



Queensland

Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2009

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2009

A Bill

for

An Act to amend the *Bail Act 1980*, the Criminal Code, the *Criminal Practice Rules 1999*, the *Director of Public Prosecutions Act 1984*, the *District Court of Queensland Act 1967*, the *Drug Court Act 2000*, the *Drugs Misuse Act 1986*, the *Evidence Act 1977*, the *Justices Act 1886*, the *Magistrates Act 1991*, the *Magistrates Courts Act 1921*, the *Penalties and Sentences Act 1992*, the *Police Service Administration Act 1990*, the *Property Law Act 1974*, the *Supreme Court of Queensland Act 1991*, the *Uniform Civil Procedure Rules 1999*, the *Workers' Compensation and Rehabilitation Act 2003* and the *Youth Justice Act 1992*, to reform and modernise civil and criminal jurisdiction and for other particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*.

2 Commencement

This Act, other than parts 6 (other than section 43 and section 49 to the extent inserts section 145), 12, 16, 17 and 18, commences on a day to be fixed by proclamation.

Part 2 Amendment of Bail Act 1980

3 Act amended

This part amends the *Bail Act 1980*.

4 Insertion of new s 15B

After section 15A—

insert—

‘15B Application for bail outside district or division

‘(1) This section applies if—

- (a) a police officer has refused to grant bail to a person under section 7 for an offence; and
- (b) a Magistrates Court is authorised under this Act to grant bail to the person for the offence; and

-
- (c) having regard to all the circumstances, the person may not reasonably or practicably be brought personally before a court to apply for bail; and
 - (d) a practice direction made by the Chief Magistrate provides for the making of an application for bail if the circumstances mentioned in paragraphs (a) to (c) apply.
- ‘(2) An application for bail may be made under section 15A, whether or not that section would otherwise apply, to a magistrate constituting a Magistrates Court outside the district or division in which the application would otherwise be required to be made.
- ‘(3) The application must comply with the practice direction.
- ‘(4) In this section—
- district* means a district appointed under the *Justices Act 1886* for the purposes of a Magistrates Court.
- division* means a division appointed under the *Justices Act 1886* for the purposes of a Magistrates Court.’.

5 Amendment of s 28A (Other warrants for apprehension of defendant)

Section 28A(1)(e), ‘or 34B(2)’—
omit, insert—
‘, 34B(2), 34BA(2) or 34BB(2)’.

6 Insertion of new ss 34BA and 34BB

After section 34B—
insert—

‘34BA Varying bail on registry committal

- ‘(1) This section applies if the clerk of the court at a place orders a person charged with an indictable offence to be committed to be tried or sentenced under a registry committal under the *Justices Act 1886*.

[s 6]

- ‘(2) The bail applying to the defendant immediately before the registry committal (the *summary bail*) is continued, and is taken to have been granted by the court (the *receiving court*) to which the defendant is committed for trial or sentence on the same conditions that applied immediately before the registry committal.
- ‘(3) However, the summary bail is taken to be varied to require the defendant to appear before the receiving court on the day the receiving court sets for the hearing of the charge.
- ‘(4) An undertaking given for the purposes of the summary bail, including any promise of a surety, is, for the continuance of the summary bail, taken to have been given to the receiving court, and, to the greatest practicable extent, the provisions of this Act relating to undertakings continue to apply.

Example for subsection (4)—

The entitlement of a surety to apply to the receiving court for a discharge under section 23 (Application to court by surety for discharge) continues to apply.

‘34BB Varying bail for charge for indictable offence referred to clerk of the court under Justices Act 1886

- ‘(1) This section applies if a charge for an indictable offence is referred to the clerk of the court at a place under the *Justices Act 1886*, section 23EB (the *referral section*).

Editor’s note—

Justices Act 1886, section 23EB (Management by clerk of the court of charge pending finalisation of proceeding under ex officio indictment)

- ‘(2) The bail applying to the defendant in relation to the charge immediately before the presentation of the relevant indictment (the *summary bail*) is continued, and is taken to have been granted by the court (the *receiving court*) in which the relevant indictment is presented, on the same conditions that applied immediately before the presentation of the relevant indictment.

- ‘(3) However, the summary bail is taken to be varied to require the defendant to appear before the receiving court on the day the receiving court sets for the hearing of the relevant indictment.
- ‘(4) An undertaking given for the purposes of the summary bail, including any promise of a surety, is, for the continuance of the summary bail, taken to have been given to the receiving court, and, to the greatest practicable extent, the provisions of this Act relating to undertakings continue to apply.

Example for subsection (4)—

The entitlement of a surety to apply to the receiving court for a discharge under section 23 (Application to court by surety for discharge) continues to apply.

- ‘(5) If the clerk of the court, under the *Justices Act 1886*, section 23EB(3)(a)(ii), refers the charge back to the Magistrates Court, and the relevant indictment has not been presented, the bail is taken to be varied to require the defendant to appear at the time and place advised to the parties by the clerk of the court under the *Justices Act 1886*, section 23EB(6).
- ‘(6) In this section—
relevant indictment means the indictment mentioned in the *Justices Act 1886*, section 23EB(2)(b)(i) or (ii).’

Part 3 Amendment of Criminal Code

7 Code amended

This part amends the Criminal Code.

8 Amendment of s 1 (Definitions)

- (1) Section 1, definitions *arresting officer* and *prosecution*—
omit.
- (2) Section 1—

[s 9]

insert—

‘arresting officer—

- (a) for chapter 62, chapter division 3, see section 590AD; or
- (b) for chapter 62, chapter division 4A, see section 590E.

disclosure obligation, for chapter 62, chapter division 4A, see section 590E.

disclosure obligation direction, for chapter 62, chapter division 4A, see section 590E.

party, for chapter 62, chapter division 4A, see section 590E.

prosecution—

- (a) for chapter 62, chapter division 3, see section 590AD; or
- (b) for chapter 62, chapter division 4A, see section 590E.

serious offence charge, for chapter 58A, see section 552BA.’.

- (3) Section 1, definition *exculpatory thing*, ‘thing’—

omit, insert—

‘evidence’.

9 Replacement of ss 552A and 552B

Sections 552A and 552B—

omit, insert—

‘552A Charges of indictable offences that must be heard and decided summarily

- ‘(1) This section applies to a charge before a Magistrates Court of any indictable offence against this Code if the offence is—
 - (a) a relevant offence; or
 - (b) the offence of—
 - (i) attempting to commit a relevant offence; or
 - (ii) counselling or procuring the commission of a relevant offence; or

-
- (iii) becoming an accessory after the fact to a relevant offence.
 - ‘(2) A charge to which this section applies must be heard and decided summarily.
 - ‘(3) This section is subject to section 552D.
 - ‘(4) In this section—

relevant offence means—

- (a) an offence against a provision of this Code, if the maximum penalty for the offence is, or includes, imprisonment for not more than 3 years; or

Example—

Section 328A (Dangerous operation of a vehicle) provides an example of the operation of paragraph (a), because the maximum penalty for an offence constituted by an act described in section 328A(1) includes imprisonment for not more than 3 years. If the circumstances of the offence include a circumstance of aggravation described in section 328A(2)(a), (b) or (c) (which provides for a maximum penalty that includes 5 years imprisonment), but the circumstance of aggravation is not charged, the offence would still be a relevant offence. (See section 564(2) (Form of indictment) which provides that any circumstance of aggravation intended to be relied on must be charged in the indictment.)

- (b) an offence against any of the following provisions—
 - (i) section 141;
 - (ii) section 142;
 - (iii) section 143;
 - (iv) section 346; or

Editor’s note—

sections 141 (Aiding persons to escape from lawful custody), 142 (Escape by persons in lawful custody), 143 (Permitting escape) and 346 (Assaults in interference with freedom of trade or work)

- (c) an offence against part 6 (other than chapter 38), unless—

[s 9]

- (i) the offence is already provided for in paragraph (a); or
- (ii) a charge for the offence would be a serious offence charge.

Editor's note—

- part 6 (Offences relating to property and contracts)
- chapter 38 (Stealing with violence—extortion by threats)

'552B Charges of indictable offences that must be heard and decided summarily on prosecution election

- '(1) This section applies to a charge before a Magistrates Court of any indictable offence against this Code if the offence is—
 - (a) a relevant offence; or
 - (b) the offence of—
 - (i) attempting to commit a relevant offence; or
 - (ii) counselling or procuring the commission of a relevant offence; or
 - (iii) becoming an accessory after the fact to a relevant offence.
- '(2) A charge to which this section applies must be heard and decided summarily, if the prosecution elects to have the charge heard and decided summarily.

Note—

It is open to the director of public prosecutions to issue guidelines for deciding whether to elect to have charges heard and decided summarily. (See the *Director of Public Prosecutions Act 1984*, section 11 (Powers of director).)

- '(3) This section is subject to section 552D.
- '(4) In this section—

relevant offence means any indictable offence against this Code, unless a charge for the offence is—

-
- (a) a charge that must be heard and decided summarily under section 552A; or
 - (b) a serious offence charge.

‘552BA Meaning of *serious offence charge* for ch 58A

- ‘(1) A charge for an offence against this Code is a *serious offence charge* for this chapter if the offence is—
 - (a) a serious offence; or
 - (b) the offence of—
 - (i) attempting to commit a serious offence; or
 - (ii) counselling or procuring the commission of a serious offence; or
 - (iii) becoming an accessory after the fact to a serious offence.
- ‘(2) An offence is a serious offence under this section if it is an offence against a provision listed in column 1 of the following table of serious offences, and—
 - (a) no relevant circumstance is listed for the provision in column 3; or
 - (b) both of the following apply—
 - (i) 1 or more relevant circumstances are listed for the provision in column 3;
 - (ii) at least 1 of the relevant circumstances, or the relevant circumstance if only 1 relevant circumstance is listed, applies in relation to the offence.

Notes—

- 1 Section 564(2) (Form of indictment) requires that any circumstances of aggravation intended to be relied upon must be charged in the indictment. Accordingly an offence against a provision listed in column 1 might not be a serious offence if a relevant circumstance listed in column 3 would require that a circumstance of aggravation apply, but the circumstance is not actually charged.

[s 9]

2 Under section 574 (Summary convictions), chapter 60 (Indictments), which includes section 564(2), also applies to a complaint with a view to summary conviction.

‘(3) Column 2 of the following table of serious offences gives the names of the provisions mentioned in column 1, and is for information only.

‘(4) In this section—

plead guilty, in relation to an offender, includes that the offender has indicated to a Magistrates Court that the offender intends to plead guilty.

prescribed value means \$30000.

Table of serious offences

Column 1	Column 2	Column 3
Provision of Code	Provision heading	Relevant circumstance
section 54A	Demands with menaces upon agencies of government	The offender is liable to imprisonment for life or an indefinite sentence under the <i>Penalties and Sentences Act 1992</i> , part 10.
section 59	Member of Parliament receiving bribes	
section 60	Bribery of member of Parliament	
section 61	Riot	1 The offender is liable to life imprisonment. 2 The offender is liable to 7 years imprisonment because the offender was armed with a dangerous or offensive weapon, instrument or explosive substance.
section 87	Official corruption	
section 92A	Misconduct in relation to public office	
section 98C	Bribery	
section 119B	Retaliation against judicial officer, juror, witness etc.	
section 120	Judicial corruption	

Column 1	Column 2	Column 3
Provision of Code	Provision heading	Relevant circumstance
section 121	Official corruption not judicial but relating to offences	
section 122	Corruption of jurors	
section 124	Punishment of perjury	
section 126	Fabricating evidence	
section 127	Corruption of witnesses	
section 129	Damaging evidence with intent	
section 131	Conspiracy to bring false accusation	
section 132	Conspiring to defeat justice	
section 133	Compounding an indictable offence	The offender is liable to imprisonment for 7 years.
section 140	Attempting to pervert justice	
section 208	Unlawful sodomy	
section 210	Indecent treatment of children under 16	<ol style="list-style-type: none"> 1 The person in relation to whom the offence is committed is under 14 years at the time of the offence. 2 The person in relation to whom the offence is committed is of or above the age of 14 years at the time of the offence and the offender does not plead guilty. 3 The offender is liable to imprisonment for 20 years.
section 213	Owner etc. permitting abuse of children on premises	<ol style="list-style-type: none"> 1 The child in relation to whom the offence is committed is under 14 years at the time of the offence. 2 The child in relation to whom the offence is committed is of or above the age of 14 years at the time of the offence and the offender does not plead guilty.
section 215	Carnal knowledge with or of children under 16	<ol style="list-style-type: none"> 1 The child in relation to whom the offence is committed is under 14 years at the time of the offence.

[s 9]

Column 1	Column 2	Column 3
Provision of Code	Provision heading	Relevant circumstance
section 216	Abuse of persons with an impairment of the mind	2 The child in relation to whom the offence is committed is of or above the age of 14 years at the time of the offence and the offender does not plead guilty.
section 217		3 The offender is liable to imprisonment for 14 years or for life.
section 218	Procuring young person etc. for carnal knowledge	1 The person in relation to whom the offence is committed is under 14 years at the time of the offence.
section 218A		2 The person in relation to whom the offence is committed is of or above the age of 14 years at the time of the offence and the offender does not plead guilty.
section 219	Procuring sexual acts by coercion etc.	3 The person in relation to whom the offence is committed is a person with an impairment of the mind.
section 218A		1 The person in relation to whom the offence is committed is, or is believed by the offender to be, under 14 years at the time of the offence.
section 219	Using internet etc. to procure children under 16	2 The person in relation to whom the offence is committed is of or above the age of 14 years at the time of the offence and the offender does not plead guilty.
section 219		1 The person in relation to whom the offence is committed is, or is believed by the offender to be, of or above the age of 14 years at the time of the offence and the offender does not plead guilty.
section 219	Taking child for immoral purposes	1 The child in relation to whom the offence is committed is under 14 years at the time of the offence.

Column 1	Column 2	Column 3
Provision of Code	Provision heading	Relevant circumstance
section 221	Conspiracy to defile	<p>2 The child in relation to whom the offence is committed is of or above the age of 14 years at the time of the offence and the offender does not plead guilty.</p> <p>1 The person the subject of the conspiracy to induce is under 14 years at the time of the offence.</p> <p>2 The person the subject of the conspiracy to induce is of or above the age of 14 years at the time of the offence and the offender does not plead guilty.</p>
section 222	Incest	
section 228	Obscene publications and exhibitions	The offender is liable to imprisonment for 5 years or 10 years.
section 228A	Involving child in making child exploitation material	<p>1 The child involved in the making of child exploitation material is under 14 years at the time of the offence.</p> <p>2 The child involved in the making of child exploitation material is of or above the age of 14 years at the time of the offence and the offender does not plead guilty.</p>
section 228B	Making child exploitation material	<p>1 The child described or depicted in the child exploitation material is, or apparently is, under 14 years.</p> <p>2 The child described or depicted in the child exploitation material is, or apparently is, of or above the age of 14 years and the offender does not plead guilty.</p>
section 228C	Distributing child exploitation material	<p>1 The child described or depicted in the child exploitation material is, or apparently is, under 14 years.</p> <p>2 The child described or depicted in the child exploitation material is, or apparently is, of or above the age of 14 years and the offender does not plead guilty.</p>
section 228D	Possessing child exploitation material	<p>1 The child described or depicted in the child exploitation material is, or apparently is, under 14 years.</p>

[s 9]

Column 1	Column 2	Column 3
Provision of Code	Provision heading	Relevant circumstance
section 229B	Maintaining a sexual relationship with a child	<p>2 The child described or depicted in the child exploitation material is, or apparently is, of or above the age of 14 years and the offender does not plead guilty.</p> <p>1 The child is under 14 years at any time during the period of the unlawful sexual relationship.</p> <p>2 The child was of or above the age of 14 years at the time the unlawful sexual relationship commenced and the offender does not plead guilty.</p>
section 305	Punishment of murder	
section 306	Attempt to murder	
section 307	Accessory after the fact to murder	
section 309	Conspiring to murder	
section 310	Punishment of manslaughter	
section 311	Aiding suicide	
section 313	Killing unborn child	
section 315	Disabling in order to commit indictable offence	
section 316	Stupefying in order to commit indictable offence	
section 317	Acts intended to cause grievous bodily harm and other malicious acts	
section 317A(1)	Carrying or sending dangerous goods in a vehicle	
section 318	Obstructing rescue or escape from unsafe premises	
section 319	Endangering the safety of a person in a vehicle with intent	
section 320	Grievous bodily harm	

Column 1	Column 2	Column 3
Provision of Code	Provision heading	Relevant circumstance
section 320A	Torture	
section 321	Attempting to injure by explosive or noxious substances	
section 322	Administering poison with intent to harm	The offender is liable to 14 years imprisonment.
section 323A	Female genital mutilation	
section 323B	Removal of child from State for female genital mutilation	
section 328A(4)	Dangerous operation of a vehicle	
section 339	Assaults occasioning bodily harm	The offender is liable to imprisonment for 10 years.
section 349	Rape	
section 350	Attempt to commit rape	
section 351	Assault with intent to commit rape	
section 352	Sexual assaults	
section 398	Punishment of stealing	<ol style="list-style-type: none"> 1 The offender is liable to 14 years imprisonment under clause 1, the value of the yield to the offender, or the detriment caused, because of the stealing of the testamentary instrument is equal to or more than the prescribed value and the offender does not plead guilty. 2 The total value of anything stolen, other than a testamentary instrument as mentioned in clause 1, and as provided for in the charge for the offence, is equal to or more than the prescribed value and the offender does not plead guilty.

[s 9]

Column 1 Provision of Code	Column 2 Provision heading	Column 3 Relevant circumstance
section 399	Fraudulent concealment of particular documents	<p>3 The offender is liable to imprisonment for 14 years under clause 14 and a charge for the indictable offence mentioned in clause 14(b) is to be heard and decided on indictment or would be required to be heard and decided on indictment if the charge were laid.</p> <p>The offender is liable to 14 years imprisonment, the value of the yield to the offender, or the detriment caused, because of the concealment is equal to or more than the prescribed value and the offender does not plead guilty.</p>
section 403	Severing with intent to steal	The value of the thing made moveable is equal to or more than the prescribed value and the offender does not plead guilty.
section 406	Bringing stolen goods into Queensland	The value of the property is equal to or more than the prescribed value and the offender does not plead guilty.
section 408A	Unlawful use or possession of motor vehicles, aircraft or vessels	<p>1 The value of the motor vehicle, aircraft or vessel is equal to or more than the prescribed value and the offender does not plead guilty.</p> <p>2 The offender is liable to imprisonment for 10 years and a charge for the indictable offence mentioned in section 408A(1A) is to be heard and decided on indictment, or would be required to be heard and decided on indictment if the charge were laid.</p> <p>3 The offender is liable to imprisonment for 12 years, the value of the destruction, damage, interference or detriment caused, or the value of the thing removed, (regardless of the value of the motor vehicle, aircraft or vessel involved) is equal to or more than the prescribed value and the offender does not plead guilty.</p>

Column 1	Column 2	Column 3
Provision of Code	Provision heading	Relevant circumstance
section 408C	Fraud	The offender does not plead guilty and the total value of the fraud involved is equal to or more than the prescribed value.
section 408E	Computer hacking and misuse	The offender is liable to imprisonment for 10 years, the value of the detriment or damage caused, or benefit obtained, is equal to or more than the prescribed value and the offender does not plead guilty.
section 411	Punishment of robbery	The offender is liable to imprisonment for life.
section 412	Attempted robbery	<ol style="list-style-type: none"> 1 The offender is liable to imprisonment for 14 years because the offender is or pretends to be armed with any dangerous or offensive weapon or instrument. 2 The offender is liable to imprisonment for life.
section 415	Extortion	The offender is liable to life imprisonment.
section 417A	Taking control of aircraft	The offender is liable to imprisonment for life.
section 419(1)	Burglary	<ol style="list-style-type: none"> 1 The offender is liable to imprisonment for life under section 419(3)(b)(i) or (ii). 2 The offender is liable to imprisonment for life under section 419(3)(b)(iv), the value of any damage caused to property is equal to or more than the prescribed value and the offender does not plead guilty.
section 419(4)	Burglary	A charge for the indictable offence mentioned in section 419(4) is to be heard and decided on indictment, or would be required to be heard and decided on indictment if the charge were laid.
section 421(2)	Entering or being in premises and committing indictable offences	A charge for the indictable offence mentioned in section 421(2) is to be heard and decided on indictment, or would be required to be heard and decided on indictment if the charge were laid.

[s 9]

Column 1	Column 2	Column 3
Provision of Code	Provision heading	Relevant circumstance
section 421(3)	Entering or being in premises and committing indictable offences	<ol style="list-style-type: none"> 1 A charge for the indictable offence mentioned in section 421(3) is to be heard and decided on indictment, or would be required to be heard and decided on indictment if the charge were laid. 2 The value of any damage caused by the break is equal to or more than the prescribed value and the offender does not plead guilty.
section 427	Unlawful entry of vehicle for committing indictable offence	<ol style="list-style-type: none"> 1 The offender is liable to imprisonment for 14 years under section 427(2)(b)(i) or (ii). 2 The offender is liable to imprisonment for 14 years under section 427(2)(b)(iv), the value of any damage caused to property is equal to or more than the prescribed value and the offender does not plead guilty.
section 430	Fraudulent falsification of records	The value of the yield to the offender because of the act or omission mentioned in section 430(a), (b), (c), (d) or (e), or the value of the detriment caused by that act or omission, is equal to or more than the prescribed value and the offender does not plead guilty.
section 433	Receiving tainted property	The value of the tainted property is equal to or more than the prescribed value and the offender does not plead guilty.
section 435	Taking reward for recovery of property obtained by way of indictable offences	The value of the benefit mentioned in section 435(b) is equal to or more than the prescribed value and the offender does not plead guilty.
chapter 42A chapter 44	Secret commissions Offences analogous to stealing relating to animals	The value of the animal the subject of the offence is equal to or more than the prescribed value and the offender does not plead guilty.
section 461 section 462	Arson Endangering particular property by fire	

Column 1	Column 2	Column 3
Provision of Code	Provision heading	Relevant circumstance
section 463	Setting fire to crops and growing plants	
section 467	Endangering the safe use of vehicles and related transport infrastructure	
section 468	Injuring animals	The offender is liable to imprisonment for 7 years, the value of the animal the subject of the offence is equal to or more than the prescribed value and the offender does not plead guilty.
section 469	Wilful damage	The offender is liable to punishment under clause 1 (Destroying or damaging premises by explosion), 2 (Sea walls and other property), 5 (Railways), 6 (Aircraft) or 7 (Other things of special value).
section 469A	Sabotage and threatening sabotage	
section 470	Attempts to destroy property by explosives	
section 471	Damaging mines	The value of the damage or interference caused is equal to or more than the prescribed value and the offender does not plead guilty.
section 472	Interfering with marine signals	The value of any damage or detriment directly attributable to the commission of the offence, including, for example, economic loss arising from disruption to shipping, is equal to or more than the prescribed value and the offender does not plead guilty.
section 473	Interfering with navigation works	The value of any damage or detriment directly attributable to the commission of the offence, including, for example, economic loss arising from disruption to shipping, is equal to or more than the prescribed value and the offender does not plead guilty.

[s 10]

Column 1	Column 2	Column 3
Provision of Code	Provision heading	Relevant circumstance
section 474	Communicating infectious diseases to animals	The value of the animal or animals the subject of the offence is equal to or more than the prescribed value and the offender does not plead guilty.
section 488	Forgery and uttering	The offender is liable to 7 or 14 years imprisonment, the value of the detriment, or of the yield to the offender, involved in the forging or uttering is equal to or more than the prescribed value and the offender does not plead guilty.
section 498	Falsifying warrants for money payable under public authority	The value of the detriment, or of the yield to the offender, involved in the making out or delivering of the warrant is equal to or more than the prescribed value and the offender does not plead guilty.
section 514	Personation in general	The offender is liable to imprisonment for 14 years, the value of the property mentioned in section 514(2) is equal to or more than the prescribed value and the offender does not plead guilty.’.

10 Amendment of s 552D (When Magistrates Court must abstain from jurisdiction)

- (1) Section 552D(2)—
renumber as section 552D(4).
- (2) Section 552D—
insert—
- ‘(2) A Magistrates Court must also abstain from dealing summarily with a charge under section 552A or 552B if satisfied, on an application made by the defence, that, because of exceptional circumstances applying in relation to the charge, the charge should not be heard and decided summarily.

Example of exceptional circumstances—

Exceptional circumstances could include that factual circumstances will cause the proceeding for the charge to be especially complex, or will involve the giving of a significant amount of expert technical evidence.

- ‘(3) If the defendant is not legally represented, the Magistrates Court must explain to the defendant the availability of an application under subsection (2).’.

11 Replacement of s 552G (Value of property affecting jurisdiction to be decided by Magistrates Court)

Section 552G—

omit, insert—

‘552G Matters affecting jurisdiction to be decided by Magistrates Court

- ‘(1) This section applies if something must be considered in order to decide whether, for the purposes of this chapter, a charge for an offence must be heard and decided summarily.
- ‘(2) The thing must be decided by the Magistrates Court.

Examples—

- 1 If the value of property or of damage to property must be considered for deciding whether an offence must be heard and decided summarily, the value is the value as decided by the Magistrates Court.
 - 2 If the age of a person at the time an offence is alleged to have been committed must be considered for deciding whether the offence must be heard and decided summarily, the age of the person is the age as decided by the Magistrates Court.
- ‘(3) The Magistrates Court may make a decision under subsection (2) on the basis of submissions made to the court by parties to the proceeding for the offence.’.

12 Amendment of s 552I (Procedure under section 552B)

- (1) Section 552I, heading, ‘552B’—

omit, insert—

[s 13]

‘552A or 552B’.

- (2) Section 552I(1) and (2)—
omit, insert—
- ‘(1) This section applies to any charge for an offence if—
 - (a) the charge must be heard and decided summarily under section 552A; or
 - (b) the charge must be heard and decided summarily because the prosecution has elected under section 552B to have the charge heard and decided summarily.
- ‘(2) If the defendant is not legally represented, the Magistrates Court is required to state the substance of the charge to the defendant.’.
- (3) Section 552I(3), from ‘unless’ to ‘a jury,’—
omit.
- (4) Section 552I(7)(b)—
omit, insert—
‘(b) for making a decision under section 552D.’.

13 Amendment of s 590AA (Pre-trial directions and rulings)

- (1) Section 590AA(2)(ba)—
omit, insert—
‘(ba) disclosure under chapter division 3 or 4; or’.

14 Insertion of new section 590AAA

Chapter 62, chapter division 2, after section 590AA—
insert—

‘590AAA Noncompliance with particular direction under s 590AA

- ‘(1) If it appears to the court that a party (the *directed party*) to a proceeding has not complied with a direction given under

section 590AA(2)(ba), the court may order the directed party to file an affidavit, or give evidence in court, explaining and justifying the failure to comply.

Examples—

an explanation of circumstances that prevented compliance, or the identification of a statutory provision that prohibits disclosure

- ‘(2) If the court requires the directed party to file an affidavit, a copy of the affidavit must be served on the party for whose benefit the direction was given (the *affected party*).
- ‘(3) An order under subsection (1) may be made—
 - (a) on the court’s own initiative; or
 - (b) on the application of the affected party.
- ‘(4) If the court is not satisfied the directed party’s affidavit or evidence satisfactorily explains and justifies the noncompliance, the court may, either before or at the trial for the proceeding—
 - (a) adjourn the proceeding to allow enough time for—
 - (i) the directed party to comply with the direction; and
 - (ii) the affected party to consider anything disclosed under the direction and take any necessary further action; and
 - (b) if the court is satisfied that the noncompliance was unjustified, unreasonable or deliberate—make, in relation to the adjournment, an award in favour of the affected party and against the directed party of an amount of costs the court considers just and reasonable; and
 - (c) if an award of costs is made under paragraph (b)—fix a time for the amount to be paid.
- ‘(5) This section does not limit the court’s power otherwise to deal with a failure to comply with a direction, including, for example, any power in the court to punish to punish for contempt.

[s 15]

‘(6) In this section—
direction includes ruling.’.

15 Amendment of s 590AB (Disclosure obligation)

Section 590AB(2)(b)—
omit, insert—

‘(b) all information, including knowledge, or material in the possession of the prosecution, capable of rebutting the prosecution case or advancing the defence case.

Note—

The *Director of Public Prosecutions Act 1984*, section 24C complements the disclosure obligation under this chapter division by establishing a police officer’s obligation to disclose evidence to the director of public prosecutions.

‘(3) Subsections (1) and (2) apply subject to section 590AC(1)(a) and chapter subdivision D.’.

16 Amendment of s 590AC (Chapter division does not have particular consequences)

(1) Section 590AC(1)(a), ‘the disclosure of a thing it is unlawful to disclose’—

omit, insert—

‘disclosure that is unlawful’.

(2) Section 590AC(1)(b), ‘a thing’—

omit, insert—

‘anything’.

17 Amendment of s 590AD (Definitions for ch div 3)

(1) Section 590AD, definition *prescribed summary trial*—

omit, insert—

'prescribed summary trial' means a summary trial of—

- (a) a charge for an indictable offence that must be heard and decided summarily under section 552A; or
 - (b) a charge for an indictable offence if, under section 552B, the prosecution has elected that the charge be heard and decided summarily; or
 - (c) a charge for an indictable offence against a provision of the *Drugs Misuse Act 1986*, if—
 - (i) under that Act, proceedings for the charge may be taken summarily; and
 - (ii) the prosecution has elected that proceedings for the charge be taken summarily; or
 - (d) a charge for an offence prescribed under a regulation for this definition.’.
- (2) Section 590AD, definition *exculpatory thing*, ‘thing’—
omit, insert—
‘evidence’.

18 Amendment of s 590AH (Disclosure that must always be made)

Section 590AH(2)—

omit, insert—

- ‘(2) For a relevant proceeding, the prosecution must give the accused person each of the following—
- (a) a copy of the bench charge sheet, complaint or indictment containing the charge against the person;
 - (b) a copy of the accused person’s criminal history in the possession of the prosecution;
 - (c) a copy of any statement of the accused person in the possession of the prosecution;
 - (d) for each proposed witness for the prosecution—

[s 18]

- (i) a copy of any statement of the witness in the possession of the prosecution; or
Example—
 - a statement made by a proposed witness for the prosecution in an audio recording of an interview
 - (ii) if there is no statement of the witness in the possession of the prosecution—a written notice naming the witness;
 - (e) for each proposed witness for the prosecution who is, or may be, an affected child—a written notice naming the witness and describing why the proposed witness is, or may be, an affected child;
 - (f) if the prosecution intends to adduce evidence of a representation under the *Evidence Act 1977*, section 93B, a written notice stating that intention and the matters mentioned in section 590C(2)(b) to (d);
 - (g) a copy of any report of any test or forensic procedure relevant to the proceeding in the possession of the prosecution;
Example of a forensic procedure—
 - DNA, fingerprint or another scientific identification procedure
 - (h) a written notice describing any test or forensic procedure, including a test or forensic procedure that is not yet completed, on which the prosecution intends to rely at the proceeding;
 - (i) a written notice describing any original evidence on which the prosecution intends to rely at the proceeding;
 - (j) a copy of anything else on which the prosecution intends to rely at the proceeding.
- ‘(3) Subsection (2) does not require the prosecution to disclose anything if its disclosure would not fall within the disclosure obligation as described in section 590AB(2).’

19 Amendment of s 590AI (When mandatory disclosure must be made)

- (1) Section 590AI(2)(a), ‘before evidence starts to be heard at the relevant proceeding’—

omit, insert—

‘before the date set by the court for the commencement of the hearing of evidence’.

- (2) Section 590AI(3)—

insert—

Note—

An administrative arrangement made under section 706A (Development of administrative arrangements) might provide for the prosecution’s agreement to a form of staged disclosure that will ensure an accused person is provided with at least part of the material that must be disclosed under section 590AH within a period stated in the arrangement that is shorter than the period stated in subsection (2).’.

20 Amendment of s 590AJ (Disclosure that must be made on request)

- (1) Section 590AJ(2)—

omit, insert—

- ‘(2) For a relevant proceeding, the prosecution must, on request, give the accused person each of the following—

- (a) particulars if a proposed witness for the prosecution is, or may be, an affected child;
- (b) a copy of the criminal history of a proposed witness for the prosecution, in the possession of the prosecution;
- (c) a copy or notice of anything in the possession of the prosecution that is adverse to the reliability or credibility of a proposed witness for the prosecution;
- (d) notice of anything in the possession of the prosecution that raises an issue about the competence of a proposed witness for the prosecution to give evidence in the proceeding;

[s 21]

- (e) a copy of any statement of a person in the possession of the prosecution that is relevant to the proceeding, but on which the prosecution does not intend to rely;

Example—

a statement made by a person interviewed by an arresting officer during the investigation of the accused person for the offence in the relevant proceeding and recorded in the arresting officer's notebook

- (f) a copy or notice of anything else in the possession of the prosecution that is relevant to the proceeding but on which the prosecution does not intend to rely.

Example for paragraph (f)—

a copy of a crime report, running sheet, logbook, photo board or other document about the accused person in the possession of the arresting officer relating to the investigation of the offence with which the accused person is charged that contains information capable of rebutting the prosecution case or advancing the defence case

- '(2A) However, subsection (2) does not require the prosecution to disclose anything if its disclosure would not fall within the disclosure obligation as described in section 590AB(2).
- '(2B) A thing that may be requested under subsection (2)(c), (d) or (e) does not include a copy of a statement mentioned in section 590AH(2)(d)(i).'

21 Amendment of s 590AK (When requested disclosure must be made)

Section 590AK(1)(b)(ii) and (iii), 'a thing'—

omit, insert—

'the thing'.

22 Amendment of s 590AL (Ongoing obligation to disclose)

Section 590AL(2) and (3), ‘an exculpatory thing’—

omit, insert—

‘exculpatory evidence’.

23 Amendment of s 590AN (Limitation on disclosure of things accused person already has)

Section 590AN, ‘any thing’—

omit, insert—

‘anything’.

24 Amendment of s 590AQ (Limit on disclosure contrary to the public interest)

Section 590AQ(6)(a), ‘an exculpatory thing’—

omit, insert—

‘exculpatory evidence’.

25 Amendment of s 590AS (Viewing particular evidence)

Section 590AS(1), ‘590AH(2)(e)’—

omit, insert—

‘590AH(2)(i)’.

26 Amendment of s 590AV (Disclosure directions)

Section 590AV, heading, after ‘directions’—

insert—

‘under particular provisions’.

[s 27]

27 Insertion of new ch 62, ch div 4A

After section 590C—

insert—

‘Chapter division 4A Disclosure obligation directions

‘590D Purpose and scope of ch div 4A

- ‘(1) This chapter division makes particular provision for disclosure obligation directions.
- ‘(2) This chapter division does not affect—
 - (a) any other power a court has in relation to a failure to comply with a disclosure obligation, including, for example, to exclude evidence if it would be unfair to an accused person to admit the evidence; or
 - (b) any other action that may be taken against a party in relation to a failure to comply with a disclosure obligation.

Example for paragraph (b)—

Section 204 (Disobedience to statute law) renders a person liable to prosecution for an offence if the person omits to do an act the person is required to do under chapter division 3 or 4.
- ‘(3) This chapter division does not limit the making of practice directions by the Chief Justice or Chief Judge about disclosure in a proceeding.

‘590E Definitions for ch div 4A

‘In this chapter division—

arresting officer has the same meaning it has in chapter division 3.

disclosure obligation means—

- (a) the obligation of the prosecution, for the purposes of a relevant proceeding under chapter division 3, to comply

with the requirements of that chapter division for disclosure to an accused person, other than the obligation to comply with a disclosure direction as defined in section 590AV; or

- (b) the obligation of an accused person to comply with requirements of chapter division 4 for disclosure.

disclosure obligation direction means a direction or ruling under section 590AA(2)(ba), to the extent it relates to compliance with a disclosure obligation.

party, to a proceeding, means—

- (a) an accused person who is charged with an offence the subject of the proceeding; or
- (b) the prosecution in relation to an offence the subject of the proceeding.

prosecution has the same meaning it has in chapter division 3.

‘590F Subject matter for disclosure obligation direction

- ‘(1) A disclosure obligation direction may provide for any of the following—
 - (a) whether a party to a proceeding has a disclosure obligation in relation to another party to the proceeding;
 - (b) requiring that a particular thing must be disclosed;
 - (c) allowing the court to inspect a particular thing to decide whether the court should further direct that a party has a disclosure obligation in relation to the thing;
 - (d) allowing the court to examine the prosecution or arresting officer to decide whether the court should direct that the prosecution has a disclosure obligation in relation to a particular thing;
 - (e) how a disclosure obligation is to be complied with in a particular case;
 - (f) setting a timetable for compliance with a disclosure obligation.

[s 28]

- ‘(2) Subsection (1) does not limit section 590AA(2)(ba).
- ‘(3) The court may make a disclosure obligation direction on the conditions, whether about the circumstances of disclosure or otherwise, it considers appropriate.

‘590G Application for disclosure obligation direction

- ‘(1) The procedures applying in relation to an application under section 590AA(1) by a party to a proceeding for a disclosure obligation direction are stated in the *Criminal Practice Rules 1999*, chapter 9A.
- ‘(2) To the greatest practicable extent, the procedures apply in addition to, and do not limit, the procedures applying under the *Criminal Practice Rules 1999*, chapter 9.
- ‘(3) The existence of the procedures mentioned in subsection (1) is not intended to stop either party to a proceeding from writing to, or otherwise communicating information to, the other party to resolve issues arising over a disclosure obligation.’.

28 Amendment of s 651 (Court may decide summary offences if a person is charged on indictment)

Section 651(7), definition *summary offence*—

insert—

- ‘(c) an indictable offence against this Code, if, under section 552A, a charge for the offence must be heard and decided summarily; or
- (d) an indictable offence against this Code, if under section 552B, the prosecution has elected to have the charge heard and decided summarily.’.

29 Insertion of new s 706A

Chapter 71—

insert—

‘706A Development of administrative arrangements

- ‘(1) A relevant agency may, to the extent it is consistent with the proper performance of its functions, collaborate with 1 or more other relevant agencies to develop arrangements for compatible business and operating processes to facilitate the efficient and timely resolution of proceedings under relevant laws.
- ‘(2) An arrangement under subsection (1) can not affect—
 - (a) any power of a court, including any inherent power, to give a direction or make an order in a particular case, or generally; or
 - (b) the judicial independence of any court or judicial officer.
- ‘(3) However, a practice direction may be made to give effect to the arrangement.
- ‘(4) In this section—

relevant agency means any of the following—

 - (a) the chief executive;
 - (b) the chief executive (corrective services);
 - (c) the chief executive of the department in which the *Youth Justice Act 1992* is administered;
 - (d) the commissioner of the police service;
 - (e) the director of public prosecutions;
 - (f) the Chief Magistrate under the *Magistrates Act 1991*;
 - (g) the Chief Judge of the District Court of Queensland under the *District Court of Queensland Act 1967*;
 - (h) the Chief Justice of Queensland;
 - (i) the chief executive officer, Legal Aid Queensland;
 - (j) the president of the Queensland Law Society Incorporated;
 - (k) the president of the Bar Association of Queensland.

[s 30]

relevant law means any of the following—

- (a) any law that includes provisions relating to criminal procedure, including in particular this Code and the *Justices Act 1886*;
- (b) any other law that operates in conjunction with, or whose operation is otherwise associated with, the operation of a law mentioned in paragraph (a);
- (c) practice directions relating to criminal practice and procedure for the purposes of the operation of a law mentioned in paragraph (a).’.

30 Insertion of new ch 87

Part 9—

insert—

‘Chapter 87 Transitional provisions for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009

‘724 Definition for ch 87

‘In this chapter—

amending Act means the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*.

originating step, for a proceeding, means—

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

‘725 New disclosure provisions apply only to prosecutions commenced after commencement

‘Chapter 62, chapter divisions 2, 3 and 4, as amended by the amending Act, and section 590AAA and chapter 62, chapter division 4A, as inserted by the amending Act, apply to a proceeding for an offence only if an originating step for the proceeding is taken on or after the commencement of this section.

‘726 New summary disposition provisions apply only to prosecutions commenced after commencement

‘(1) Chapter 58A, as amended by amending Act, applies in relation to a charge for an offence only if an originating step for the proceeding for the charge is taken on or after the commencement of this section.

‘(2) For subsection (1), it does not matter when the offence was committed.

‘(3) Subsection (4) applies if—

(a) an originating step for a proceeding for a charge for an old offence is taken against a person on or after the commencement of this section in relation to circumstances that happened before the repeal of the provision providing for the old offence; and

(b) the proceeding for the old offence is not prevented under section 11(1).

‘(4) The issue of whether the charge for the old offence must be heard and decided summarily must, to the greatest practicable extent, be decided according to whether a charge for the new offence could be, or would be required to be, heard and decided summarily.

‘(5) In this section—

new offence means the offence that, for the purposes of section 11(1), is the offence under the law in force at the time when the person is charged with the old offence.

[s 31]

old offence means an offence against a provision of this Code that was repealed at any time before the commencement of this section.’.

Part 4 Amendment of Criminal Practice Rules 1999

31 Rules amended

This part amends the *Criminal Practice Rules 1999*.

32 Amendment of r 5 (Application of rules to Magistrates Courts)

Rule 5, after the second dot point—

insert—

- chapter 9A
- chapter 14, to the extent provided for in rule 59(3).’.

33 Amendment of r 29 (Subpoenas)

Rule 29—

insert—

- ‘(10) This rule does not permit the accused person, by subpoena, to require the prosecutor to attend a court to produce a document or thing to the court that the prosecutor is otherwise required to disclose under chapter 62, chapter division 3 of the Code.

Note—

If the court is a Magistrates Court, the prosecutor could be, as a complainant, a person who is a public officer under the *Justices Act 1886* or a police officer.’.

34 Amendment of ch 9, hdg

Chapter 9, heading, after ‘rulings’—

insert—

‘generally’.

35 Insertion of new ch 9A

After rule 43—

insert—

‘Chapter 9A Disclosure obligation directions

‘43A Purpose and scope of ch 9A

‘This chapter states the procedures applying in relation to—

- (a) an application to a court under the Code, section 590AA(1) by a party to a proceeding for a disclosure obligation direction; or
- (b) a party seeking, at a direction hearing under the *Justices Act 1886*, section 83A, a disclosure obligation direction.

‘43B Definitions for ch 9A

‘In this chapter—

applicant means a party to a proceeding who—

- (a) applies for a disclosure obligation direction under the Code, section 590AA(1); or
- (b) seeks, at a direction hearing under the *Justices Act 1886*, section 83A, a disclosure obligation direction.

applicant’s communication means the applicant’s communication to the respondent under rule 43C.

disclosure obligation direction has the same meaning it has for the Code, chapter 62, chapter division 4A.

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disclosure obligation has the same meaning it has for the Code, chapter 62, chapter division 4A.

party, to a proceeding, means—

- (a) an accused person who is charged with an offence the subject of the proceeding; or
- (b) the prosecution in relation to an offence the subject of the proceeding.

prosecution has the same meaning it has for the Code, chapter 62, chapter division 3.

respondent means a party to a proceeding against whom a disclosure obligation direction is sought.

respondent's response means the respondent's response under rule 43C.

‘43C Procedure applying before filing of application for disclosure obligation direction

- ‘(1) This rule provides for the procedures that apply before the filing of an application for a disclosure obligation direction.
- ‘(2) The applicant must, by letter, or by email or some other electronic form of written communication—
 - (a) advise the respondent of the following—
 - (i) what the applicant says the respondent should have done, but has not done, in relation to the disclosure obligation that is to be the subject of the disclosure obligation direction to be sought by the applicant;
 - (ii) the disclosure obligation direction to be sought by the applicant; and
 - (b) give the respondent a brief statement about what the applicant considers the respondent should give the applicant to satisfy the applicant that the respondent has complied with the disclosure obligation; and
 - (c) advise the respondent whether the applicant is asking for the court—

-
- (i) to require the parties to the proceeding to attend before the court and make oral submissions; or
 - (ii) to decide the application based on the material to be placed before the court.
- ‘(3) The respondent must, by letter, or by email or some other electronic form of written communication, respond to the applicant’s communication—
- (a) as soon as practicable after the respondent receives the applicant’s communication; and
 - (b) not later than 3 clear days before the day next set for a hearing of the proceeding the subject of the disclosure obligation.

Note—

Under rule 42, and under the *Justices Act 1886*, section 83A, an application for a disclosure obligation direction would be required to be served on the other party at least 2 clear days before the application is to be heard.

- ‘(4) The response must—
- (a) state that the response is a response to the applicant’s communication; and
 - (b) advise the applicant of what the respondent intends to do in response to the applicant’s communication.

‘43D Filing of application for disclosure obligation direction

- ‘(1) The applicant may file the application for a disclosure obligation direction if—
- (a) the applicant receives a respondent’s response but the response is not satisfactory to the applicant; or
 - (b) the applicant does not receive a respondent’s response within the time allowed under this chapter.
- ‘(2) The applicant must file all of the following documents with the application—
- (a) a copy of the applicant’s communication;

[s 35]

- (b) if the respondent gave a respondent's response—a copy of the response;
 - (c) a copy of any relevant correspondence exchanged between the applicant and the respondent after the applicant received the respondent's response or, if the applicant did not receive a respondent's response, after the time allowed under this chapter for receiving the respondent's response.
- '(3) Unless the court otherwise directs, the only material before the court in relation to the application for a disclosure obligation direction must be the application for the disclosure obligation direction and the documents mentioned in subrule (2).

Example for subrule (3)—

Unless the court otherwise directs, there is no requirement for an affidavit to be filed in relation to the application for the disclosure obligation direction.

'43E Disposal of application for disclosure obligation direction

'The court may dispose of an application for a disclosure obligation direction without requiring the parties to the proceeding to attend before the court, and without oral submissions being made, unless—

- (a) the applicant has, in the applicant's communication, or the respondent has, in the respondent's response, stated that the party wishes to make an oral submission; and
- (b) the court is satisfied it is necessary for oral submissions to be made for the application to be properly disposed of.'

36 Amendment of r 59 (Application of ch 14)

Rule 59—

insert—

‘(3) Rule 62 also applies to a proceeding in a Magistrates Court.’.

37 Amendment of r 62 (Verdict and judgment record)

(1) Rule 62(2)(c), after ‘judge’—

insert—

‘, magistrate or justice’.

(2) Rule 62(3)—

omit, insert—

‘(3) A copy of the record must be given to the chief executive (corrective services) if—

(a) an Act provides for it to be given; or

(b) the person mentioned in subrule (1) is being committed into, or remanded in, custody.’.

(3) Rule 62—

insert—

‘(5) The proper officer may amend the record if it is inaccurate in any respect, and, if a copy of an inaccurate record has been given to the chief executive (corrective services), the proper officer must replace the copy with a copy of the record as amended.’.

38 Insertion of new ch 17

After rule 122—

insert—

[s 39]

‘Chapter 17 Transitional provisions

‘123 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009

- ‘(1) On the commencement of this rule, rules 59 and 62, and schedule 6, definition *court*, as amended by the amending Act, and the relevant rule 5 amendment, have effect in relation to a proceeding, regardless of when the proceeding was commenced.
- ‘(2) To remove any doubt, it is declared that chapter 9A, as inserted by the amending Act, applies to a proceeding only if the Criminal Code, chapter 62, chapter division 4A or the *Justices Act 1886*, part 4, division 10B applies to the proceeding.
- ‘(3) In this rule—
 - amending Act* means the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*.
 - relevant rule 5 amendment* means the amendment of rule 5 by the amending Act to the extent the amendment inserts a reference to chapter 14.’

39 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definitions *chief executive (corrective services)* and *respondent*—
 - omit.*
- (2) Schedule 6—
 - insert*—
 - ‘*applicant*, for chapter 9A, see rule 43B.
 - applicant’s communication*, for chapter 9A, see rule 43B.
 - disclosure obligation direction*, for chapter 9A, see rule 43B.
 - disclosure obligation*, for chapter 9A, see rule 43B.

prosecution, for chapter 9A, see rule 43B.

respondent—

- (a) in an appeal, means—
 - (i) a person who is defending the appeal; or
 - (ii) a cross-appellant; or
- (b) for chapter 9A, see rule 43B.

respondent's response, for chapter 9A, see rule 43B. .

- (3) Schedule 6, definition *court*, paragraph (a), after ‘34’—
insert—
 ‘and rule 62’.
- (4) Schedule 6, definition *party*, paragraph (c)—
renumber as paragraph (d).
- (5) Schedule 6, definition *party*—
insert—
 ‘(c) for chapter 9A, see rule 43B; or’.

Part 5 Amendment of Director of Public Prosecutions Act 1984

40 Act amended

This part amends the *Director of Public Prosecutions Act 1984*.

41 Amendment of s 24C (Disclosures by police officers)

- (1) Section 24C(1)(c), ‘is’—
omit.
- (2) Section 24C(2), from ‘or other things’—

- (3) Section 61(2)(b), ‘210(3) or (4),’—

omit.

- (4) Section 61(2)(b), ‘398, 409,’—

omit.

44 Amendment of s 68 (Civil jurisdiction)

- (1) Section 68(2), definition *monetary limit*, ‘\$250000’—

omit, insert—

‘\$750000’.

- (2) Section 68(3)(b), ‘in the case of proceedings falling within subsection (1)(b)(iii), (xi) or (xii)—’—

omit.

45 Amendment of s 69 (Powers of District Court)

- (1) Section 69(1), after ‘authorities of the Supreme Court,’—

insert—

‘including the powers and authorities conferred on the Supreme Court by an Act,’.

- (2) Section 69(1)—

insert—

‘Example of power conferred on the Supreme Court by an Act—

the power of the Supreme Court under the Land Title Act 1994, section 127 (Removing a caveat) to order that a caveat be removed’.

46 Amendment of s 75 (When a jury may be summoned)

- (1) Section 75(a), (b) and (c), ‘\$10000’—

omit, insert—

‘the Magistrates Courts jurisdictional limit’.

[s 47]

(2) Section 75—

insert—

‘(2) In this section—

Magistrates Courts jurisdictional limit means the amount applying under the *Magistrates Courts Act 1921*, section 4(a), as the limit of the amount claimed in a personal action.’.

47 Amendment of s 77 (Removal of proceedings from Supreme Court to District Court)

Section 77—

insert—

‘(7) The reference in subsection (1)(b) to an Act amending the jurisdiction of the District Court does not include reference to the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*.’.

48 Amendment of s 78 (Removal of proceedings from the District Court to a Magistrates Court)

Section 78—

insert—

‘(7) The reference in subsection (1)(b) to an Act amending the jurisdiction of the Magistrates Courts does not include reference to the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*.’.

49 Insertion of new ss 145 and 146

After section 144—

insert—

‘145 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009—civil jurisdiction

‘Sections 68 and 75, as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*, apply only to actions commenced after the commencement of this section.

‘146 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009—criminal jurisdiction

- ‘(1) Section 61, as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*, applies in relation to a charge for an offence only if an originating step for the proceeding for the charge is taken on or after the commencement of this section.
- ‘(2) For subsection (1), it does not matter when the offence was committed.
- ‘(3) In this section—
- originating step*, for a proceeding, means—
- (a) the arrest of the defendant in the proceeding; or
 - (b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or
 - (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.’.

[s 50]

Part 7 Amendment of Drug Court Act 2000

50 Act amended

This part amends the *Drug Court Act 2000*.

51 Amendment of s 8 (What is a *relevant offence*)

Section 8(1)(b)—

omit, insert—

‘(b) an indictable offence that must be dealt with summarily;

Examples of indictable offences that must be dealt with summarily—

- an offence provided for in the Criminal Code, section 552A (Charges of indictable offences that must be heard and decided summarily)
- an offence provided for in the Criminal Code, section 552B (Charges of indictable offences that must be heard and decided summarily on prosecution election) if the prosecution has elected that the offence be heard and decided summarily
- an offence provided for in the *Drugs Misuse Act 1986*, section 13 (Certain offences may be dealt with summarily) or 14 (Other offences that may be dealt with summarily if no commercial purpose alleged) if the prosecution has made the election mentioned in section 118(2) of that Act’.

52 Amendment of s 37 (Immunity from prosecution)

(1) Section 37(3)(b), ‘552B’ and footnote—

omit, insert—

‘552A or 552B’.

(2) Section 37(3)(b), ‘13’ and footnote—

omit, insert—

‘13 or 14’.

(3) Section 37(3)—

insert—

‘Editor’s note—

Criminal Code, section 552A (Charges of indictable offences that must be heard and decided summarily) or 552B (Charges of indictable offences that must be heard and decided summarily on prosecution election) or *Drugs Misuse Act 1986*, section 13 (Certain offences may be dealt with summarily) or 14 (Other offences that may be dealt with summarily if no commercial purpose alleged)’.

53 Insertion of new pt 7, div 3

After section 51—

insert—

‘Division 3 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009

‘52 Amendments apply only to prosecutions commenced after commencement

‘(1) Sections 8 and 37, as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*, apply in relation to a charge for an offence only if an originating step for the proceeding for the charge is taken on or after the commencement of this section.

‘(2) For subsection (1), it does not matter when the offence was committed.

‘(3) In this section—

originating step, for a proceeding, means—

(a) the arrest of the defendant in the proceeding; or

[s 54]

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

Part 8 Amendment of Drugs Misuse Act 1986

54 Act amended

This part amends the *Drugs Misuse Act 1986*.

55 Insertion of new s 14

Part 2—

insert—

‘14 Other offences that may be dealt with summarily if no commercial purpose alleged

- ‘(1) Subject to subsection (2), if a person charged with the commission of a crime (a *relevant crime*) defined in section 6, 8, 9 or 10B, or an attempt to commit a relevant crime, is liable on conviction to more than 15 years imprisonment, proceedings for a charge of the offence may be taken summarily.

Editor’s note—

Section 6 (Supplying dangerous drugs), 8 (Producing dangerous drugs), 9 (Possessing dangerous drugs) or 10B (Possession of a prohibited combination of items)

Note—

It is open to the director of public prosecutions to issue guidelines for deciding whether to take proceedings summarily under subsection (1).

(See the *Director of Public Prosecutions Act 1984*, section 11 (Powers of director).

- ‘(2) Subsection (1) does not apply if the prosecution alleges that the supply, production or possession the subject of the charge was for a commercial purpose.
- ‘(3) A person against whom proceedings are taken summarily under this section is liable, on conviction, to not more than 3 years imprisonment.’.

56 Amendment of s 127 (No costs to be awarded)

Section 127—

insert—

- ‘(2) Subsection (1) does not apply to costs awarded under a relevant provision in relation to a failure to comply with a disclosure direction.
- ‘(3) In this section—
relevant provision means—
 - (a) the Criminal Code, section 590AAA; or
 - (b) the *Justices Act 1886*, section 83B.’.

57 Insertion of new pt 7, div 7

After section 141—

insert—

[s 58]

**‘Division 7 Provision for Civil and Criminal
Jurisdiction Reform and
Modernisation Amendment Act
2009**

**‘142 New summary disposition provisions apply only to
prosecutions commenced after commencement**

- ‘(1) Section 14, as inserted by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*, applies in relation to a charge for an offence only if an originating step for the proceeding for the charge is taken on or after the commencement of this section.
- ‘(2) For subsection (1), it does not matter when the offence was committed.
- ‘(3) In this section—
- originating step***, for a proceeding, means—
- (a) the arrest of the defendant in the proceeding; or
 - (b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or
 - (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.’.

**Part 9 Amendment of Evidence Act
1977**

58 Act amended

This part amends the *Evidence Act 1977*.

59 Amendment of s 21AF (Evidence-in-chief)

(1) Section 21AF(3)(a), ‘subsections (4), (5)(a) and (d), (8) and (9)’—

omit, insert—

‘subsections (5)(a), (8) and (9)’.

(2) Section 21AF(3)(b)(i), ‘(4),’—

omit.

**Part 10 Amendment of Justices Act
1886**

60 Act amended

This part amends the *Justices Act 1886*.

61 Amendment of s 4 (Definitions)

Section 4—

insert—

‘arresting officer, for part 4, division 10B, see section 83D.

disclosure obligation, for part 4, division 10B, see section 83D.

disclosure obligation direction, for part 4, division 10B, see section 83D.

party, for part 4, division 10B, see section 83D.

prosecution, for part 4, division 10B, see section 83D.

registry committal means a committal by the clerk of a court under an order under part 5, division 7A.’.

[s 62]

62 Amendment of s 22C (Appointment of clerks of the court)

Section 22C(1), ‘, by gazette notice,’—
omit.

63 Insertion of new s 22D

After section 22C—
insert—

‘22D Principal clerk of courts

- ‘(1) The Governor in Council may appoint a principal clerk of courts.
- ‘(2) The principal clerk of courts is appointed under the *Public Service Act 2008*.
- ‘(3) The principal clerk of courts is appointed for all Magistrates Courts in Queensland.
- ‘(4) The appointment of a person as principal clerk of courts is for the whole of Queensland, and the person must not be appointed for any particular place.
- ‘(5) The principal clerk of courts may, for any place for which a clerk of the court or assistant clerk of the court is appointed under section 22C, discharge all functions the clerk of the court or assistant clerk of the court may discharge.
- ‘(6) The principal clerk of courts may give directions to each clerk of the court and assistant clerk of the court appointed under section 22C, and to any other officer employed in a registry of a Magistrates Court, about the discharge of the functions of the clerk of the court, assistant clerk of the court or other officer.’.

64 Insertion of new ss 23EB and 23EC

Part 3, division 2A—
insert—

‘23EB Management by clerk of the court of charge pending finalisation of proceeding under ex officio indictment

- ‘(1) A court may, under this section, refer to the clerk of the court a charge before the court, but only if the defendant in relation to the charge is represented by a lawyer, is not in custody and is not in breach of any condition of the undertaking on which the defendant was granted bail.
- ‘(2) A charge (the *relevant charge*) may be referred to the clerk of the court if—
- (a) it is a charge for an indictable offence; and
 - (b) the prosecution and the defendant advise the court that they are agreed that—
 - (i) an indictment for the offence the subject of the relevant charge has been or is to be presented under the Criminal Code, section 561; or

Editor’s note—
Criminal Code, section 561 (Ex officio indictments)
 - (ii) an indictment for another indictable offence (the *other offence*) has been presented under the Criminal Code, section 561, and the other offence arises out of the same set of circumstances alleged in relation to the relevant charge.
- ‘(3) If the relevant charge is referred under this section—
- (a) the clerk of the court has the following functions—
 - (i) keeping the relevant charge under review;
 - (ii) referring the relevant charge back to the court if—
 - (A) the clerk of the court considers this should be done to ensure the hearing of the relevant charge is not unnecessarily delayed; or
 - (B) the prosecution or the defendant asks the clerk of the court to do so; and
 - (b) the registrar of the court in which the indictment mentioned in subsection (2)(b)(i) or (ii) is presented

[s 64]

must, within 1 calendar month after the relevant charge or the charge for the other offence is disposed of in that court, advise the clerk of the court of the fact.

- ‘(4) If the clerk of the court is advised under subsection (3)(b), no further appearance is required in the Magistrates Court by any party to the proceeding for the relevant charge.
- ‘(5) The functions of the clerk of the court under this section do not include any function in relation to bail.

Note—

See the *Bail Act 1980*, section 34BB (Varying bail for charge for indictable offence referred to clerk of the court under Justices Act 1886).

- ‘(6) If the relevant charge is referred back to the court under subsection (3)(a)(ii), the clerk of the court must give reasonable notice, in writing, to all parties to the proceeding—
 - (a) advising that the relevant charge has been referred back to the court; and
 - (b) stating the time and place for the next hearing of the proceeding in the court.

‘23EC Magistrate for other district or division authorised to grant bail may also adjourn a hearing for offence

- ‘(1) This section applies if an application for bail is made under the *Bail Act 1980*, section 15A, as applied under section 15B of that Act, to a magistrate constituting a Magistrates Court (the *bail court*) for a division or district outside the district or division in which the application would otherwise be required to be made.
- ‘(2) At the hearing, the magistrate, as well as deciding the application for bail, may—
 - (a) adjourn the proceeding for the offence to a stated time and place; or
 - (b) adjourn the proceeding without stating a time and place, and order that the time and place be decided by a

Magistrates Court, whether or not the bail court, for a stated division or district.’

65 Amendment of s 41 (Prosecution disclosure)

Section 41, before ‘are’—

insert—

‘for a relevant proceeding as defined in the Criminal Code, section 590AD’.

66 Amendment of s 52 (Limitation of proceedings)

Section 52—

insert—

‘(2) The 1 year limitation applying under subsection (1) is taken to be 2 years if—

- (a) a proceeding was previously commenced for an indictable offence against a provision of the Criminal Code or the *Drugs Misuse Act 1986*, arising out of alleged circumstances, but the proceeding has been discontinued, or is to be discontinued by a Crown Law Officer as defined in the Criminal Code; and
- (b) the simple offence or breach of duty arises out of the same set of alleged circumstances.

‘(3) Also, subsection (1) does not apply to an offence if, under the Act providing for the offence, the Magistrates Court has jurisdiction for the offence without limit as to time.

Example for subsection (3)—

The Criminal Code, section 552F gives jurisdiction to a Magistrates Court that hears and decides a charge summarily under section 552A or 552B of that Code despite the time that has elapsed from the time when the matter of complaint of the charge arose.’

[s 67]

67 Amendment of s 83 (Production of documents before justices)

Section 83—

insert—

- (3) This section does not permit the justices to require the prosecutor or complainant to attend before a court to produce a document or thing to the court that the prosecution is otherwise required to disclose under the Criminal Code, chapter 62, chapter division 3.

Note—

A complainant could include a person who is a public officer under this Act, or a police officer.’

68 Amendment of s 83A (Direction hearing)

- (1) Section 83A(5)(aa)—

omit, insert—

‘(aa) disclosure under the Criminal Code, chapter 62, chapter division 3;’.

- (2) Section 83A(5)(g)—

insert—

‘(iii) requiring a person to attend to give oral evidence under section 110B.’.

- (3) Section 83A(8), after ‘proceeding’—

insert—

‘, except to the extent they are awarded under division 10B arising out of noncompliance with a disclosure direction’.

- (4) Section 83A(9)—

renumber as section 83A(10).

- (5) Section 83A—

insert—

- ‘(9) A direction hearing for a disclosure obligation direction under section 83D, or for a requirement under section 110B that a person attend a proceeding, may be held on the day set for the hearing of evidence in the proceeding the subject of the direction or requirement.’

69 Insertion of new s 83B and new pt 4, div 10B

After section 83A—

insert—

‘83B Noncompliance with disclosure direction

- ‘(1) If it appears to the court that a party (the *directed party*) to a proceeding has not complied with a direction given under section 83A(5)(aa), the court may order the directed party to file an affidavit, or give evidence in court, explaining and justifying the failure to comply.

Examples—

an explanation of circumstances that prevented compliance, or the identification of a statutory provision that prohibits disclosure

- ‘(2) If the court requires the directed party to file an affidavit, a copy of the affidavit must be served on the party for whose benefit the direction was given (the *affected party*).
- ‘(3) An order under subsection (1) may be made—
- (a) on the court’s own initiative; or
 - (b) on the application of the affected party.
- ‘(4) If the court is not satisfied the directed party’s affidavit or evidence satisfactorily explains and justifies the noncompliance, the court may, either before or at the trial for the proceeding—
- (a) adjourn the proceeding to allow enough time for—
 - (i) the directed party to comply with the disclosure direction; and

[s 69]

- (ii) the affected party to consider anything disclosed under the disclosure direction and obtain any necessary further evidence; and
 - (b) if the court is satisfied that the noncompliance was unjustified, unreasonable or deliberate—make, in relation to the adjournment, an award in favour of the affected party and against the directed party of an amount of costs the court considers just and reasonable; and
 - (c) if an award of costs is made under paragraph (b)—fix a time for the amount to be paid.
- ‘(5) This section does not limit the court’s power otherwise to deal with a failure to comply with a direction of any kind given under section 83A, including, for example, any power in the court to punish for contempt.

‘Division 10B Disclosure obligation directions

‘83C Purpose and scope of div 10B

- ‘(1) This division makes particular provision for disclosure obligation directions.
- ‘(2) This division does not affect—
 - (a) any other power a court has in relation to a failure to comply with a disclosure obligation, including, for example, the court’s power to exclude evidence if it would be unfair to an accused person to admit the evidence; or
 - (b) any other action that may be taken against a party in relation to a failure to comply with a disclosure obligation.

Example for paragraph (b)—

The Criminal Code, section 204 (Disobedience to statute law) renders a person liable to prosecution for an offence if the person omits to do an act the person is required to do under chapter 62, chapter division 3 of that Code.

- ‘(3) This division does not limit the making of practice directions by the Chief Magistrate about disclosure in a proceeding.

‘83D Definitions for div 10B

In this division—

arresting officer has the same meaning it has in the Criminal Code, chapter 62, chapter division 3.

disclosure obligation means the obligation of the prosecution, for the purposes of a relevant proceeding under the Criminal Code, chapter 62, chapter division 3, to comply with the requirements of that chapter division for disclosure to an accused person, other than the obligation to comply with a disclosure direction as defined in the Criminal Code, section 590AV.

disclosure obligation direction means a direction under section 83A, to the extent it relates to compliance with a disclosure obligation.

party, to a proceeding, includes—

- (a) an accused person who is charged with an offence the subject of the proceeding; and
- (b) the prosecution in relation to an offence the subject of the proceeding.

prosecution has the same meaning it has in the Criminal Code, chapter 62, chapter division 3.

‘83E Subject matter for disclosure obligation direction

- ‘(1) A disclosure obligation direction may provide for any of the following—
- (a) whether a party to a proceeding has a disclosure obligation in relation to another party to the proceeding;
 - (b) requiring that a particular thing must be disclosed;

[s 70]

- (c) allowing the court to inspect a particular thing to decide whether the court should further direct that a party has a disclosure obligation in relation to the thing;
 - (d) allowing the court to examine the prosecution or arresting officer to decide whether the court should direct that the prosecution has a disclosure obligation in relation to a particular thing;
 - (e) how a disclosure obligation is to be complied with in a particular case;
 - (f) setting a timetable for compliance with a disclosure obligation.
- ‘(2) Subsection (1) does not limit section 83A(5)(aa)
- ‘(3) The court may make a disclosure obligation direction on the conditions, whether about the circumstances of disclosure or otherwise, it considers appropriate.

‘83F Application for disclosure obligation direction

- ‘(1) The procedures applying in relation to a party seeking, at a direction hearing under section 83A, a disclosure obligation direction are stated in the *Criminal Practice Rules 1999*, chapter 9A.
- ‘(2) To the greatest practicable extent, the procedures apply in addition to, and do not limit, the procedures applying under section 83A.
- ‘(3) The existence of the procedures mentioned in subsection (1) is not intended to stop either party to a proceeding from writing to the other party informally to resolve issues arising over a disclosure obligation.’.

70 Amendment of s 84 (Remand of defendant)

Section 84(1), ‘by their warrant’—
omit.

71 Insertion of new s 88A

Part 4, division 11—

insert—

‘88A Use of verdict and judgment record

‘An order under section 84(1) providing for the remand of a defendant, or under section 88(2)(a) providing for the committal of a defendant, may be issued by a clerk of the court, acting as a proper officer under the *Criminal Practice Rules 1999*, in the form of a verdict and judgment record as provided for under the rules.’.

72 Insertion of new s 103B

Part 5, division 5—

insert—

‘103B Magistrate supervisory role

- ‘(1) A magistrate has an overall supervisory responsibility for any relevant proceeding coming before the court over which the magistrate presides.
- ‘(2) Subsection (1) does not affect—
 - (a) the powers of a justice or justices to act under this division in relation to the examination of witnesses in relation to an indictable offence; or
 - (b) the operation of the provisions of this division relating to registry committals; or
 - (c) the duty of a magistrate to comply with directions or requirements given or made by the Chief Magistrate.
- ‘(3) In this section—
relevant proceeding means a proceeding leading to the committal, or the possible committal, of a defendant for trial or sentence for an indictable offence.’.

[s 73]

73 Amendment of s 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

Section 104(2)(b), after ‘to call witnesses’—

insert—

‘for the defence’.

74 Amendment of s 110A (Use of tendered statements in lieu of oral testimony in committal proceedings)

(1) Section 110A(1)—

omit.

(2) Section 110A(4)—

omit.

(3) Section 110A(5)(a)—

omit, insert—

‘(a) if it is a statement tendered by the defence—the prosecution agrees to its admission; and’.

(4) Section 110A(5)(b), ‘parties;’—

omit, insert—

‘parties, and when the copy is made available, the party proposing to tender it advises that the copy is being made available with the intention that the written statement be admitted under this section; and’.

(5) Section 110A(5)(d)—

omit.

(6) Section 110A—

insert—

‘(6A) Subsection (6) may be applied to commit the defendant for trial or sentence even if, before the lawyer for the defendant consents under subsection (6)(b), an unsuccessful application is made to the court under section 110B to require a person to attend a proceeding.’.

-
- (7) Section 110A—
insert—
- ‘(9A) Despite subsections (2) and (9), if a written statement is tendered by the prosecution as mentioned in subsection (2)—
- (a) subject to compliance with subsection (5), subsection (2) must be taken to require, rather than to permit, the justices to admit the statement as evidence without the witness appearing before them to give evidence or make a statement; and
 - (b) the justices may not, under subsection (9), require that the witness attend before them and give evidence.
- ‘(9B) Subsection (9A) does not stop a person being required to attend to give oral evidence under subsection (8) or on the granting of an application under section 110B.
- ‘(9C) Also, if the defendant is not legally represented, subsection (9A) does not apply if the justices are not satisfied that all of the following are true—
- (a) the defendant understands what the proceeding is about and the possible consequences for the defendant arising out of the proceeding;
 - (b) the defendant is aware that the defendant can apply for legal assistance under the *Legal Aid Queensland Act 1997*;
 - (c) the defendant has been made aware that the defendant has a right to apply under section 110B for the court to require that the maker of the written statement attend the proceeding so that the defendant can cross-examine the maker of the written statement;
 - (d) the defendant has been given an explanation of the requirements that apply under this division for making an application as mentioned in paragraph (c).
- ‘(9D) Despite subsection (9C) and section 110B, subsection (9A) does not apply if the justices are satisfied there are substantial reasons why, in the interests of justice, the witness should attend to give oral evidence.’.

[s 75]

- (8) Section 110A(10), after ‘for sentence,’—
insert—
‘or the defendant is not legally represented.’.

75 Insertion of new ss 110B and 110C

After section 110A—

insert—

‘110B Maker of written statement to be tendered by the prosecution may be required to attend proceeding

- ‘(1) This section applies to a written statement if, having regard to section 110A(2) and (9A) to (9D), it is required to be admitted as evidence for the prosecution.
- ‘(2) The court may require the person who made the written statement to attend the proceeding if it is satisfied there are substantial reasons why, in the interests of justice, the person should attend to give oral evidence.
- ‘(3) The court may require a person to attend under subsection (2) on an application of the defendant at a direction hearing under section 83A.
- ‘(4) An application to the court to require a person to attend under this section may be made only if—
- (a) the defendant has served on the prosecution a notice identifying—
 - (i) the name of the maker of the written statement; and
 - (ii) the general issues relevant to the making of the application; and

Examples of general issues—
identification evidence, expert opinion evidence

 - (iii) the reasons to be relied on to justify the calling of the maker of the written statement to give oral evidence; and

Examples of reasons—

- that the defence proposes to submit that the evidence is not sufficient to put the defendant on trial
 - that the defence wishes to narrow the issues in dispute
 - that the defence proposes to expose a weakness in the prosecution case
 - that cross-examination of the maker is likely to undermine significantly the maker's credit, and the maker will be a significant witness at the trial
 - that cross-examination of the maker is necessary to avoid the defendant being taken by surprise at the trial
 - that attendance of the maker is sought to enable cross-examination in relation to a matter that itself might give rise to a discretion or decision to reject evidence at the trial
- (iv) a reasonable period (the *prescribed period*) within which the prosecution must respond to the notice; and
- (b) the prosecution response to the notice has been received or the prescribed period, or a shorter or longer period agreed between the defence and the prosecution, has ended; and
- (c) there is filed with the application—
- (i) a copy of the notice served under paragraph (a); and
 - (ii) the prosecution's response to the notice, if a response has been received.
- (5) A prosecution response mentioned in subsection (4)(c)(ii) may state whether the prosecution agrees to the calling of the maker of the statement, and any conditions attaching to the prosecution's agreement.

Note—

Section 110A(8) (Use of tendered statements in lieu of oral testimony in committal proceedings) allows for agreement between the prosecution and defence about the maker of a written statement being present for cross-examination. It is open to the director of public prosecutions to issue guidelines for the giving of agreement under section 110A(8). (See

[s 75]

the *Director of Public Prosecutions Act 1984*, section 11 (Powers of director).)

- ‘(6) If the court requires a person to attend under subsection (2), the court must give reasons for the decision.
- ‘(7) This section does not apply to a written statement given by an affected child under the *Evidence Act 1977*, part 2, division 4A, subdivision 2.
- ‘(8) Despite subsection (4)(a)(iv) and (b), the prescribed period, and any extension of the period, must end not later than 3 clear days before the day next set for a hearing of the proceeding.

Note—

Under section 83A, an application for a direction requiring a witness to attend under this section would be required to be served on the other party at least 2 clear days before the application is to be heard.

‘110C Other matters concerning requirement to attend proceeding under s 110B

- ‘(1) A requirement made under section 110B(2) on the application of the defence may be withdrawn, on the application of the prosecution, if the defendant does not appear at the hearing.
- ‘(2) If a person attends to give oral evidence because of a requirement made under section 110B on an application by the defendant, the court must not allow the person to be cross-examined about an issue that is not relevant to the reasons given by the court for requiring the person to attend.
- ‘(3) The court may allow cross-examination that is otherwise not permitted under subsection (2) if the court is satisfied there are substantial reasons why, in the interests of justice, the cross-examination should be allowed.
- ‘(4) The prosecution may re-examine a person who attends and is cross-examined under a requirement made under section 110B.

- ‘(5) The limitations on cross-examination provided for in subsections (2) and (3) are additional to, and do not affect the operation of, any other law limiting cross-examination.

Examples of other laws that operate to limit cross-examination—

- 1 The *Evidence Act 1977*, section 9E states principles for dealing with child witnesses.
- 2 The *Evidence Act 1977*, section 20 provides for the court to disallow particular questions as to credit.
- 3 The *Evidence Act 1977*, section 21 provides for the court to disallow questions the court considers improper.
- 4 The *Evidence Act 1977*, part 2, division 6 provides for the cross-examination of protected witnesses.’.

76 Insertion of new pt 5, div 7A

Part 5—

insert—

‘Division 7A Registry committals

‘114 Registry committal by clerk of court

- ‘(1) The clerk of the court at a place may order a defendant to be committed to be tried or sentenced for an indictable offence, if all of the following apply—
- (a) all evidence of witnesses for the prosecution (including the evidence of any affected child under the *Evidence Act 1977*, part 2, division 4A, given under the requirements of that division) is intended to be given in written statements;
 - (b) the written statements have been filed in the court and copies provided to the defendant by the prosecution;
 - (c) the defendant, if an individual, is not in custody, and is not in breach of any condition of the undertaking on which the defendant was granted bail;
 - (d) the defendant is represented by a lawyer;

[s 76]

- (e) the lawyer has, by written notice, or by email or some other electronic form of written communication, given a notice to the clerk of the court—
 - (i) stating that the defendant does not intend to give evidence or call any witness in relation to the defendant’s committal for the offence; and
 - (ii) either—
 - (A) stating whether the defendant pleads guilty to the offence; or
 - (B) indicating an intention to plead guilty to the offence;
 - (f) the notice given under paragraph (e) is given to the clerk of the court not later than on the last clear day before the date set for the hearing of the committal proceeding before the court;
 - (g) the defendant has served on the prosecution a copy of the notice given under paragraph (e) not later than the day it is given to the clerk of the court.
- ‘(2) After the defendant is ordered to be committed to be tried or sentenced, there must not be any examination of any person in relation to the committal of the defendant for trial or sentence for the indictable offence, whether or not the person gave a written statement mentioned in subsection (1)(a).
- ‘(3) This section does not apply to an indictable offence if the indictable offence is to be heard and decided summarily, having regard to the requirements of the Criminal Code, chapter 58A.
- ‘(4) A document required to be given or served under this section may be given or served electronically.
- ‘(5) An order under subsection (1) has effect as if it were an order of justices and may be enforced accordingly.

‘115 Process of clerk of the court for registry committal

- ‘(1) The functions of the clerk of the court for a registry committal do not include considering or deciding whether the evidence before the clerk of the court is sufficient to put the defendant on trial for the indictable offence.
- ‘(2) However, if under a registry committal a clerk of the court orders a defendant who is an individual to be committed to be tried for an indictable offence, the clerk of the court must give notice to the defendant to the same effect as the warning required to be given to a defendant under section 104(5).
- ‘(3) Nothing in this part is taken to require the defendant or any other party to appear at a registry committal.
- ‘(4) Subsection (5) applies if parties agree that circumstances applying in relation to a registry committal are circumstances that, for a committal for trial under section 108, would permit the making of an order under section 108(2), or, for a committal for sentence under section 113, would permit the making of an order under section 113(4).
- ‘(5) The clerk of the court must make an order for committal for trial or sentence of the type mentioned in subsection (4).
- ‘(6) An order under subsection (5) has effect as if it were an order of justices ordering the committal of the defendant for trial or sentence under section 108 or 113 as appropriate.
- ‘(7) The functions of the clerk of the court for a registry committal do not include remanding the defendant in custody, or any function in relation to bail.

Note for subsection (6)—

The *Bail Act 1980*, section 34BA (Varying bail on registry committal) provides for the automatic continuation of the defendant’s bail. It is taken to have been granted by the court to which the defendant is committed for trial or sentence.

[s 76]

‘116 Limited application of divs 5 to 7 for registry committals

- ‘(1) If there is a registry committal, subject to subsection (2), it takes the place of the procedures relating to committal for trial or sentence that would otherwise apply, or would otherwise continue to apply, under divisions 5, 6 and 7.
- ‘(2) Section 110A(12) to (15), and any other provision of this or another Act directly or indirectly referred to in section 110A(12) to (15), have effect for a registry committal, to the greatest practicable extent, as if a reference to a written statement admitted in accordance with section 110A were a reference to a written statement given in evidence for the registry committal (other than the evidence of any affected child under the *Evidence Act 1977*, part 2, division 4A, given under the requirements of that division).

‘117 Application of registry committals to indictable offences under other Acts

- ‘(1) This section applies to an offence against a provision of another Act if—
 - (a) the Act (the *other Act*) provides that the offence is an indictable offence; and
 - (b) whether or not the other Act allows for the summary conviction of a person charged with the offence, it makes provision, whether or not by reference to this Act, for the court to proceed by way of a committal proceeding in relation to the offence.

Example for subsection (1)—

Under the *Property Agents and Motor Dealers Act 2000*, section 589, a charge for an indictable offence under that Act, depending on circumstances as provided for in the section, at the level of the Magistrates Court, either could be heard and decided summarily, or could be the subject of a committal proceeding, effectively as provided for under this Act.

- ‘(2) To remove any doubt, it is declared that if a person is charged with the offence, and the offence is not to be heard and

decided summarily, the person may be committed for trial or sentence on the basis of a registry committal.

- ‘(3) If there is a registry committal, it takes the place of any committal proceeding otherwise provided for in the other Act.’.

77 Insertion of new s 130

Part 5, division 8—

insert—

‘130 Division applies also to registry committals

- ‘(1) This division applies to registry committals, to the greatest practicable extent, in the same way it applies to committals by justices for trial or sentence.
- ‘(2) For applying subsection (1), a reference in section 126, 127 or 129 to the committing justices, however described, is taken to include a reference to a clerk of the court who, under division 7A, ordered a defendant to be committed to be tried or sentenced for an indictable offence.’.

78 Insertion of new pt 11, div 5

After section 275—

insert—

‘Division 5 Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009

‘276 Definitions for div 5

‘In this division—

amending Act means the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*.

[s 78]

originating step, for a proceeding, means—

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

‘277 Particular amendments apply only to charges originated after commencement

- ‘(1) The relevant provisions, as inserted or amended by the amending Act, apply in relation to a charge for an offence only if an originating step for the proceeding for the charge is taken on or after the commencement of this section.
- ‘(2) For subsection (1), it does not matter when the offence was committed.
- ‘(3) In this section—
relevant provisions means—
 - (a) section 23EB; and
 - (b) section 52; and
 - (c) section 83; and
 - (d) section 83A; and
 - (e) part 4, division 10B; and
 - (f) the provisions relating to committals of persons for trial or sentence for indictable offences, including part 5, division 7A.

Editor’s note—

part 5 (Proceedings in case of indictable offences), division 7A
(Registry committals)

'278 Particular provisions apply to proceeding whenever commenced

'On the commencement of this section, sections 23EC and 88A, as inserted by the amending Act, and section 84 as amended by the amending Act have effect in relation to a proceeding, regardless of when the proceeding was commenced.

'279 Existing appointment as principal clerk of courts continues

'If immediately before the commencement of this section a person held appointment under the *Public Service Act 2008* as principal clerk of courts and principal registrar, the person—

- (a) without further appointment, is taken to hold the appointment of the principal clerk of courts under the *Justices Act 1886*, section 22D; and

Note—

Because of the person's appointment as principal clerk of courts as provided for in paragraph (a), the person will also be the principal registrar of Magistrates Courts as provided for in the *Magistrates Courts Act 1921*, section 3A.

- (b) continues to hold the appointment in accordance with with the terms of the person's appointment under the *Public Service Act 2008*.

Part 11 Amendment of Magistrates Act 1991

79 Act amended

This part amends the *Magistrates Act 1991*.

[s 80]

80 Amendment of s 41 (Functions of magistrates generally)

Section 41(1), ‘direction given to, or requirement made by,’—

omit, insert—

‘direction or requirement given or made to the magistrate by’.

81 Amendment of s 53J (Practice direction)

(1) Section 53J(1)(d)—

omit.

(2) Section 53J(1)(e)—

renumber as section 53J(1)(d).

(3) Section 53J(2)(c)—

omit.

Editor’s note—

The amendments of section 53J assume the commencement of the *State Penalties Enforcement and Other Legislation Amendment Act 2009*, section 109.

82 Insertion of new pt 10, div 6

Part 10—

insert—

‘Division 6 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009

‘64 Continuing operation of practice direction for judicial registrars

‘(1) This section applies to—

(a) an application, that immediately before the commencement of this section, was in the course of

-
- being heard and decided by a judicial registrar under a practice direction given under section 53J(1)(d); or
 - (b) a matter for which, immediately before the commencement of this section, a judicial registrar constituted a Magistrates Court under a practice direction given under section 53J(2)(c).
- ‘(2) The judicial registrar may continue—
- (a) to hear and decide the application; or
 - (b) to constitute, and exercise all the jurisdiction and powers of, a Magistrates Court for the matter.’

Part 12 Amendment of Magistrates Courts Act 1921

83 Act amended

This part amends the *Magistrates Courts Act 1921*.

84 Amendment of s 2 (Definitions)

Section 2—

insert—

‘*prescribed limit* means \$150000.’.

85 Insertion of new s 3A

Part 1—

insert—

‘3A Principal clerk of courts is principal registrar

- ‘(1) The principal clerk of courts appointed under the *Justices Act 1886*, section 22D is the principal registrar of Magistrates Courts.

[s 86]

- ‘(2) The principal registrar of Magistrates Courts may—
- (a) discharge the powers and functions of each registrar mentioned in section 3; and
 - (b) may give directions to each registrar mentioned in section 3, and to any other officer employed in a registry of a Magistrates Court, about the discharge of the functions of the registrar or other officer.’.

86 Amendment of s 4 (Jurisdiction of Magistrates Courts)

Section 4, ‘\$50000’—

omit, insert—

‘the prescribed limit’.

87 Insertion of new s 4AA

After section 4—

insert—

‘4AA Proceeding commenced in central registry

- ‘(1) Despite section 4, if under the rules, a proceeding that may be started in a Magistrates Court is started in a registry for a Magistrates Court that is a central registry, that Magistrates Court has jurisdiction for the proceeding.
- ‘(2) Subsection (1) does not prevent the proceeding being transferred to another Magistrates Court under the rules.

Example—

Rule 40 (Change of venue by court order) allows a proceeding to be sent for trial to or to be dealt with by another court if the first court is satisfied the proceeding can be more conveniently or fairly heard or dealt with in the other court.’.

88 Amendment of s 5 (Abandonment of excess etc.)

Section 5, '\$50000'—

omit, insert—

'the prescribed limit'.

89 Amendment of s 6 (Splitting debt by giving bills etc.)

Section 6, '\$50000'—

omit, insert—

'the prescribed limit'.

90 Amendment of s 45 (Appeal)

(1) Section 45(1) and (2), '\$5000'—

omit, insert—

'the minor civil dispute limit'.

(2) Section 45—

insert—

'(5) In this section—

minor civil dispute limit means the amount that is, for the time being, the prescribed amount under the *Queensland Civil and Administrative Tribunal Act 2009*.'

91 Insertion of new s 60

After section 59—

insert—

'60 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009

'Sections 4, 5, 6 and 45, as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*, and section 4AA as inserted by that Act, apply only

[s 92]

to actions or proceedings commenced after the commencement of this section.’.

Part 13 Amendment of Penalties and Sentences Act 1992

92 Act amended

This part amends the *Penalties and Sentences Act 1992*.

93 Replacement of s 13 (Guilty plea to be taken into account)

Section 13—

omit, insert—

‘13 Guilty plea as a mitigating factor in sentencing an offender

- ‘(1) This section applies if a court is imposing a sentence on an offender for an offence and the offender has pleaded guilty to the offence.
- ‘(2) The guilty plea is a mitigating factor for section 9(2)(g).
- ‘(3) The earlier the offender pleaded guilty, or informed the relevant law enforcement agency of his or her intention to plead guilty, the greater the mitigation.
- ‘(4) The court must have regard to the mitigating factor to the greatest extent if the offender pleaded guilty, or informed the relevant law enforcement agency of his or her intention to plead guilty, at the earliest available opportunity.
- ‘(5) In considering whether the offender made the guilty plea, or informed the relevant law enforcement agency of his or her intention to plead guilty, at the earliest available opportunity, the court may have regard to any matter the court considers to be relevant in the circumstances.

-
- ‘(6) Without limiting subsection (5), the court may have regard to the following matters, as the court considers appropriate—
- (a) when the offender’s first court appearance for the offence happened;
 - (b) when the offender had access to legal representation;
 - (c) whether the offender had a reasonable time to receive and consider legal advice and give instructions;
 - (d) when the charge against the offender was finally decided by the prosecution, and when the offender became aware of the charge as finally decided;
 - (e) whether, and if so when, the prosecution fully or substantially complied with the requirements for disclosure applying to it under the Criminal Code, chapter 62, chapter division 3;
 - (f) when the charge for the offence was listed for hearing or trial;
 - (g) when or whether any other event happened that the court considers to be relevant in the circumstances;
 - (h) whether the offender’s decision-making capacity was relevant to the timing of entering the plea of guilty.

Example for subsection (6)—

A court would not be likely to consider that an offender has made a guilty plea at the earliest available opportunity if the charge has been finally decided, there has been full disclosure by the prosecution and the offender is aware of the charges and has had a reasonable opportunity to receive and consider legal advice, but the plea is not made, or an indication of the intended plea of guilty is not given, by the offender until the day for which the charge has been listed for trial or hearing.

- ‘(7) When imposing the sentence, the court—
- (a) must state in open court that it had regard to the mitigating factor in sentencing the offender; and
 - (b) if because of the mitigating factor it reduces the sentence the offender would otherwise have received, must also state that fact in open court; and

[s 94]

- (c) may state in open court whether it considers the offender made the guilty plea, or informed the relevant law enforcement agency of his or her intention to plead guilty, at the earliest available opportunity and, if so, may also state in open court the matters it took into consideration in so concluding; and
 - (d) may state in open court the sentence that would have been imposed in the absence of the offender making the guilty plea, or informing the relevant law enforcement agency of his or her intention to plead guilty at the time the plea was made or intention informed.
- ‘(8) A statement under subsection (7)(d) may state any reduction in the period of imprisonment that has been imposed, or may state any other form of sentence reduction that has been applied.
- ‘(9) If the court does not, under this section, in any way reduce the sentence imposed on the offender, the court must state in open court—
- (a) that fact; and
 - (b) its reasons for not reducing the sentence.
- ‘(10) A sentence is not invalid only because of a failure of the court to make the statement as required under subsection (7)(a) and (b) or (9), but the failure may be considered by an appeal court if an appeal against sentence is made.
- ‘(11) In this section—
- sentence* does not include a sentence that, under an Act, can not be mitigated or varied.’.

94 Amendment of s 15A (Audio visual link or audio link may be used to sentence)

Section 15A(2), ‘13(3) or (4)’—

omit, insert—

‘13(7) or (9)’.

95 Amendment of s 152A (Proper officer to give chief executive (corrective services) record of order of imprisonment)

Section 152A(3), ‘for a court other than a Magistrates Court,’—

omit.

96 Insertion of new s 218

Part 14—

insert—

‘218 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009

‘(1) Section 13 as inserted by the amending Act (the *new section 13*), applies to the sentencing of an offender for an offence whether the offence or conviction happened before or after the commencement of this section.

‘(2) However, if section 13, as in force immediately before the commencement of this section (the *old section 13*), applied when a court imposed a sentence on an offender for an offence, the old section 13, and not the new section 13, continues to apply—

- (a) in relation to that sentence; and
- (b) for any appeal arising out of that sentence.

‘(3) On the commencement of this section, section 152A, as amended by amending Act, has effect in relation to a proceeding, regardless of when the proceeding was commenced.

‘(4) In this section—

amending Act means the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*.’.

[s 97]

Part 14 Amendment of Police Service Administration Act 1990

97 Act amended

This part amends the *Police Service Administration Act 1990*.

98 Amendment of s 4.8 (Commissioner's responsibility)

Section 4.8(2)—

insert—

- '(u) in relation to a proceeding against a person for a charge for an offence that the commissioner is authorised to institute and conduct—
 - (i) taking part in discussions and conferences with the person's legal representative about the conduct of the proceeding in order to narrow issues or help in the timely resolution of the proceeding; and
 - (ii) amending, substituting or withdrawing the charge; and
 - (iii) deciding the facts to be presented to the court; and
 - (iv) if there is a prosecution election available, in relation to the charge, as to the charge being heard summarily—deciding whether to exercise the election; and
 - (v) in exercising an election under subparagraph (iv)—having regard to any guidelines under the *Director of Public Prosecutions Act 1984*, section 11 that apply to the commissioner and to any other relevant considerations and requirements; and
 - (vi) deciding the submissions that will be made to the court in the sentencing of the offender.'

Part 15 **Amendment of Property Law
Act 1974**

99 **Act amended**

This part amends the *Property Law Act 1974*.

100 **Amendment of s 147 (Arrears of rent etc.)**

Section 147(5), '\$40000'

omit, insert—

'\$150000'.

101 **Amendment of s 259 (Definitions for pt 19)**

- (1) Section 259, definition, *monetary limit*, paragraph (a), editor's note, '\$250000'—

omit, insert—

'\$750000'.

- (2) Section 259, definition *monetary limit*, paragraph (b)—

omit, insert—

'(b) for a Magistrates Court—means the prescribed limit under the *Magistrates Courts Act 1921*.

Editor's note—

Magistrates Courts Act 1921, section 2 (Definitions)—

prescribed limit means \$150000.'

102 **Insertion of new pt 22**

After section 352—

insert—

[s 103]

**‘Part 22 Transitional Provision for Civil
and Criminal Jurisdiction
Reform and Modernisation
Amendment Act 2009**

‘353 Amendments do not affect existing matters

- ‘(1) The amendment of section 147(5) by the amending Act does not apply in relation to a further matter of complaint as mentioned in that section 147(5) if the proceeding in relation to the complaint was commenced before the commencement of this section.
- ‘(2) The change to the monetary limit for part 19 brought into effect by amendments of this Act, the *Magistrates Courts Act 1921* and the *District Court of Queensland Act 1967* by the amending Act does not apply to a proceeding commenced before the commencement of this section.
- ‘(3) In this section—
amending Act means the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*.’.

**Part 16 Amendment of Supreme Court
of Queensland Act 1991**

103 Act amended

This part amends the *Supreme Court of Queensland Act 1991*.

104 Insertion of new s 139

After section 138—
insert—

‘139 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009

‘The amendment of the *Criminal Practice Rules 1999* and the *Uniform Civil Procedure Rules 1999* under the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009* does not affect the power of the Governor in Council to further amend the rules or to repeal them.’.

Part 17 Amendment of Uniform Civil Procedure Rules 1999

105 Rules amended

This part amends the *Uniform Civil Procedure Rules 1999*.

106 Amendment of ch 2, pt 6, div 1, hdg

Chapter 2, part 6, division 1, heading, ‘of Supreme Court’—
omit.

107 Amendment of r 33 (Central registry of Supreme Court)

(1) Rule 33, heading, ‘of Supreme Court’—

omit.

(2) Rule 33, ‘in the Supreme Court’—

omit, insert—

‘in a court’.

108 Replacement of ch 2, pt 6, div 2, hdg

Chapter 2, part 6, division 2, heading—

omit, insert—

[s 109]

‘Division 2 Starting proceeding other than in central registry’.

109 Replacement of r 34 (Application of div 2)

Rule 34—

omit, insert—

‘34 Application of div 2

‘This division applies to the following courts if a person decides to start a proceeding other than in a central registry of a court—

- (a) the Supreme Court;
- (b) the District Court;
- (c) Magistrates Courts.’.

110 Amendment of r 283 (Judgment by default—debt or liquidated demand)

Rule 283—

insert—

- ‘(10) If the court as constituted by a registrar is considering whether to give judgment, the registrar is not required to consider the merits of the plaintiff’s claim against the defendant.

Note—

Under rule 982, the matter could be referred to a judge or magistrate for disposal, or for consideration and referral back, if the circumstances set out in that rule apply.’.

111 Amendment of r 286 (Judgment by default—recovery of possession of land)

Rule 286—

insert—

- (5) If the court as constituted by a registrar is considering whether to give judgment, the registrar is not required to consider the merits of the plaintiff's claim against the defendant.

Note—

Under rule 982, the matter could be referred to a judge or magistrate for disposal, or for consideration and referral back, if the circumstances set out in that rule apply.

112 Insertion of new ch 24, pt 4

Chapter 24—

insert—

'Part 4 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009

'999 Transitional provision

'Schedule 3, as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*, applies only to actions commenced after the commencement of this section.'

113 Amendment of sch 3 (Scale of costs—Magistrates Courts)

- (1) Schedule 3, part 1, item 1(3), 'part 2'—

omit, insert—

'part 2 or 3'.

- (2) Schedule 3, part 2, heading, after 'Costs'—

insert—

'(up to \$50000)'.

[s 113]

- (3) Schedule 3, part 2, column G, heading, ‘Over \$20000’
omit, insert—
‘\$20001 to \$50000’.
- (4) Schedule 3—
insert—

‘Part 3 Costs (over \$50000)

This part applies if the amount recovered by the plaintiff is over \$50000.

\$
(including
GST)

General care and conduct

- 1 In addition to an amount that is to be allowed under another item of this schedule, the amount that is to be allowed for a solicitor’s care and conduct of a proceeding is the amount the registrar considers reasonable having regard to the circumstances of the proceeding including, for example—
 - (a) the complexity of the proceeding; and
 - (b) the difficulty and novelty of any question raised in the proceeding; and
 - (c) the importance of the proceeding to the party; and
 - (d) the amount involved; and
 - (e) the skill, labour, specialised knowledge and responsibility involved in the proceeding on the part of the solicitor; and
 - (f) the number and importance of the documents prepared or perused, without regard to the length of the documents; and
 - (g) the time spent by the solicitor; and

	\$ (including GST)
(h) research and consideration of questions of law and fact.	
Registrar’s discretion	
2 For a matter for which a cost is not provided for in this schedule, the amount to be allowed is the cost the registrar considers reasonable.	
Costs on quarter hourly basis	
3 If, under an item of this schedule, costs in relation to a matter are allowable on a quarter hourly basis, the amount to be allowed is—	
(a) for less than a quarter hour spent on the matter—the cost of 1 quarter hour; or	
(b) for part of a quarter hour after the first quarter hour spent on the matter—a proportionate amount of the cost of 1 quarter hour.	
Drafting documents	
4 Drafting a document—for each 100 words	14.00
Producing documents	
5 Producing a document in final form—for each 100 words	3.60
Preparing exhibit certificates	
6 Preparing an exhibit certificate—for each exhibit, including a paginated book	2.80
Copying documents	
7 Copying a document—for each page	0.20

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		\$ (including GST)
Perusing documents		
8	Perusing a document—for each 100 words	2.80
Examining or comparing documents		
9	Examining a document or comparing documents, if perusal is unnecessary—	
	(a) by a solicitor—for each quarter hour	44.00
	(b) by an employee—for each quarter hour	14.00
Serving documents		
10	Serving on a person 1 or more documents at the same time—	
	(a) personal service, by a solicitor or a solicitor’s employee, if personal service is required for 1 or more of the documents served However, if the registrar considers another amount is reasonable (having regard, for example, to the distance travelled, the time involved, and the number of attendances necessary to effect service), the amount the registrar considers reasonable.	31.00
	(b) ordinary service	19.50
	(c) service by post	14.00
	(d) service by facsimile—	
	(i) for the first page	6.40
	(ii) for each extra page	0.80
	(e) service by email	6.40

		\$ (including GST)
Attendances		
11	Attendance, if capable of being done by an employee—	
	(a) to file or deliver a document, obtain an appointment, insert an advertisement, or settle an order; or	
	(b) to search; or	
	(c) to do something of a similar nature	19.50
12	Attendance by telephone that does not involve the exercise of skill or legal knowledge.	13.00
13	Attendance in court, mediation or case appraisal, at a compulsory conference or before the registrar, by a solicitor who appears without a barrister—for each quarter hour	49.50
14	Attendance for a hearing or trial held at a place other than the town where the solicitor lives or carries on business—	
	(a) by the solicitor—	
	(i) for the time spent in attendance at the hearing or trial—for each quarter hour	44.00
	(ii) for the time the solicitor is absent from the solicitor’s place of business, including time used in travelling to or from the hearing or trial, other than in attendance at the hearing or trial—	
	(A) for an absence of 4 hours or less	350.00
	(B) for an absence of more than 4 hours—for each quarter hour to a maximum of 8 hours	21.50
	(iii) the expenses the registrar considers reasonable for each day of absence, including Saturdays and Sundays; and	

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		\$ (including GST)
	(iv) the actual expenses of transport to and from the hearing or trial the registrar considers reasonable; or	
	(b) by the solicitor’s employee—the amount the registrar considers reasonable.	
	However, if the solicitor’s absence is to attend more than 1 hearing or trial at the same place, the costs are to be divided proportionately.	
15	Attendance at a callover, to be apportioned if the attendance is for more than 1 proceeding	35.50
16	Other attendances—	
	(a) by a solicitor, involving skill or legal knowledge—for each quarter hour	44.00
	(b) by an employee—for each quarter hour	14.00
	However, the costs allowed under this item are to be reduced by 25% in relation to time necessarily spent at court before an appearance in court.	
	Correspondence	
17	(1) A short letter of a formal nature, written or received, or forwarding a document without comment.	10.50
	(2) An ordinary letter, written or received, including a letter between principal and agent.	26.00
	(3) A special letter involving skill or legal knowledge, including an allowance for drafting and producing	28.50
	However, if the registrar considers a higher amount is reasonable for a special letter involving skill or legal knowledge, the amount the registrar considers reasonable.	
	(4) Correspondence between offices of the same firm of solicitors—the allowance that would have been allowable if an agent had been engaged and the engagement was normal and reasonable in the circumstances.	

\$
 (including
 GST)

Sending documents

18	Postage, carriage or transmission of documents, in addition to the other costs allowed under this schedule—	
	(a) for facsimile transmissions—	
	(i) for the first page	6.40
	(ii) for each extra page	0.80
	(b) for email transmissions	6.40
	(c) for the postage, carriage or transmission of any other document—the amount the registrar considers reasonable.	

Electronic conduct of proceedings

19	(1) Printing an email, sent or received, or electronically scanning or imaging a document, other than a document mentioned in subitem (3)—for each page. .	0.40
	(2) Examining an electronic document or comparing electronic documents, including emails, if perusal is unnecessary—for each 100 words	0.80
	(3) Preparing a document for disclosure, or to be exchanged electronically, by—	
	(a) bar coding the document—for each page	0.40
	(b) electronically scanning or imaging the document—for each page	0.40
	(c) entering data about the document in a database, including delimiting the document to decide start and end pages, and carrying out quality control of the data, for example, to check for missing data and check spelling—for each document	3.60

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		\$
		(including GST)
(4)	To the extent a proceeding is conducted electronically, costs, including the costs of any electronic service provider, to the extent the registrar considers the costs have been reasonably incurred and paid.	
Fixed cost items		
20	Costs for issuing a claim	455.00
21	Costs for obtaining judgment under chapter 9, part 1, division 2	215.00
22	Costs for obtaining an enforcement warrant	160.00’.

114 Amendment of sch 4 (Dictionary)

Schedule 4, definition *central registry*—

omit, insert—

‘central registry means—

- (a) for the Supreme Court—the registry of the court at Brisbane, Rockhampton, Townsville or Cairns; or
- (b) for the District Court—the registry of the court at Brisbane, Rockhampton, Townsville or Cairns; or
- (c) for a Magistrates Court—the registry of a Magistrates Court in the Brisbane District, or at Rockhampton, Townsville or Cairns.’

Part 18 **Amendment of Workers' Compensation and Rehabilitation Act 2003**

115 Act amended

This part amends the *Workers' Compensation and Rehabilitation Act 2003*.

116 Amendment of s 546 (Notice of review decision)

Section 546(3)(b), 'an industrial magistrate or'—
omit.

117 Amendment of s 548A (Meaning of *appeal body*)

Section 548A(1), from 'is'—
omit, insert—
'is the industrial commission.'

118 Amendment of s 550 (Procedure for appeal)

Section 550(3A)—
omit.

119 Amendment of s 566 (Decision about payment of compensation)

Section 566(1), 'the industrial magistrate,'—
omit.

120 Insertion of new ch 26

After section 662—
insert—

[s 121]

**‘Chapter 26 Transitional provision for
Civil and Criminal
Jurisdiction Reform and
Modernisation Amendment
Act 2009**

‘663 Appeals commenced before amendment of s 548A

‘Chapter 13, part 3, as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*, applies only to an appeal commenced after the commencement of this section.’

**Part 19 Amendment of Youth Justice
Act 1992**

121 Act amended

This part amends the *Youth Justice Act 1992*.

Editor’s note—

The amendments in this part assume that the *Juvenile Justice and Other Acts Amendment Act 2009*, part 4 has commenced.

122 Amendment of s 8 (Meaning of *serious offence*)

Section 8(2)—

omit, insert—

‘(2) An offence is not a serious offence if—

- (a) it is a relevant offence under the Criminal Code, section 552A, or is an offence mentioned in the Criminal Code, 552A(1)(b); or

Editor's note—

Criminal Code, section 552A (Charge of indictable offences that must be heard and decided summarily)

- (b) it is a relevant offence under the Criminal Code, section 552B, or is an offence mentioned in the Criminal Code, 552B(1)(b); or

Editor's note—

Criminal Code, section 552B (Charges of indictable offences that must be heard and decided summarily on prosecution election)

- (c) under the *Drugs Misuse Act 1986*, section 13, proceedings for a charge for the offence may be taken summarily; or

Editor's note—

Drugs Misuse Act 1986, section 13 (Certain offences may be dealt with summarily)

- (d) under the *Drugs Misuse Act 1986*, section 14, proceedings for a charge for the offence may be taken summarily.

Note—

Proceedings for a charge for an offence may not be taken summarily under section 14 if the prosecution allegations include an allegation as to a commercial purpose.

Editor's note—

Drugs Misuse Act 1986, section 14 (Other offences that may be dealt with summarily if no commercial purpose alleged).

123 Amendment of s 78 (Procedural elections under this Act in relation to an indictable offence replace other elections)

Section 78, after 'any other Act'—

insert—

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‘or any provision of another Act that requires the indictable offence to be heard and decided summarily’.

124 Amendment of s 176 (Sentence orders—serious offences)

- (1) Section 176, heading, ‘serious’—

omit, insert—

‘life and other significant’.

- (2) Section 176(1), (2) and (3), ‘serious offence’—

omit, insert—

‘relevant offence’.

- (3) Section 176—

insert—

- ‘(9) In this section—

relevant offence means a life offence, or an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more, but does not include any of the following offences—

- (a) an offence of receiving, if the value of the property, benefit or detriment is not more than \$5000;
- (b) an offence against the Criminal Code, section 419 or 421, if—
 - (i) the offence involved stealing or an intent to steal or an intent to destroy or damage property or the damage or destruction of property; and
 - (ii) the offender was not armed or pretending to be armed when the offence was committed; and
 - (iii) the value of any property stolen, damaged or destroyed was not more than \$1000;
- (c) an offence that, if committed by an adult, may be dealt with summarily under the *Drugs Misuse Act 1986*, section 13.’.

125 Insertion of new pt 11, div 7

Part 11—

insert—

‘Division 7 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009

‘351 Particular amended provisions apply only to prosecutions commenced after commencement

- ‘(1) Sections 8, 78 and 176, as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2009*, apply in relation to an offence only if an originating step for a proceeding for the offence is taken on or after the commencement of this section.
- ‘(2) For subsection (1), it does not matter when the offence was committed.
- ‘(3) In this section—
- originating step***, for a proceeding, means—
- (a) the arrest of the defendant in the proceeding; or
 - (b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or
 - (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.’.