any document that is attached to a document signed as mentioned in subsection (2) and is signed by the member or members who signed the lastmentioned document is, for this Act, to be taken to have been laid before the cooperative at the general meeting referred to in subsection (2).

‘(7) Nothing in this section affects or limits any rule of law relating to the effectiveness of the assent of members of a cooperative given to a document, or to any act, matter or thing, otherwise than at a general meeting

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of the cooperative. 1

‘(8) In this section— 2

“**cooperative**” means a cooperative that has fewer than 50 members. 3

“**resolution**” includes a resolution appointing an officer or auditor or 4
 approving of or agreeing to any act, matter or thing, but does not 5
 include a resolution of which special notice is required or that is 6
 required to be passed by a majority other than a simple majority.’. 7

Replacement of s 198 (Annual general meetings) 8

Clause 23. Section 198— 9

omit, insert— 10

‘**Annual general meeting 11**

‘**198.(1)** The first annual general meeting of a cooperative must be held 12
 within whichever of the following is the later— 13

(a) 19 months after the incorporation of the cooperative; 14

(b) 5 months after the close of the financial year of the cooperative; 15

(c) any further time the registrar may allow, or that may be 16
 prescribed under a regulation. 17

‘**(2)** The second or any later annual general meeting must be held 18
 within— 19

(a) 5 months after the close of the financial year of the cooperative; or 20

(b) any further time the registrar may allow, or that may be 21
 prescribed under a regulation.’. 22

Amendment of s 204 (Minutes) 23

Clause 24. Section 204(1), after ‘records’— 24

insert— 25

‘within 28 days after the meeting’. 26

*Justice and Other Legislation (Miscellaneous
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Amendment of s 207 (Qualification of directors)

Clause	25. Section 207(2)—	2
	<i>omit, insert—</i>	3
	‘(2) The majority of directors must be member directors.’.	4

Amendment of s 209 (Meeting of the board of directors)

Clause	26. Section 209—	6
	<i>insert—</i>	7
	‘(4A) However, the number of member directors must outnumber independent directors by at least 1 or the greater number specified in the rules.’.	8
		9
		10

Amendment of s 210 (Transaction of business outside meetings)

Clause	27. Section 210(6), after ‘board’—	12
	<i>insert—</i>	13
	‘within 28 days after the resolution is approved’.	14

Insertion of new pt 9, div 1A

Clause	28. After section 213—	16
	<i>insert—</i>	17
	‘Division 1A—Secretary	18

‘Secretary

	‘213A.(1) A cooperative must have at least 1 secretary.	19
	‘(2) A secretary is to be appointed by the board.	20
	‘(3) The board may appoint a person to act as a secretary during the absence or incapacity of a secretary.	21
		22
		23

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‘(4) A person is not qualified to be appointed as, or to act as, a secretary unless the person is an adult ordinarily resident in Australia.’. 1
2

Amendment of s 242 (Annual report) 3

Clause 29.(1) Section 242, heading— 4

omit, insert— 5

‘Annual report to be lodged with registrar’. 6

(2) Section 242(1), ‘send to’— 7

omit, insert— 8

‘lodge with’. 9

(3) Section 242(1)(a), before ‘directors’— 10

insert— 11

‘secretary,’. 12

(4) Section 242(1)(b)— 13

omit, insert— 14

‘(b) a copy of— 15

(i) if the cooperative has no subsidiary—the accounts of the cooperative for the financial year then last past; or 16
17

(ii) if the cooperative has a subsidiary—the accounts and consolidated accounts, for the financial year then last past, that the cooperative is required to prepare under section 232(1)⁷;’. 18
19
20
21

(5) Section 242(2)(b), from ‘within’— 22

omit, insert— 23

‘within 28 days after the following period— 24

(i) for a first annual report—the later of the periods stated under 25

⁷ Section 232 (Requirements for accounts and accounting records)

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section 198(1)(a)⁸ and (b); or

- (ii) for the second or any later annual report—the period stated in section 198(2)(a).’.

Insertion of new s 248A

Clause 30. After section 248—
insert—

‘Restriction on use of word “cooperative” or similar words

‘**248A.(1)** A person other than a cooperative must not trade, or carry on business, under a name or title containing the word ‘cooperative’, the abbreviation ‘co-op’ or words importing a similar meaning.

Maximum penalty—20 penalty units.

‘**(2)** Subsection (1) does not apply to an entity mentioned in section 245(6).⁹’.

Amendment of s 252 (Limits on deposit taking)

Clause 31. Section 252(a), after ‘deposit’—
insert—

‘and the cooperative is authorised by its rules to accept money on deposit’.

Amendment of s 259 (Application of Corporations Law—reissue of redeemed debentures)

Clause 32. Section 259, after ‘members’—
insert—
‘or employees’.

⁸ Section 198 (Annual general meeting)

⁹ Section 245 (Name to include certain matter)

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Amendment of s 266 (Distribution of surplus or reserves to members)

Clause	33.(1) Section 266(1)(b), after ‘members’—	2
	<i>insert—</i>	3
	‘on the basis of business done with the cooperative or on the basis of the shares held by the member’.	4
		5
	(2) Section 266(1)(c), after ‘dividend’—	6
	<i>insert—</i>	7
	‘for shares held by the member’.	8

Insertion of new s 304A

Clause	34. After section 304—	10
	<i>insert—</i>	11
	‘New body must give copy of new certificate of registration or incorporation to registrar	12
		13
	‘ 304A. On the transfer of a cooperative under this division, the new body must immediately give the registrar a copy of its new certificate of registration or incorporation.	14
		15
		16
	Maximum penalty—10 penalty units.’.	17

Amendment of s 330 (Adoption of Corporations Law about insolvent cooperatives)

Clause	35. Section 330, ‘(except section 588G)’—	20
	<i>omit.</i>	21

Amendment of s 367 (Registrar to be notified of certain changes)

Clause	36. Section 367—	23
	<i>insert—</i>	24
	‘(h) the address of the registered office of a non-participating cooperative registered under this part in the state or country in	25
		26

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which it is registered, incorporated or formed; or

- (i) the name under which a non-participating cooperative registered under this part carries on business in the state or country in which it is registered, incorporated or formed;’.

Amendment of s 373 (Requirements before application can be made)

Clause **37.(1)** Section 373(1)(b), from ‘a resolution’—

omit, insert—

‘(i) a special resolution; or

(ii) a resolution of the board of the cooperative.’.

(2) Section 373(2)(b), from ‘must’—

omit, insert—

‘(i) for the non-participating cooperative—must have been approved by a resolution of the board of the cooperative; or

(ii) for the Queensland cooperative—must have been approved by a special resolution, or by a resolution of the board, of the cooperative.’.

(3) Section 373(3), ‘resolution of the board’—

omit, insert—

‘a special resolution, or by a resolution of the board,’.

(4) Section 373—

insert—

‘**(4)** A consent mentioned in subsection (3) may be subject to conditions.’.

PART 4—AMENDMENT OF CRIMES (CONFISCATION) ACT 1989

	Act amended in pt 4	3
Clause	38. This part amends the <i>Crimes (Confiscation) Act 1989</i> .	4
	Amendment of s 13 (Meaning of tainted property)	5
Clause	39. Section 13—	6
	<i>insert—</i>	7
	‘(1A) Also, tainted property in relation to a serious offence includes—	8
	(a) for a provision of this Act other than section 90 and if the offence	9
	is against section 90—the tainted property mentioned in	10
	section 90 in relation to which the offence is committed or	11
	intended to be committed; and	12
	(b) for a provision of this Act other than section 92 and if the offence	13
	is against section 92—the property suspected of being tainted	14
	property mentioned in section 92 in relation to which the offence	15
	is committed or intended to be committed.	16
	‘(1B) Property mentioned in subsection (1)(a) includes, and is declared	17
	always to have included, property the use of which constitutes the serious	18
	offence.’.	19
	Amendment of s 40 (Restraining orders)	20
Clause	40.(1) Section 40(19)(b), ‘derived by anyone from the commission	21
	of’—	22
	<i>omit, insert—</i>	23
	‘tainted property in relation to’.	24
	(2) Section 40—	25
	<i>insert—</i>	26
	‘(19A) Despite section 43 or 45, subsection (18) is the only provision of	27

*Justice and Other Legislation (Miscellaneous
Provisions)*

this Act under which provision may be made for meeting out of property
that is the subject of a restraining order expenses mentioned in
subsection 18(b).’.

**Amendment of s 43 (Supreme Court may order that property be
excluded from restraining order)**

- Clause **41.** Section 43(8), ‘For all applications’—
 omit, insert—
 ‘For an application under this section’.

**PART 5—AMENDMENT OF JUDGES (PENSIONS
AND LONG LEAVE) ACT 1957**

Act amended in pt 5

- Clause **42.** This part amends the *Judges (Pensions and Long Leave) Act 1957*.

Amendment of s 2C (Minimum benefit payable)

- Clause **43.(1)** Section 2C(3)—
 renumber as section 2C(4).
 (2) Section 2C—
 insert—
 ‘**(3)** To remove any doubt, it is declared that this section does not apply
to an acting Supreme Court judge or an acting District Court judge.’.

PART 6—AMENDMENT OF JUSTICES ACT 1886

Act amended in pt 6

Clause 44. This part amends the *Justices Act 1886*.

Insertion of new pt 6 div 10

Clause 45. Part 6—

insert—

‘Division 10—Charge for issuing certain warrants

‘Warrant may include charge for its issue

‘178AA.(1) The amount recoverable under a warrant of execution issued under this or another Act for the non-payment of a penalty is increased by the amount of a charge that may be prescribed under a regulation for issuing the warrant.

‘(2) If a warrant under this or another Act authorises a person’s imprisonment for the non-payment of a penalty, the amount of the penalty recoverable under the warrant is increased by the amount of a charge that may be prescribed under a regulation for issuing the warrant.

‘(3) Subsection (2) does not affect the *Penalties and Sentences Act 1992*, section 185.¹⁰’.

PART 7—AMENDMENT OF LAND SALES ACT 1984

Act amended in pt 7

Clause 46. This part amends the *Land Sales Act 1984*.

¹⁰ Section 185 (Scale of imprisonment for nonpayment of penalty)

*Justice and Other Legislation (Miscellaneous
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Amendment of s 6 (Interpretation)

- Clause **47.** Section 6(1), definition “**proposed lot**”, ‘that,’—
 omit, insert—
 ‘that’.

Amendment of s 9 (Identification of land)

- Clause **48.** Section 9(3)(f), ‘section 10A(1)’—
 omit, insert—
 ‘section 10A(3)’.

Amendment of s 10 (Vendor must tell purchaser about significant variations between disclosure plan and later plans)

- Clause **49.** Section 10(1)(b)(ii), ‘section 10A(1)(b)’—
 omit, insert—
 ‘section 10A(3)(b)’.

Amendment of s 10A (Purchaser must be given registrable instrument of transfer and other documents)

- Clause **50.(1)** Section 10A(2) and (3)—
 renumber as section 10A(4) and (5).

- (2)** Section 10A(1), words before paragraph (a)—
 omit, insert—

‘10A.(1) The vendor of a proposed allotment must give the purchaser the registrable instrument of transfer for the allotment not later than 18 months after the purchaser enters upon the purchase of the allotment.

‘(2) Subsection (3) applies if the vendor of a proposed allotment does not give the purchaser a copy of the plan of survey for the proposed allotment noted with the local government’s approval under the Planning Act,

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Provisions)*

section 5.3¹¹ before the purchaser enters upon the purchase of the proposed allotment.

‘(3) The vendor must give the purchaser the following documents relating to the allotment not later than 18 months after the purchaser enters upon the purchase of the allotment—’.

(3) Section 10A(5) as renumbered, ‘(1)(c)’—
omit, insert—
‘(1) or (3)(c)’.

**PART 8—AMENDMENT OF PROPERTY LAW ACT
1974**

Act amended in pt 8

Clause 51. This part amends the *Property Law Act 1974*.

Amendment of s 61 (Conditions of sale of land)

Clause 52. Section 61(2)(a), ‘cheque drawn by any bank’—
omit, insert—
‘a financial institution cheque drawn on itself’.

¹¹ Section 5.3 (Sealing of plans for registration)

PART 9—AMENDMENT OF ROMAN CATHOLIC CHURCH (INCORPORATION OF CHURCH ENTITIES) ACT 1994

Act amended in pt 9

Clause 53. This part amends the *Roman Catholic Church (Incorporation of Church Entities) Act 1994*.

Omission of s 2 (Commencement)

Clause 54. Section 2—
omit.

Amendment of s 3 (Definitions)

Clause 55.(1) Section 3, definition “**incorporated church entity**”—
omit.

(2) Section 3—
insert—

‘ “**associated entity**” means a discrete service, work, activity or part of the following—

- (a) a diocese or archdiocese, or the trustees of a diocese or archdiocese, of the church;
- (b) a religious institute or the members of the religious institute;
- (c) a juridic person, or the person’s competent authority;
- (d) the holder of an office, or the holders of offices, of the church under canon law.

“**canon law**” means the Code of Canon Law and the statutes of juridic persons.

“**competent authority**”, of a juridic person or religious institute, means the person’s or institute’s competent authority as decided under canon law.

*Justice and Other Legislation (Miscellaneous
Provisions)*

“incorporated church entity” means—	1
(a) an entity established under this Act; or	2
(b) an AI Act corporation established under this Act; or	3
(c) an RECI Act corporation established under this Act;	4
and includes—	5
(d) the Corporation of the Bishops; and	6
(e) in part 5 ¹² —an AI Act corporation, or an RECI Act corporation that is not established under this Act.	7 8
“juridic person” means a juridic person within the meaning of canon law.	9
“religious institute” means an Institute of Consecrated Life or a Society of Apostolic Life.’.	10 11
(3) Section 3, definitions “bishop” and “officer”, ‘the Code of’— omit.	12 13
(4) Section 3, definition “church entity”, from paragraph (b)— omit, insert—	14 15
‘(b) a religious institute or the members of the religious institute; or	16
(c) a juridic person, or the person’s competent authority; or	17
(d) the holder of an office, or the holders of offices, of the church under canon law;	18 19
and includes an associated entity.’.	20
Amendment of s 4 (Interpretation and application of Code of Canon Law)	21 22
Clause 56.(1) Section 4, heading, ‘Code of’— omit.	23 24
(2) Section 4, from ‘the Code’ to ‘code’—	25

¹² Part 5 (Legal capacity and powers of incorporated church entities)

*Justice and Other Legislation (Miscellaneous
Provisions)*

omit, insert— 1
‘canon law to matters under this Act, that law’. 2

Amendment of s 8 (Certificate of incorporation) 3

Clause 57. Section 8, ‘the Code of’— 4
omit. 5

Amendment of s 9 (Request to incorporate church entity) 6

Clause 58.(1) Section 9— 7
insert— 8

‘(2A) Before asking for incorporation of a religious institute or an 9
associated entity of a religious institute, the bishop or Corporation of the 10
Bishops proposing to make the request must obtain written consent to the 11
making of the request from the religious institute’s competent authority 12
who has jurisdiction for the State. 13

‘(2B) If the request is for an associated entity of a religious institute, the 14
consent must state the associated entity’s or church entity’s assets, if any, 15
that are to vest in the corporation on its establishment under this part.’. 16

(2) Section 9(3)— 17
insert— 18

‘(e) for an associated entity, other than an associated entity of a 19
religious institute—state the associated entity’s or church entity’s 20
assets, if any, that are to vest in the corporation on its 21
establishment under this part; and 22

(f) for a religious institute or an associated entity of a religious 23
institute—be accompanied by a copy of the consent mentioned in 24
subsection (2A).’. 25

*Justice and Other Legislation (Miscellaneous
Provisions)*

Amendment of s 11 (Composition of corporation)

Clause **59.** Section 11(1), ‘the Code of’—
 omit.

Insertion of new ss 11A and 11B

Clause **60.** After section 11—
 insert—

‘Vesting of assets

‘**11A.(1)** On the establishment of a church entity, other than an associated entity, as a corporation under this part, the church entity’s assets vest in the corporation.

‘**(2)** On the establishment of an associated entity as a corporation under this part, the following assets vest in the corporation—

- (a) for an associated entity of a religious institute—only the assets stated in the consent mentioned in section 9(2A);¹³
- (b) for another associated entity—only the assets stated in the request under section 9(3)(e).

‘Transfer of rights and liabilities

‘**11B.(1)** On the establishment of a church entity as a corporation under this part—

- (a) the rights and liabilities of the entity become the rights and liabilities of the corporation; and
- (b) a legal proceeding by or against the entity that has not been finished before the establishment may be continued and finished by or against the corporation.’.

¹³ Section 9 (Request to incorporate church entity)

*Justice and Other Legislation (Miscellaneous
Provisions)*

Amendment of s 13 (Person acting for corporation)

Clause **61.** Section 13, ‘the Code of’—
 omit.

Amendment of s 16 (Request to establish existing church corporation under this part)

Clause **62.(1)** Section 16—
 insert—

 ‘**(2A)** However, if the existing church corporation is a religious institute or an associated entity of a religious institute, a request for establishment may be made only if the religious institute’s competent authority who has jurisdiction for the State has given written consent to the making of the request.

 ‘**(2B)** The consent must be given to the bishop or Corporation of the Bishops proposing to make the request.’.

(2) Section 16(3)—
 insert—

 ‘(d) if the existing church corporation is a religious institute or an associated entity of a religious institute—be accompanied by a copy of the consent mentioned in subsection (2A).’.

Amendment of s 18 (Composition of corporation)

Clause **63.** Section 18(1), ‘the Code of’—
 omit.

Amendment of s 20 (Person acting for existing church corporation)

Clause **64.** Section 20, ‘the Code of’—
 omit.

*Justice and Other Legislation (Miscellaneous
Provisions)*

Amendment of s 21 (Establishment under this part does not affect legal personality etc.)

Clause 65. Section 21—

insert—

‘(4) To prevent doubt, the assets held by the existing church corporation immediately before its establishment under this part are, on the establishment, taken to be the assets of the corporation established under this part.’.

Amendment of s 27 (Restrictions on powers)

Clause 66. Section 27(1) and (2)(b), ‘the Code of’—

omit.

Amendment of s 28 (Persons having dealings with incorporated church entities etc.)

Clause 67. Section 28(3)(a), ‘the Code of’—

omit.

Amendment of s 33 (Request to dissolve entity)

Clause 68.(1) Section 33(3)—

omit, insert—

‘(3) The request may be made only if—

(a) dissolution of the entity accords with canon law; and

(b) for an entity that is a religious institute or an associated entity of a religious institute—the religious institute’s competent authority who has jurisdiction for the State has given the person proposing to make the request written consent to the making of the request.’.

(2) Section 33(4)(e), ‘the Code of’—

omit.

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Provisions)*

(3) Section 33(4)—	1
<i>insert—</i>	2
‘(f) for an entity that is a religious institute or an associated entity of a	3
religious entity—be accompanied by a copy of the consent	4
mentioned in subsection (3)(b).’.	5

PART 10—AMENDMENT OF VEXATIOUS	6
LITIGANTS ACT 1981	7

Act amended in pt 10	8
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Clause 69. This part amends the <i>Vexatious Litigants Act 1981</i> .	9
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Amendment of s 2 (Meaning of terms)	10
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Clause 70. Section 2(2)(a), ‘section 9A(6)’—	11
<i>omit, insert—</i>	12
‘section 4A(6) or 9A(6)’.	13

Amendment of s 3 (Declaration of vexatious litigants upon application by public official)	14 15
--	----------

Clause 71. Section 3(2), ‘or Townsville in the State’—	16
<i>omit, insert—</i>	17
‘, Townsville or Cairns’.	18

Insertion of new s 4A	19
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Clause 72. After section 4—	20
<i>insert—</i>	21

Justice and Other Legislation (Miscellaneous Provisions)

‘Application to vary or revoke s 3 order

‘4A.(1) An application under section 3(3) or 4¹⁴ by a person declared to be a vexatious litigant (the **“applicant”**) must be made by the applicant filing the following documents in the Supreme Court—

- (a) an originating application;
- (b) an affidavit of relevant evidence;
- (c) submissions on which the applicant intends to rely.

‘(2) The registrar of the court must—

- (a) decide, having regard to the documents filed, whether there are any persons who may wish to respond to the application (the **“interested parties”**); and
- (b) advise the applicant in writing of the names and addresses of the interested parties.

‘(3) The applicant must—

- (a) give a service copy of each filed document and the notice mentioned in subsection (4) to each interested party within 7 days after receiving the registrar’s advice under subsection (2)(b); and
- (b) file in the court an affidavit about service of the documents within 10 days after receiving the advice.

‘(4) The notice must state that the interested party may, within 45 days after the notice is given (the **“response period”**), file a written response to the application in the court.

‘(5) If the interested party wishes to respond to the application, the party must file an affidavit in response in the court before the response period ends.

‘(6) The court must, in the absence of the applicant and any interested party, decide the application after the last response period ends, by reference to the documents mentioned in subsection (1) and the written responses, if any, received under this section.

¹⁴ Section 3 (Declaration of vexatious litigants upon application by public officials) or 4 (Revocation of s 3 order)

*Justice and Other Legislation (Miscellaneous
Provisions)*

‘(7) If the application is refused, the registrar must refuse to accept a further originating application under this section dealing with the same, or substantially the same, issue.

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2
3

‘(8) An application for leave under section 8 or 9 may not be made in relation to a decision made under subsection (6).’.

4
5

SCHEDULE 1	1
MINOR AMENDMENTS	2
section 3	3
ASSOCIATIONS INCORPORATION ACT 1981	4
1. Section 22(2), ‘section (1)(a)’—	5
<i>omit, insert—</i>	6
‘subsection (1)(a)’.	7
2. Section 59(1)(a), ‘prepare’—	8
<i>omit, insert—</i>	9
‘prepares’.	10
3. Section 59(1)(a), at the end—	11
<i>insert—</i>	12
‘and’.	13
CHILDRENS COURT ACT 1992	14
1. Section 21E(2), from ‘it’—	15
<i>omit, insert—</i>	16
‘the appeal may proceed by way of rehearing, completely or partly.’.	17

SCHEDULE 1 (continued)

CRIMINAL CODE

1. Section 651—

insert—

‘(8) In this section—

“summary offence” means—

(a) a simple or regulatory offence; or

(b) an offence for which—

(i) proceedings for a charge of the offence may be taken summarily under the *Drugs Misuse Act 1986*; and

(ii) the prosecution has made an election under section 45¹⁵ of that Act.’.

2. Section 652, heading, ‘summary charge’—

omit, insert—

‘charge for summary offence’.

CRIMINAL INVESTIGATION

(EXTRA-TERRITORIAL OFFENCES) ACT 1985

1. Section 2, definition “appropriate authority”, paragraph (d)(ii)—

omit, insert—

‘(ii) the commissioner of the Police Service;’.

¹⁵ Section 45 (Proceedings for offences)

SCHEDULE 1 (continued)

EVIDENCE ACT 1977

1. Section 107, heading, ‘Minister may approve’—

omit, insert—

‘Use of’.

FAIR TRADING ACT 1989

1. Section 48, penalty—

omit, insert—

‘Maximum penalty—540 penalty units.’

2. Section 86, penalty, ‘400’—

omit, insert—

‘540’.

3. Section 90(6A)—

omit, insert—

‘(6A) Subsection (6) does not apply to information as to the name and address of the person or as to the person’s ownership of, control over or position in, any business.’

HIRE-PURCHASE ACT 1959

1. Section 2(1), definition “hire-purchase agreement”—

insert—

SCHEDULE 1 (continued)

- ‘(g) that is, or forms part of, a transaction for the letting of goods with
an option to purchase or the purchase of goods by instalments (or
both) if the goods have a total market value of more
than \$40 000 000 at the time the transaction is entered into.’.

JURY ACT 1995

1. Part 8, after section 74—

insert—

‘Declaration—District Court registrars

‘**74A.(1)** This section applies if a District Court registrar at a courthouse
has performed a function or exercised a power that was assigned, or
delegated, under this Act to a deputy sheriff at the courthouse.

‘**(2)** The performance of the function or exercise of the power is as valid
as it would be if the District Court registrar were a deputy sheriff at the
court house.

‘**(3)** This section expires on the day after it commences.’.

**JUSTICE AND OTHER LEGISLATION
(MISCELLANEOUS PROVISIONS) ACT (NO. 2) 1997**

1. Section 60, ‘147(1)’—

omit, insert—

‘147A(1)’.

SCHEDULE 1 (continued)

LEGAL AID QUEENSLAND ACT 1997

- | | | |
|--|--|----|
| | | 1 |
| 1. Section 42(1)(a), ‘with perpetual succession’— | | 2 |
| <i>omit.</i> | | 3 |
| 2. Section 42(1)(b), ‘common’— | | 4 |
| <i>omit.</i> | | 5 |
| 3. Section 42(3)— | | 6 |
| <i>insert—</i> | | 7 |
| ‘(c) an exempt public authority under the Corporations Law.’. | | 8 |
| 4. Section 42— | | 9 |
| <i>insert—</i> | | 10 |
| ‘(5) Subsection (3)(c) is taken to have commenced on 1 July 1997. | | 11 |
| ‘(6) Subsection (5) and this subsection expire on the day after they | | 12 |
| commence.’. | | 13 |
| 5. Section 78, ‘73(2)’— | | 14 |
| <i>omit, insert—</i> | | 15 |
| ‘73(b)’. | | 16 |

SCHEDULE 1 (continued)

PENALTIES AND SENTENCES ACT 1992

1. Section 56(2), from ‘offender’ (second mention)—

omit, insert—

‘offender an application for a fine option order.’.

STIPENDIARY MAGISTRATES ACT 1991

1. Section 18(3), ‘by’—

omit, insert—

‘as’.

TRUSTEE COMPANIES ACT 1968

1. Schedule 2, heading, ‘2’—

omit.

2. Schedule 2, part 2, entry for ANZ Executors & Trustee Company Limited, paragraph (c)—

omit.

3. Schedule 2, part 2, entry for ANZ Executors & Trustee Company Limited, paragraphs (ca) and (cb)—

renumber as paragraphs (c) and (ca).

SCHEDULE 1 (continued)

4. Schedule 2, part 2, entry for Perpetual Trustees Australia Limited, paragraph (c)—	1 2
<i>omit.</i>	3
5. Schedule 2, part 2, entry for Perpetual Trustees Australia Limited, paragraph (ca)—	4 5
<i>renumber</i> as paragraph (c).	6
6. Schedule 2, part 2, entry for Perpetual Trustees Queensland Limited, paragraph (c)—	7 8
<i>omit.</i>	9
7. Schedule 2, part 2, entry for Perpetual Trustees Queensland Limited, paragraph (ca)—	10 11
<i>renumber</i> as paragraph (c).	12
8. Schedule 2, part 2, entry for Trust Company of Australia Limited, paragraph (c)—	13 14
<i>omit.</i>	15
9. Schedule 2, part 2, entry for Trust Company of Australia Limited, paragraph (ca)—	16 17
<i>renumber</i> as paragraph (c).	18

SCHEDULE 2**AMENDMENTS OF CERTAIN ACTS TO BROADEN
RANGE OF PERSONS WHO MAY AUDIT**

section 3

ASSOCIATIONS INCORPORATION ACT 1981**1. Section 59(1)(b)(i) and (ii)—***omit, insert—*

- ‘(i) a person registered as an auditor under the Corporations Law; or
- (ii) a member of the Australian Society of Certified Practicing Accountants or the Institute of Chartered Accountants in Australia; or
- (iii) a member of the National Institute of Accountants who holds a current public practice certificate issued by the institute and has satisfactorily completed an auditing component of a course of study in accountancy at a tertiary level conducted by an institution prescribed under section 1280(2) of the Corporations Law; or
- (iv) a person approved by the chief executive;’.

CHARITABLE FUNDS ACT 1958**1. Section 24(2)(c)(i) and (ii)—***omit, insert—*

- ‘(i) a person registered as an auditor under the Corporations Law; or

SCHEDULE 2 (continued)

- | | |
|---|----------------------------|
| (ii) a member of the Australian Society of Certified Practicing Accountants or the Institute of Chartered Accountants in Australia; or | 1
2
3 |
| (iii) a member of the National Institute of Accountants who holds a current public practice certificate issued by the institute and has satisfactorily completed an auditing component of a course of study in accountancy at a tertiary level conducted by an institution prescribed under section 1280(2) of the Corporations Law; or | 4
5
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9 |
| (iv) a person approved by the chief executive.’. | 10 |

COLLECTIONS ACT 1966 11

- | | |
|---|----------------------------------|
| 1. Section 31(1)(f)(i) and (ii)— | 12 |
| <i>omit, insert—</i> | 13 |
| ‘(i) a person registered as an auditor under the Corporations Law; or | 14
15 |
| (ii) a member of the Australian Society of Certified Practicing Accountants or the Institute of Chartered Accountants in Australia; or | 16
17
18 |
| (iii) a member of the National Institute of Accountants who holds a current public practice certificate issued by the institute and has satisfactorily completed an auditing component of a course of study in accountancy at a tertiary level conducted by an institution prescribed under section 1280(2) of the Corporations Law; or | 19
20
21
22
23
24 |
| (iv) a person approved by the chief executive.’. | 25 |

SCHEDULE 2 (continued)

GAMING MACHINE ACT 1991**1. Section 161(1), definition “accountant”, paragraph (d)—***omit, insert—*

- ‘(d) a member of the National Institute of Accountants who holds a current public practice certificate issued by the institute and has satisfactorily completed an auditing component of a course of study in accountancy at a tertiary level conducted by an institution prescribed under section 1280(2) of the Corporations Law; or
- (e) a person approved by the chief executive.’.

SECURITY PROVIDERS ACT 1993**1. Section 3, definition “accountant”, paragraphs (a) and (b)—***omit, insert—*

- ‘(a) a person registered as an auditor under the Corporations Law; or
- (b) a member of the Australian Society of Certified Practicing Accountants or the Institute of Chartered Accountants in Australia; or
- (c) a member of the National Institute of Accountants who holds a current public practice certificate issued by the institute and has satisfactorily completed an auditing component of a course of study in accountancy at a tertiary level conducted by an institution prescribed under section 1280(2) of the Corporations Law; or
- (d) a person approved by the chief executive.’.

SCHEDULE 2 (continued)

TRUST ACCOUNTS ACT 1973**1. Section 15(1)(d)(i) to (iii)—***omit, insert—*

- ‘(i) a person registered as an auditor under the Corporations Law; or
- (ii) a member of the Australian Society of Certified Practicing Accountants or the Institute of Chartered Accountants in Australia; or
- (iii) a member of the National Institute of Accountants who holds a current public practice certificate issued by the institute and has satisfactorily completed an auditing component of a course of study in accountancy at a tertiary level conducted by an institution prescribed under section 1280(2) of the Corporations Law; or
- (iv) a person approved by the chief executive; or’.

TRUSTS ACT 1973**1. Section 5(1), definition “public accountant”, paragraphs (a) to (c)—***omit, insert—*

- ‘(a) a person registered as an auditor under the Corporations Law; or
- (b) a member of the Australian Society of Certified Practicing Accountants or the Institute of Chartered Accountants in Australia; or
- (c) a member of the National Institute of Accountants who holds a current public practice certificate issued by the institute and has satisfactorily completed an auditing component of a course of study in accountancy at a tertiary level conducted by an institution

SCHEDULE 2 (continued)

- | | |
|--|---|
| prescribed under section 1280(2) of the Corporations Law; or | 1 |
| (d) a person approved by the chief executive.’. | 2 |