Parliamentary Committees



Court and Civil Legislation Amendment Bill 2017

Report No. 55, 55th Parliament
Legal Affairs and Community Safety Committee
May 2017

Legal Affairs and Community Safety Committee

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Acknowledgements

The committee acknowledges the assistance provided by the Department of Justice and Attorney-General.

Contents

Abbreviations

ATSIC (JLOM) Act	*Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*
ACF	Appeal Costs Fund
ACF Act	*Appeal Costs Fund Act 1973*
AD Act	*Anti-Discrimination Act 1991*
AIA	*Acts Interpretation Act 1954*
ASIO	Australian Security Intelligence Organisation
Authority	Prostitution Licensing Authority
BAQ	Bar Association of Queensland
Bill/CCLAB 2017	Court and Civil Legislation Amendment Bill 2017
CCO	communications centre operator
CEO	chief executive officer
CGC	City of Gold Coast
Commission	Anti-Discrimination Commission
committee	Legal Affairs and Community Safety Committee
Council	Brisbane City Council
Department/DJAG	Department of Justice and Attorney-General
EVAWQ	Ending Violence Against Women Queensland
gazette	Queensland Government Gazette
FLPs	fundamental legislative principles
IP Act	*Information Privacy Act 2009*
ILP	Incorporated legal practice
IoP Act	*Invasion of Privacy Act 1971*
JPCD Act	*Justices of the Peace and Commissioners for Declarations Act 1991*
JOLAB 2014	Justice and Other Legislation Amendment Bill 2014
LAQ	Legal Aid Queensland
LAQ Act	*Legal Aid Queensland Act 1997*
LC Act	*Land Court Act 2000*
LL 17	City of Gold Coast Local Law 17 (Maintenance of work in waterway areas)
LP Act	*Legal Profession Act 2007*
LS Act	*Legislative Standards Act 1992*

LSC	Legal Services Commission
Magistrates Act	*Magistrates Act 1991*
Ombudsman Act	*Ombudsman Act 2001*
OQPC	Office of the Queensland Parliamentary Counsel
PACT	Protect All Children Today Inc.
PG Act	*Public Guardian Act 2014*
PL Act	*Property Law Act 1974*
Prostitution Act	*Prostitution Act 1999*
PS Act	*Professional Standards Act 2004*
QCAT Act	*Queensland Civil and Administrative Tribunal Act 2009*
Queensland Classification Acts	*Classification of Computer Games and Images Act 1995*, *Classification of Films Act 1991* and *Classification of Publications Act 1991*
QIRC	Queensland Industrial Relations Commission
QLS	Queensland Law Society
RSL Act	*Retail Shop Leases Act 1994*
RSLA Act	*Retail Shop Leases Amendment Act 2016*
RTI Act	*Right to Information Act 2009*
SCLC	Supreme Court Library Committee
SLC	(former) Scrutiny of Legislation Committee
Succession Act	*Succession Act 1981*
Trusts Act	*Trusts Act 1973*
WLAQ	Women Lawyers Association of Queensland
VP Act	*Vexatious Proceedings Act 2005*

Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Court and Civil Legislation Amendment Bill 2017.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

This report summarises the committee's examination of the Bill, including the views expressed in submissions and by witnesses at the committee's public hearing, and information provided by the Department of Justice and Attorney-General. After considering the submitted evidence and information, the committee has recommended that the Bill be passed.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on the Bill and appeared before the committee.

I thank all members of the committee for their work on the inquiry. Additionally, I wish to express my appreciation to the Department of Justice and Attorney-General and the committee's staff for the support they have provided**.**

I commend this report to the House.

Duncan Pegg MP

Chair

Recommendation

The committee recommends the Court and Civil Legislation Amendment Bill 2017 be passed.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (the committee) is a portfolio committee of the Legislative Assembly.[1] The committee's primary areas of responsibility are:

- Justice and Attorney-General
- Training and Skills
- Police, Fire, Emergency Services
- Corrective Services.

The committee is responsible for examining each Bill in its portfolio areas to consider the policy to be given effect by the legislation, and the application of fundamental legislative principles (FLPs).[2]

Further information about the work of the committee can be found on its website.

1.2 Referral of the Bill

The Court and Civil Legislation Amendment Bill 2017 (the Bill) was introduced into the Legislative Assembly on 23 March 2017 by the Hon Yvette D'Ath MP, the Attorney-General and Minister for Justice and Minister for Training and Skills.

In accordance with Standing Order 131 of the Standing Rules and Orders of the Legislative Assembly, the Bill was referred to the committee for detailed consideration. The committee was required to report to the Legislative Assembly by 15 May 2017.

1.3 Committee inquiry process

The committee invited submissions from the public and identified stakeholders to be received by 12 April 2017. The committee received 11 submissions (see **Appendix A** for a list of submitters).

The Department of Justice and Attorney-General (the department) provided the committee with a written briefing on the Bill on 11 April 2017. The committee received an oral briefing from the department on 18 April 2017. The committee also held a public hearing on the Bill in Brisbane on 18 April 2017. See **Appendix B** for details of the witnesses who participated in the committee's public briefing and hearing.

Copies of the material published in relation to this inquiry, including submissions and transcripts, are available on the committee's website.

1.4 Policy objectives of the Bill

The objectives of the Bill, as set out in the explanatory notes, are to:

- streamline various court and tribunal processes and clarify court powers and jurisdiction
- increase the age limit for acting magistrates to 75 years
- provide for enhanced equity and clarity as to the basis of payments from the Appeal Costs Fund
- make Queensland's classification legislation consistent with national scheme legislation
- modernise the eligibility requirements for the chief executive officer of Legal Aid Queensland
- strengthen the Ombudsman's functions and powers in the interests of enhanced integrity and accountability and the protection of complainants and witnesses
- facilitate the making of domestic violence notations on a person's criminal history or a formal record of conviction
- clarify the functions and powers of the Public Guardian in relation to a relevant child under the *Child Protection Act 1999*
- clarify, update and strengthen legislation for the regulation of the legal profession

[1] *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.
[2] *Parliament of Queensland Act 2001*, s 93.

- expand secrecy provisions and facilitate disclosure of personal information in certain cases
- limit the effect of statutory instruments in relation to contracts or dealings concerning property
- give permanent effect to a transitional regulation under the *Retail Shop Leases Act 1994* and correct an inadvertent omission from the *Retail Shop Leases Amendment Act 2016*
- allow for online website notifications in place of various requirements for the publication of matters and notices in the Queensland Government Gazette
- clarify when the stepchild relationship ends (for family provision applications) and revoke certain dispositions in a will upon the end of a de facto relationship
- remove the requirement that the delegation of the administration of a trust is to be made by power of attorney executed as a deed
- remove redundant legislation and make minor and technical amendments of a correcting or clarifying nature.[3]

1.5 Government consultation on the Bill

The explanatory notes state consultation was undertaken by the department with the Chief Justice, the Rules Committee, the President of the Land Court, the Chief Magistrate, the Queensland Law Society (QLS), the Bar Association of Queensland (BAQ), the Legal Aid Board, the Legal Services Commission (LSC), the Appeal Costs Fund Board, the Public Trustee of Queensland, the Supreme Court Library Committee, the Ombudsman, the Office of the Information Commission, the Local Government Association of Queensland, the Commonwealth Attorney-General, the Prostitution Licensing Authority, the Professional Standards Authority, the Children's Court President, the Director of Child Protection Litigation, the Office of the Public Guardian, Queensland University of Technology, Commercial & Property Law Research Centre, the Shopping Centre Council of Australia, the National Retail Association, the Property Council of Australia and Lease 1.[4]

During the committee's inquiry, a number of stakeholders commented positively on the consultation by the government in relation to the Bill.[5]

1.6 Outcome of committee consideration

Standing Order 132(1) of the Standing Rules and Orders of the Legislative Assembly requires the committee to recommend whether the Bill should be passed.

After its examination of the Bill and consideration of the information provided by the department, submitters and witnesses at its public hearing, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Court and Civil Legislation Amendment Bill 2017 be passed.

[3] Explanatory notes, p 1.

[4] Explanatory notes, p 14.

[5] See, for example, Shopping Centre Council of Australia, submission 1, p 1; Protect All Children Today, submission 6, p 2 and Ending Violence Against Women Queensland, submission 10, p 2: Legal Aid Queensland, public hearing transcript, 18 April 2017, p 9; Privacy Commissioner and Acting Information Commissioner, public hearing transcript, 18 April 2017, p 16.

2 Examination of the Bill

This report focuses on the main issues that arose during the committee's inquiry. It does not purport to cover all of the amendments proposed by the Bill.

2.1 Background to the Bill

The Bill proposes to make changes that will affect over 30 pieces of legislation.

Much of the Bill is based on the Justice and Other Legislation Amendment Bill 2014, which was introduced into the Queensland Parliament on 26 November 2014 by the then Attorney-General and Minister for Justice but lapsed when the Parliament was dissolved on 6 January 2015. **Appendix C** contains a table provided by the department showing the amendments included in both the lapsed Justice and Other Legislation Bill 2014 and the Court and Civil Legislation Amendment Bill 2017.

2.2 Overview of stakeholders' comments

Most stakeholders were supportive of the Court and Civil Legislation Amendment Bill.[6] Some submitters and witnesses did, however, identify issues of concern. These are outlined below along with stakeholders' expressions of support for particular aspects of the Bill.

2.3 Removal of requirements for publication in the gazette

The Bill proposes to amend the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984,* (ATSIC (JLOM) Act) the *Acts Interpretation Act 1954* (AIA), the *Justices of the Peace and Commissioners for Declarations Act 1991* (JPCD Act), and the *Professional Standards Act 2004* (PS Act) to remove the requirements for gazettal of certain forms, appointments, registrations and other matters. In some instances the material will be required to be published on specified websites, and in other instances the material may either be gazetted or published on specified websites.

2.3.1 Stakeholders' views and department's response

Ending Violence Against Women Queensland Inc. (EVAWQ) was in favour of allowing for online website notifications in place of requirements for publication of matters and notices in the Queensland Government Gazette (gazette).[7]

The Queensland Law Society (QLS) was in favour of publishing documents and information on websites but it considered that it also should be published in the gazette:

> *The Society considers that the gazette is an important public record and that there should be a central source for government notices to be published rather than information of this nature being dispersed across various government websites. The gazette is also a permanent public record which is important for the retention and identification of public information.*
>
> *However, the Society supports the publication of documents and information on a relevant website in addition to the gazette.*[8]

The department advised that the changes to the ATSIC (JLOM) Act and the JPCD Act are intended to streamline the notification requirements.[9]

With respect to the PS Act, the department advised that the amendments 'are consistent with amendments made in 2013 to the *Statutory Instruments Act 1992* which provide that notification of

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6 See, for example, Legal Aid Queensland, public hearing transcript, 18 April 2017, p 9; Queensland Ombudsman, public hearing transcript, 18 April 2017, p 12; Shopping Centre Council of Australia, submission 1, p 1; Soroptimist International, submission 4, p 4; Office of the Public Guardian, public hearing transcript, 18 April 2017, p 12: Prostitution Licensing Authority, submission 11, p 1.

7 Ending Violence Against Women Queensland Inc., submission 10, p 2.

8 Queensland Law Society, submission 9, pp 1-2.

9 Department of Justice and Attorney-General, correspondence dated 11 April 2017, attachment, pp 1, 5.

subordinate legislation is by publication of the legislation and its publication date on the Queensland legislation website, rather than by gazettal'.[10]

The department described the current and proposed methods of notifying approved forms:

> *Section 48 of the AIA currently requires approved forms to be notified by publishing in the government gazette (gazette) either: (a) the form itself; or (b) a notice of the approval or availability of the form, including information about where the form can be accessed (i.e. a physical address where the form can be collected and/or a link to a website). It is a matter for each approving entity to decide whether its approved forms are notified under (a) or (b). In practice, many Queensland Government departments (departments) utilise option (b), meaning that the form itself is not published in the gazette but must be accessed physically or from a stated website.*
>
> *…*
>
> *The proposed amendment at clause 6 of the Bill will allow approved forms to be notified on a 'relevant website', as an alternative to notification in the gazette. …*
>
> *The option of website publication facilitates the centralisation of access to forms for an approving entity and the publication on a* [whole of government] *website. …*
>
> *Regardless of whether departments choose the gazette or website notification option, departments will be responsible for their own record keeping arrangements (including for historical versions of forms) under the* Public Records Act 2002.[11]

2.4 Amendments to the Appeal Costs Fund Act 1973

The Bill proposes to amend the *Appeal Costs Fund Act 1973* (ACF Act) to clarify certain provisions and omit redundant provisions.[12]

The QLS described the Appeals Costs Fund (ACF):

> *The Appeal Costs Fund … is established by legislation. It is funded by a levy on every set of proceedings that is issued in this state and it is designed to protect people against a systems failure. That systems failure in essence being from the judicial side of court process: the death of a judge during the course of a process or an error of law by a judge that necessitates an appeal to a higher court. Parties who incur that cost have the safety net and that safety net is the Appeal Costs Fund.*[13]

2.4.1 Stakeholders' views and department's response

EVAWQ supported the amendments as they provide for 'enhanced equity and clarity'.[14]

The QLS submitted that, on the basis of the information publicly available and the experience of its members, it did not support the proposed amendments to the ACF Act. It identified the following concerns:

- the amendments remove the payment of interest on the ACF and the mechanism that enables the ACF to be topped up if it is insufficient, with the result that the ACF may be unable to pay valid claims
- the proposed amendment to s 22 of the ACF Act may not capture all the events that will result in costs being thrown away, such as where a matter is adjourned, and therefore further amendment should be made
- the retrospective application of proposed new s 31. The QLS opposed the provision on the basis that it 'is unfair to parties who are yet to receive monies or benefit from the Fund. The adoption of

[10] Department of Justice and Attorney-General, correspondence dated 11 April 2017, attachment, pp 11-12.
[11] Department of Justice and Attorney-General, correspondence dated 20 April 2017, pp 1-2.
[12] Explanatory notes, p 2.
[13] Queensland Law Society, public hearing transcript, 18 April 2017, p 3.
[14] Ending Violence Against Women Queensland Inc., submission 10, p 1.

the amendment may create unjust and unforeseeable outcomes and may be contrary to section 4(3)(g) of the *Legislative Standards Act 1992*'.[15]

The department provided reassurance that the ACF would be able to pay all valid claims:

> *Clause 12 of the Bill amends section 5 to remove redundant provisions relating to the payment of interest on the fund balance, and top up of the fund from consolidated revenue. These are simply technical amendments reflecting current accounting practice across the whole of government. In practice, payments from the fund are no longer sourced from a separately maintained account. Rather, they are sourced from a general account within DJAG, with additional funding recouped, as required, from the consolidated fund.*
>
> *To be clear, the changes in the Bill (including clause 12) will not result in a shortfall of funds available to pay valid claims for reimbursement from the fund.*[16]

With respect to costs thrown away, the department advised that the QLS's comments were made in the feedback to the department on the consultation draft of the Bill and were considered during final drafting.[17]

Regarding the retrospective application of the amendments, the explanatory notes provided the following justification:

> *It is proposed to amend section 22 of the ACF Act to: clarify that the circumstances in which a person convicted on indictment is entitled to payment from the ACF includes where an appeal succeeds on the ground that there was a miscarriage of justice (the first amendment); and to clarify the basis for payment under section 22 by reference to costs the ACF Board considers have been thrown away, or partly thrown away and were reasonably incurred in the initial proceedings (the second amendment). The proposed transitional provision (which will apply both of these amendments to applications submitted, but not determined, prior to commencement) arguably raises a fundamental legislative principle issue regarding retrospectivity.*
>
> *However, the retrospective operation of the first amendment is justified as it is beneficial in nature (i.e. it will clarify that the grounds on which a person convicted on indictment can claim from the ACF include where an appeal against the conviction based on miscarriage of justice is successful). The retrospective operation of the second amendment is also justified on the basis that it aligns with current practice of the ACF Board; and is consistent with the underlying premise of appeal costs fund legislation that reimbursement should be determined by reference to costs thrown away.*[18]

These provisions are discussed further in Chapter 3 (Compliance with Legislative Standards Act) of this report.

2.5 Amendments to the Queensland Classification Acts

The Bill proposes to amend the *Classification of Computer Games and Images Act 1995*, the *Classification of Films Act 1991* and the *Classification of Publications Act 1991* (Queensland Classification Acts) to align with corresponding Commonwealth legislation and remove all references to classification officers. It also proposes to make consequential changes to the Criminal Code.[19]

The committee was advised by the department that Queensland currently has no classification officers and therefore there will be no job losses as a result of the proposed amendment.[20]

15 Queensland Law Society, submission 9, p 2.
16 Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 7.
17 Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 8.
18 Explanatory notes, p 10.
19 Explanatory notes, pp 1, 9.
20 Public briefing transcript, 18 April 2017, p 5.

2.5.1 Stakeholders' views

Protect All Children Today Inc (PACT) and EVAWQ expressed support for making the Queensland Classification Acts consistent with national scheme legislation.[21]

PACT submitted:

> *We are extremely supportive of any amendments to the* Computer Games and Images Act 1995 *in order to better classify games and images. This will increase the protection of vulnerable children through identification and disclosure of age-inappropriate games and images.*
>
> *…*
>
> *… PACT is supportive of any amendments to the* Classification of Films Act 1991 *to display the classification of films based on the age of the viewer.*
>
> *…*
>
> *We support the proposed amendments to the* Classification of Publications Act 1991 *to ensure all classification of publications will be decided in accordance with the provisions of the Commonwealth Act. Further, we support amendments that strengthen the areas covered and provide better community education and clarity of the Act's provisions, specifically to enhance the protection of children.*
>
> *The amendments in relation to the terms 'child abuse photograph' or 'child abuse publication' are also supported by PACT.*[22]

The QLS commented with respect to the Queensland Classification Acts:

> *The Society does not take issue with the proposed amendments to the* Criminal Code *on the basis that these amendments will not abrogate any defence a person has available if he or she is charged under section 228E of the* Criminal Code *and, that the amendments simply transfer the power to determine if something is exempt from classification from the State Government to the Commonwealth Government.*[23]

2.6 Amendments to the Land Court Act 2000

The Bill proposes to amend the *Land Court Act 2000* (LC Act) to:

- ensure that orders of the Land Appeal Court may be enforced in the Supreme Court
- remove any doubt as to the power of the Land Appeal Court to make declarations
- to provide for the appointment of acting judicial registrars on a full-time or part-time basis
- ensure that the Land Appeal Court has the jurisdiction and power to award costs in respect of a previous Land Court hearing where the Land Court had not previously determined costs
- strengthen the alternative dispute resolution processes with a view to ensuring so far as possible persons attending have the authority to settle the matter
- incorporate into the LC Act the provisions in the Land Court Act (Transitional) Regulation 2017
- rectify two numbering errors.[24]

In relation to the provisions regarding the resolution of matters, the department advised:

> *… the Land Court has given us advice that some formal mediations have been compromised because the person attending the mediation did not have authority to settle the matter, resulting in unnecessary cost and delay. Section 36 of the act provides a framework to ensure the parties or their representatives attend preliminary conferences and have the authority to settle. However, there is no similar framework in relation to mediations under section 37 of the act … which applies that*

[21] Protect All Children Today Inc., submission 6, p 1.
[22] Protect All Children Today Inc., submission 6, pp 1-2.
[23] Queensland Law Society, submission 9, pp 2-3.
[24] Explanatory notes, p 3.

part 6 of the Civil Proceedings Act, so it is necessary to strengthen the Land Court's mediation processes under section 37 of the act. The amendment will ensure that parties to a mediation are prepared to identify and discuss the issues in dispute and, if a party is represented by a lawyer or agent, the lawyer or agent has the authority to settle the matter or any issue discussed. If it is not practicable for the lawyer or agent to have that authority, the lawyer or agent must have the authority to make a recommendation to the party about settling the matter or any issue discussed.

It is actually giving that process or those mediation procedures a bit more teeth in the sense that they can come to a conclusion or a recommendation at least ...[25]

The department explained the reason for amendments regarding costs:

In several recent cases the Land Appeal Court has expressed doubt about whether it has jurisdiction to determine costs for the previous Land Court hearing in circumstances where the Land Court in that hearing had not previously determined costs.

The amendment is designed to remove any doubt and inserts this new section 57A to clarify that the Land Appeal Court has power to order costs, including costs in relation to the previous Land Court hearing, if the Land Court had not already done so.[26]

2.6.1 Stakeholder's view

The QLS expressed support for the proposed amendments to the LC Act.[27]

2.7 Amendments to the Legal Aid Queensland Act 1997

The Bill proposes to amend the *Legal Aid Queensland Act 1997* (LAQ Act) to:

- change the qualifications required to be the chief executive officer (CEO) of Legal Aid Queensland (LAQ)
- extend the secrecy provisions to approved students, volunteers and researchers, and external legal practitioners who conduct reviews of legal assistance decisions
- enable LAQ to disclose information or documents about clients to third parties where a client consents or directs the disclosure
- require the LAQ Board's approval for a LAQ lawyer to engage in legal work other than for LAQ.[28]

The LAQ requested the amendments to the LAQ Act and was consulted on them by the government.[29]

2.7.1 Stakeholders' views and department's response

The current CEO of LAQ explained that LAQ is both a law firm and a 'very large government organisation that does a whole lot of things that a law firm does not do'.[30] He advised the committee that the board 'was of the view that, at some time in the future, if they were to recruit a new CEO they would want to make sure that they get the right skill set for the role'.[31]

According to LAQ, the ideal skill set of a LAQ CEO would 'preferably be someone who had experience as a lawyer, but … would also need to involve a person with experience in managing budgets, experience in managing a large service delivery program … and also experience in the governance of a large complex organisation, including that it is a board-run organisation'.[32] LAQ commented that neither New South Wales nor Victoria specifically require the CEO of their legal aid agencies to be a lawyer.[33]

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25 Public briefing transcript, 18 April 2017, p 9.
26 Public briefing transcript, 18 April 2017, p 9.
27 Queensland Law Society, submission 9, p 3.
28 Explanatory notes, p 3.
29 Public briefing transcript, 18 April 2017, p 9.
30 Public hearing transcript, 18 April 2017, p 7.
31 Public hearing transcript, 18 April 2017, p 7.
32 Public hearing transcript, 18 April 2017, p 7.
33 Legal Aid Queensland, correspondence dated 20 April 2017, p 1.

EVAWQ was in favour of the proposed changes to the eligibility requirements for the CEO of LAQ.

The QLS, however, opposed the amendments to allow the appointment of a CEO who is not a lawyer. The QLS contended that because one of the main objectives of the LAQ Act is to give legal assistance to financially disadvantaged persons, the CEO must be a lawyer, 'capable of giving and administering legal advice'.[34] Further:

> *There is significant value in having a lawyer as the CEO of Legal Aid Queensland. Lawyers owe and understand their duties to the Court, to their client and understand the rule of law. A lawyer will be able to comprehend the intricacies of the work that Legal Aid Queensland performs and is equipped to assess the merits, quality and risks of the services provided. A CEO who is a lawyer will also appreciate the consequences of decisions made by the CEO on the legal and ethical obligations of the lawyers, both within and outside the organisation.*
>
> *We do not believe that our concerns will be addressed by the proposal for a Legal Aid lawyer, whether a "primary holder" or a "reserve holder", to hold a practising certificate. This additional position is unnecessary duplication which could be avoided if the CEO was legally qualified.*[35]

The QLS advised that Rule 10(b) of the *Queensland Law Society Administration Rule 2005*, which provides that a limited principal practising certificate may be issued to the CEO of LAQ or to certain other persons, may need to be amended by the QLS Council because the QLS cannot issue a practising certificate to a person appointed under proposed new s 73A.

The QLS submitted that if a non-lawyer CEO is appointed, it would be necessary to ensure the process is carried out in a way that ensures an appropriate person always holds a practising certificate for the entity.[36]

At the request of the committee, LAQ responded to the issue raised by the QLS about the potential for there to be a period in which no one holds LAQ's principal practising certificate if the CEO is a non-lawyer:

> *As noted by the QLS itself, this risk would be overcome by the timing of the appointment of the holder of a practising certificate relative to appointment of a non-lawyer CEO. Presently, the CEO is appointed by the Governor-in-Council on the board's recommendation. Under the Bill, the board will also be required to nominate the primary and reserve holders of a practising certificate in the circumstance that the board recommends a non-lawyer CEO for appointment. The coordination of the timing of the appointment of the CEO with the timely acceptance of the nomination of the proposed holders of the practising certificate would, I submit, be a fairly straightforward matter if and when required.*[37]

The department advised that the QLS's concerns regarding delineation and oversight 'are operational matters for LAQ'.[38]

Legal Aid Queensland and EVAWQ supported the expansion of the secrecy provisions.[39]

2.8 Amendments to the Legal Profession Act 2007

The Bill proposes to amend the *Legal Profession Act 2007* (LP Act) to:

- clarify that employees or agents of public service offices, as defined in the *Public Service Act 2008*, are 'government legal officers' for the purposes of the LP Act and are not required to hold a current practising certificate when engaged in legal work in the course of their employment

[34] Queensland Law Society, submission 9, p 3.
[35] Queensland Law Society, submission 9, p 3.
[36] Queensland Law Society, submission 9, p 4.
[37] Legal Aid Queensland, correspondence dated 20 April 2017, p 1. See also, Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 9.
[38] Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 10.
[39] Legal Aid Queensland, public hearing transcript, 18 April 2017, pp 9-10; Ending Violence Against Women Queensland Inc., submission 10, p 2.

- allow an incorporated legal practice (ILP) to be a QLS member to allow the QLS's Professional Standards Scheme to extend to ILP entities
- provide that an ILP going into liquidation or some other form of external administration is a show cause event and suitability matter for a legal practitioner director
- provide that the disclosure requirements in relation to costs do not apply in relation to certain bankruptcy trustee clients
- exclude from the duty of the QLS, the BAQ and the LSC the requirement to report the suspected commission of certain offences to an appropriate authority
- replace an incorrect reference to 'manager' with the correct word 'receiver' in s 517.[40]

2.8.1 Stakeholders' views and department's response

EVAWQ supported the amendments that 'clarify, update and strengthen legislation for the regulation of the legal profession'.[41]

The Women Lawyers Association of Queensland (WLAQ) supported the proposed amendments to the LP Act, describing them as 'uncontroversial and sensible'.[42] The WLAQ singled out the proposed change in relation to electronic bills as a matter the organisation particularly supports, stating that it 'reflects the current state of affairs in the industry'.[43]

The QLS, however, considered that the Bill is not sufficient regarding electronic bills. It contended that law practices should be able to send a bill to a client by way of email without seeking the client's consent.[44] It stated:

> *There is no difference between an email and a posted letter insofar as a client has provided these details as his or her contact details. Posted mail is just as likely, and we submit even more likely, to be ignored or misplaced or seen by someone other than the client, than an email. No consent however, is needed from the client before a letter or bill is posted to them.*[45]

The department advised that it considered the QLS's position regarding billing during drafting of the Bill and that the proposed amendment 'modernises the provision while continuing to safeguard clients of law practices from both a cost recovery and a privacy perspective'.[46]

2.9 Amendments to the Magistrates Act 1991

The Bill proposes to amend the *Magistrates Act 1991* (Magistrates Act) to increase the age limit for acting magistrates to 75 years and provide that service as a magistrate in Gympie constitutes regional experience for the purpose of a transfer decision.[47]

The department explained the rationale for the amendment regarding the age increase:

> *… the amendment is being proposed to assist the Chief Magistrate to ensure the orderly and expeditious exercise of the jurisdiction and power of the Magistrates Court because it will allow the Chief Magistrate increased flexibility in the management of the heavy workload of the Magistrates Court across the state by drawing on the expertise and experience of retired magistrates who have not yet reached the age of 75 years but who do wish to continue working. Further to legislative amendments made in 2013, the current age limit for acting judges of the Supreme and District*

40 Explanatory notes, pp 3-4.
41 Ending Violence Against Women Queensland Inc., submission 10, p 2.
42 Women Lawyers Association of Queensland, submission 7, p 3.
43 Women Lawyers Association of Queensland, submission 7, p 3.
44 Queensland Law Society, submission 9, p 4.
45 Queensland Law Society, submission 9, p 4.
46 Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 10.
47 Explanatory notes, p 4.

> *Courts is 78 years. I am just noting that. The selection of an age limit for retired magistrates to act as magistrates is, of course, a matter of policy for the government.*[48]

The department advised that the amendment regarding service as a magistrate in Gympie 'was requested by the Chief Magistrate, after consultation with the magistracy, having regard to the distance of Gympie from Brisbane'.[49] The department added: '… Gympie is located further from Brisbane than Warwick, which is currently regarded as prescribed regional experience under the Act for transfer policy purposes.'[50]

2.9.1 Stakeholders' views and department's response

The WLAQ expressed support for the proposed amendments to the Magistrates Act, particularly the increase in the age limit to 75 years, '[i]n our view, the change is positive as it allows Magistrates who have retired early to again hold judicial office and assist in filling a vacancy of office.'[51]

The WLAQ, however, also expressed the following concern:

> *We would not agree with a proposal which allows Magistrates, as they approach the age of 70 years, to be unilaterally appointed as an Acting Magistrate effective the day following their 70th birthday; essentially having a continuation of appointment, albeit as an Acting Magistrate as opposed to a Magistrate. Our interpretation of the Bill is that it is not expected to operate in this manner, rather* [it] *is to afford the Attorney-General the option to fill a vacancy and meet the community's needs on a short term basis.*[52]

The department noted the WLAQ's comments.[53]

EVAWQ supported the increase in the age limit for acting magistrates.[54]

2.10 Amendments to the Ombudsman Act 2001

The Bill proposes to amend the *Ombudsman Act 2001* (Ombudsman Act) to:

- improve the Ombudsman's ability to protect complainants and witnesses and obtain and control the release of sensitive information
- add the provision of advice or training to agencies to the functions of the Ombudsman
- provide the Ombudsman with power to direct the principal officer of a local government to table a report by the Ombudsman about the local government at a local government meeting
- provide that a person may not be employed as an officer of the Ombudsman if the person does not consent to a criminal history check
- clarify that a corporation may be appointed to undertake strategic reviews of the Office of the Queensland Ombudsman
- increase the interval between strategic reviews under the Ombudsman Act from five to seven years.[55]

The amendments to the Ombudsman Act principally implement recommendations resulting from the last strategic review of the Office of the Queensland Ombudsman.[56]

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48 Public briefing transcript, 18 April 2017, p 8.
49 Department of Justice and Attorney-General, correspondence dated 20 April 2017, p 2.
50 Department of Justice and Attorney-General, correspondence dated 20 April 2017, p 2.
51 Women Lawyers Association of Queensland Inc., submission 7, p 1.
52 Women Lawyers Association of Queensland Inc., submission 7, pp 1-2.
53 Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 3.
54 Ending Violence Against Women Queensland Inc., submission 10, p 1.
55 Explanatory notes, p 4.
56 Queensland Ombudsman, submission 5, p 1. The report of the 2012 review is available at https://www.ombudsman.qld.gov.au/about-us/corporate-documents/strategic-review.

2.10.1 Stakeholders' views and department's response

Stakeholders presented differing views regarding the amendments to the Ombudsman Act.

The Ombudsman advised that he was consulted on all amendments except those relating to the timing and undertaking of strategic reviews of the Office of the Ombudsman, and that he supported the proposed changes.[57] The Ombudsman submitted:

> *The proposed amendments in the Bill are necessary and desirable to support the better operations of the Office, particularly the management of complaints and investigations. They also formalise the administrative improvement role for the Office which has been an important aspect of its work for some time. Collectively, the amendments to the Ombudsman Act contained in the Bill will also provide a valuable improvement to the protections for officers, complainants and witnesses and enhanced powers for the Ombudsman in the release of reports to local councils.*[58]

The department explained the reason for the increased interval between strategic reviews:

> *Basically, by the time we actually get the report of the strategic review and it goes to the parliamentary committee and the parliamentary committee reports on it and then the government responds to that and then there is legislative amendment and because not a lot of legislative amendments are coming out of it, it was thought it was better to extend that period.*[59]

The QLS was of the view that cl 183, which enables a corporation to undertake a strategic review of the Office of the Queensland Ombudsman if a director, employee or other staff member of the corporation is appropriately qualified, should be amended to expressly state that the person with the qualification is the person who needs to conduct or supervise the strategic review.[60]

In response to the QLS's suggestion, the department advised that it 'is not considered appropriate to require a specific individual to conduct or supervise a review where a corporation submits an offer to undertake the review'.[61]

EVAWQ supported the strengthening of 'the Ombudsman's functions and powers in the interests of enhanced integrity and accountability and the protections of complainants and witnesses'.[62]

Brisbane City Council (Council) was concerned about certain amendments to the Ombudsman Act, specifically:

- the new power of the Ombudsman to direct the principal officer to table a report of the Ombudsman at a local government meeting
- that the Ombudsman may direct the principal officer to table a report of the Ombudsman if, during or after an investigation, the Ombudsman considers there is evidence of a breach of duty or misconduct on the part of an officer of an agency.[63]

With respect to the tabling of a report by the principal officer, the Council advised that the principal officer of Council (the CEO) does not attend Council meetings and is not permitted to table documents at a meeting. The Council recommended that the current wording of s 50(4), which requires the principal officer to give a copy of the report and any recommendations to all members of the local government, be retained.[64]

With respect to the public disclosure of a report, the Council submitted:

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57 Queensland Ombudsman, submission 5, p 1.
58 Queensland Ombudsman, submission 5, p 2.
59 Public briefing transcript, 18 April 2017, p 5.
60 Queensland Law Society, submission 9, pp 4-5.
61 Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 11.
62 Ending Violence Against Women Queensland Inc., submission 10, p 1.
63 Brisbane City Council, submission 3, p 1.
64 Brisbane City Council, submission 3, p 1.

> *… Council is concerned about the requirement to publicly disclose a report which merely indicates that the Ombudsman considers that there is evidence of a breach of duty or misconduct on the part of an officer of an agency. Council is required to comply with the provisions of the* Crime and Corruption Act 2001 *which include carrying out investigations of conduct where there is a suspected breach of duty or misconduct. Council considers that this disclosure could reasonably be expected to impede the administration of justice both generally, including procedural fairness, and for the officer concerned in any investigation undertaken by Council in accordance with the* Crime and Corruption Act 2001.[65]

The department responded:

> *There is nothing in legislation preventing the CEO of a local government (including* [Brisbane City Council]*) attending a council meeting and tabling documents at the meeting. Further, there are a number of provisions in the* Local Government Regulation 2012 *… and the* City of Brisbane Regulation 2012 *… which require the CEO of a local government to present certain documents at council meetings. … There is nothing in the Meetings Local Law that prevents the BCC CEO attending a council meeting and tabling documents at the meeting.*
>
> *The requirements of current section 50(4) of the Ombudsman Act have been retained in the Bill – a principal officer of a local government who is given a report must give a copy of the report to all members … of the local government.*
>
> *Clause 180 gives the Ombudsman a discretionary power to direct the principal officer of a local government to table a report received from the Ombudsman at a local government meeting to ensure it is placed on the public record. Before deciding whether to require that a report be tabled, the Ombudsman will consider the rights and liberties of individuals named in the report.*[66]

The QLS was concerned about cls 175 and 178 of the Bill.[67] Clause 175 clarifies that it is not a reasonable excuse for failing to comply with an investigation requirement that complying with it might incriminate the person. Clause 178 widens the categories of material to be regarded as inadmissible as evidence against an individual who gives information to the Ombudsman under an investigation requirement. The QLS submitted:

> *Any breach of a fundamental right, such as the right to claim privilege against self-incrimination, should be a last resort. Fundamental rights of this nature underpin the rule the law and the justice system as a whole …*
>
> *If clause 178 will abrogate self-incrimination privilege as proposed by clause 175, then strong and specific protections of the admissibility and use of that evidence must be included in the statute. Clause 178(2) is strongly worded, however, should also protect against the use of derivative evidence being admissible against the individual. It is noted that the Act specifically refers to 'derivative evidence' being admissible to use against an individual in criminal proceedings about the falsity or misleading nature of the evidence (perjury type offences). However, the Act is silent on protecting against the otherwise use of derivative evidence against an individual.*[68]

The explanatory notes provided the following rationale for the abrogation of the privilege against self-incrimination:

> *… The abrogation of the privilege against self-incrimination is necessary because the information would generally be peculiarly within the knowledge of the person from whom it is requested and would otherwise be difficult to establish and it is in the public interest to ensure accountability of government. As a safeguard, the amendment to section 48 provides that the information or document and other evidence directly or indirectly derived from the information or document, is not*

65 Brisbane City Council, submission 3, p 1.
66 Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, pp 2-3.
67 Queensland Law Society, submission 9, p 5.
68 Queensland Law Society, submission 9, p 5.

admissible in any proceeding as evidence against the individual unless it pertains to the falsity or misleading nature of the information or document.[69]

The department explained that derivate evidence would not be admissible in any proceeding as evidence against the individual, but it may be used under subsection 3 of clause 178 in criminal proceedings about the falsity or misleading nature of the primary evidence.[70]

The Ombudsman responded to the QLS's concerns stating that cls 175 and 178 were included in the Bill to ensure 'that persons who are called as witnesses and who are compelled to give testimony may not use self-incrimination as an explanation as to why they will not give evidence …'.[71] The Ombudsman advised that the compulsory powers 'are very rarely exercised'[72] and that it is of the view that there are sufficient safeguards in the Bill in relation to the derivative use of evidence in criminal proceedings.[73]

These provisions are discussed further in Chapter 3 (Compliance with Legislative Standards Act) of this report.

2.11 Amendments to the Penalties and Sentences Act 1992

The Bill proposes to amend the *Penalties and Sentences Act 1992* to:

- allow domestic violence notations to be administratively made on a person's criminal history or a formal record of conviction where the person is convicted of an offence for which the charge has been noted as a domestic violence offence (unless the court orders that a notation not be made because it is not satisfied that the offence is a domestic violence offence)
- clarify that the prosecution bears the onus of proving that an offence is a domestic violence offence
- clarify that domestic violence notations do not apply to a person's traffic history.[74]

2.11.1 Stakeholders' views and department's response

Soroptimist International expressed strong support for the proposal in the Bill to facilitate the making of domestic violence notations on a person's criminal history or formal record of conviction. It was of the view that recording these convictions 'will support the recently strengthened Domestic Violence legislation, and ongoing legislative amendment to help eradicate domestic and family violence'.[75]

PACT and EVAWQ also expressed support for the provisions.[76] PACT stated that the amendment 'is likely to lead to the better protection of vulnerable children involved in [a] domestic violence situation'.[77]

The WLAQ submitted that the proposed amendment 'addresses two key concerns the WLAQ has, namely the onus of proving a domestic violence offence and the possible administrative burden for all parties involved'.[78] It was concerned, however, about the process of information sharing to other states and territories:

The Bill will not achieve its intended purpose if there is a not a clear process about this if the Bill is passed. The purpose of the notation, in our view, goes to assisting and protecting the community, the complainant and her/his family. If other Police Services are not aware of the notation, then the intention of the proposed changes may ultimately fail. WLAQ appreciates that this is outside the scope of the Committee and is dependent on the actions of entities outside of Queensland. This is

69 Explanatory notes, p 12.
70 Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 11.
71 Public hearing transcript, 18 April 2017, p 14.
72 Public hearing transcript, 18 April 2017, p 14.
73 Public hearing transcript, 18 April 2017, p 14.
74 Explanatory notes, p 4.
75 Soroptimist International, submission 4, pp 1-2.
76 Protect All Children Today Inc., submission 6, p 1; Ending Violence Against Women Queensland Inc., submission 10, p 2.
77 Protect All Children Today Inc., submission 6, p 1.
78 Women Lawyers Association of Queensland, submission 7, p 2.

> *an opportune time for the Commonwealth Government to consider the implementation of a National process in line with the Bill's proposals.*[79]

The department advised that it noted the WLAQ's concerns regarding information sharing but that they are beyond the scope of the Bill.[80]

The QLS was concerned that the amendments would apply retrospectively. In response to this concern, the department stated:

> *The court has no power to examine a person's past criminal history unless the person has been charged and convicted of a domestic violence offence under 12A. For the notation to be made in relation to past convictions, an application must have been made by the prosecution and the court must be satisfied that the offence which the person has been previously convicted of did occur in a domestic and family violence context. This automatic provision for the amendment is in relation to the current matter where the charge itself before the court has been noted as a domestic violence offence.*[81]

2.12 Amendments to privacy legislation

The Bill proposes to amend the *Right to Information Act 2009* (RTI Act), the *Information Privacy Act 2009* (IP Act) and the *Invasion of Privacy Act 1971* (IoP Act). The amendments:

- clarify certain matters in the RTI Act and the IP Act
- promote consistency in language between the IP Act and the RTI Act
- provide that access to a document may be refused in certain circumstances (RTI Act and IP Act)
- prevent the release of documents associated with the administration of a judicial appointment process (RTI Act)
- clarify that a corporation may be appointed to undertake a strategic review of the Office of the Information Commissioner (RTI Act)
- ensure the IP Act does not restrict disclosure of personal information to the Australian Security Intelligence Organisation in certain cases
- create an exception to the offence for using a 'listening device' to record a private conversation where police and emergency services communications centre operators record private conversations between individuals while operating the open microphone function of a government network radio in certain circumstances (IoP Act).[82]

The department advised that the amendments to the IoP Act were made in response to concerns raised by the then Public Safety Business Agency.[83]

2.12.1 Stakeholders' views

Brisbane City Council submitted that it supported the proposed amendments to the RTI Act and the IP Act which 'clarify the requirement of an agency to provide access to personal information, exempt information and information which is contrary to the public interest, only where it is reasonably practical to give the information.'[84]

[79] Women Lawyers Association of Queensland, submission 7, p 2.
[80] Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 4.
[81] Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 12.
[82] Explanatory notes, pp 2, 3, 5.
[83] Department of Justice and Attorney-General, correspondence dated 20 April 2017, p 2.
[84] Brisbane City Council, submission 3, p 1.

PACT supported the proposed amendments to the IP Act which provide that certain requirements about the collection and disclosure of personal information do not apply in the context of delivering an emergency service.[85]

The QLS expressed support for the proposed amendment relating to the release of documents in relation to judicial appointments.[86]

EVAWQ supported the facilitation of disclosure of personal information in certain cases.[87]

2.13 Amendments to the Property Law Act 1974

The Bill proposes to amend the *Property Law Act 1974* (PL Act) to prohibit statutory instruments (other than prescribed subordinate legislation) from rendering void, unenforceable or subject to termination, contracts or dealings concerning property that are made, entered into or effected contrary to the statutory instrument.

2.13.1 Stakeholders' views and department's response

The QLS expressed support for the proposed amendment to s 57A of the PL Act, as did EVAWQ.[88]

The City of Gold Coast (CGC) was of the view that the inclusion of proposed new s 57A (Effect of Act or statutory instrument) may 'materially and adversely affect Council's interests'[89] because of its effect on Local Law 17 (Maintenance of works in waterway areas) (LL 17).[90] Amongst other things, LL 17 requires sellers of certain waterfront land to disclose to buyers in contracts of sale that a specified work is on or connected to, the land being sold. If the vendor fails to do so, the buyer may terminate the contract before its completion. According to the CGC:

> *Section 15 of LL 17 … ensures that buyers are well informed of their responsibilities under LL 17 before proceeding with contracts to buy affected waterfront land. In the absence of a buyer's right of termination, it is highly unlikely a seller would made the disclosure required by the provision (even though it is also an offence not to comply with the disclosure requirement).*[91]

The CGC further submitted:

> *The Explanatory Notes to the Bill do not adequately explain why a statutory instrument allowing for the right of termination of a land contract should be the subject of scrutiny of Parliament. Parties are free to provide for termination rights in land contracts. Such freedom does not need to be 'approved' by Parliament.*
>
> *It is not clear, then, why a statutory instrument of another law-making entity, namely, a local government, that provides for the termination of a land contract should be subject to the scrutiny of Parliament …*[92]

The CGC contended that LL 17 does not impose a compliance burden on sellers and that the new regime will be more onerous:

> *Any suggestion that a statutory instrument, including a local law, would, in providing for a right to terminate a land contract, create an additional compliance burden for sellers and their legal representatives, or that it would lead to a proliferation of similar local laws (or other statutory instruments) is unfounded. … LL 17 … is well known to legal practitioners. It had been Council's*

85 Protect All Children Today Inc., submission 6, p 2.
86 Queensland Law Society, submission 9, p 8.
87 Ending Violence Against Women Queensland Inc., submission 10, p 2.
88 Queensland Law Society, submission 9, p 5; Ending Violence Against Women Queensland Inc., submission 10, p 2.
89 City of Gold Coast, submission 8, p 1.
90 Local Law 17 was made to address issues relating to the maintenance of works in Gold Coast waterways, such as the responsibilities of Council and landowners: City of Gold Coast, submission 8, p 2.
91 City of Gold Coast, submission 8, p 2.
92 City of Gold Coast, submission 8, p 2.

experience before the commencement of LL 17 that property owners had generally been unaware of their responsibilities in relation to many waterway works and had sought to shift such responsibilities to Council.

In any event, given the 'prescribed subordinate legislation' exception …, the new s 57A will create a greater compliance burden for sellers and their legal representatives as they will still need to check whether an exception applies in the case of their contracts.[93]

The CGC was of the view that the 'prescribed subordinate legislation' exception would enable s 15 of LL 17 to continue operation.

Council notes that the proposed s 57A allows for a statutory instrument, including, for example, s 15 of LL 17, to be 'prescribed subordinate legislation'. In that case, the relevant statutory instrument is not invalid (or beyond the instrument maker's power).[94]

In response to the issues raised in the CGC's submission, the department explained the rationale for proposed new s 57A and identified purported issues with LL 17:

Section 57A was enacted to promote certainty in conveyancing practice by minimising the circumstances in which a land contract could be found to be impliedly illegal for failure to comply with a statutory instrument.

…

[LL 17] *illustrates the compliance problems of local laws which impose disclosure obligations on sellers with accompanying termination rights in favour of the buyer. …*

In particular, it should be noted there is no central register of affected properties that could be searched by the seller or buyer to determine the application of LL 17 to a particular property. This means that in order to ascertain the application of LL 17, the seller would need to engage a lawyer to make inquiries of the council, and where this is inconclusive, then consult a building professional in order to reach a conclusion, with commensurate cost burdens.[95]

The department stated that the main purpose of the 'prescribed subordinate legislation' exception is 'to allow for the possibility that there may be existing subordinate legislation, made in reliance on current section 57A, where exemption from the stronger prohibition is justifiable.'[96] It explained that LL 17 will not fall within the 'prescribed subordinate legislation' exception:

Local laws are not "subordinate legislation" (see section 9 of the Statutory Instruments Act 1992*) and will be ineligible for prescription for the purposes of amended section 57A(1). This amendment will apply to statutory instruments that are not subordinate legislation (i.e. local laws) from commencement regardless of when the statutory instrument was made and the new prohibitions will therefore immediately impact the operation of Gold Coast City Council Local Law No. 17 (Maintenance of Works in Waterway Area) (LL 17). Contracts or dealings concerning property that were made, effected or entered into before the commencement will not be affected.*

This amendment responds to legal stakeholder criticism of LL 17, which requires sellers of property (to which certain works obligations attach) to include information about those obligations in contracts of sale for those properties and gives buyers the right to terminate the contract if that information is not included. LL 17 is problematic where sellers would not necessarily be aware of those obligations and the information is not searchable.

It is an intended consequence of the amendment that LL 17 will be affected. …[97]

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93 City of Gold Coast, submission 8, p 3.

94 City of Gold Coast, submission 8, p 3.

95 Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, pp 4-5.

96 Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 4.

97 Department of Justice and Attorney-General, correspondence dated 20 April 2017, pp 2-3. The correspondence also provided a link to background information – http://www.justice.qld.gov.au/corporate/community-consultation/community-consultation-activities/current-activities/review-of-property-law-in-queensland.

2.14 Amendments to the Prostitution Act 1999

The Bill proposes to amend the *Prostitution Act 1999* (Prostitution Act) to:

- remove the requirement that an application for variation be treated as if it were an application for a certificate
- enable the Governor in Council to appoint a member of the Prostitution Licensing Authority (Authority) to act as chairperson when the chairperson is unavailable
- remove the 'chief executive, or a person nominated by the chief executive', as a member of the Authority
- revert the quorum at a meeting of the Authority from 'half the number of members plus one' to five members
- enable the Authority to approve all forms under the Prostitution Act, with limited exceptions
- clarify that 'chief executive' means of the department (and not the Authority).[98]

2.14.1 Stakeholder's view

The Authority submitted that it is supportive of the amendments to the Prostitution Act as they 'will improve its operational efficiency'.[99]

2.15 Amendments to the Public Guardian Act 2014

The Bill proposes to amend the *Public Guardian Act 2014* (PG Act) to clarify:

- that the functions and powers of the Public Guardian in relation to a relevant child can be exercised from the time an application for an order under the Child Protection Act is filed until the application is finalised and arrangements are no longer in place for that child
- that it is the Public Guardian who is responsible for the termination of community visitor appointments.[100]

2.15.1 Stakeholders' views

PACT, EVAWQ and the QLS expressed support for the clarification of the definition of 'relevant child' in the PG Act.[101]

2.16 Amendments to the Queensland Civil and Administrative Tribunal Act 2009 and the Anti-Discrimination Act 1991

The Bill proposes to make minor amendments to the *Anti-Discrimination Act 1991* (AD Act) and to amend the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) to:

- remove the requirement for a person wishing to enforce a final decision of the Queensland Civil and Administrative Tribunal (QCAT) to obtain a certified copy of the decision from the QCAT registry for filing in the registry
- remove unnecessary references to 'style' in relation to business names.[102]

2.16.1 Stakeholder's views and department's response

The Anti-Discrimination Commission (Commission) supported the minor amendments proposed to the AD Act by the Bill.[103]

98 Explanatory notes, p 5.
99 Prostitution Licensing Authority, submission 11, p 1.
100 Explanatory notes, p 5.
101 Protect All Children Today Inc., submission 6, p 2; Queensland Law Society, submission 9, p 6; Ending Violence Against Women Queensland Inc., submission 10, p 2.
102 Explanatory notes, p 5.
103 Anti-Discrimination Commission Queensland, submission 2, p 7.

In relation to the amendments regarding enforcement of final decisions, the Commission submitted:

> *In order to make it clear that the process for enforcing QCAT decisions includes agreements filed with QCAT under the* Anti-Discrimination Act 1991*, the Commission recommends an amendment to that effect to the definition of 'final decision' in section 129 of the QCAT Act*.[104]

The Commission considered that its recommended amendment should be made because:

> *(a) there are now two tribunals that have jurisdiction to deal with complaints;*[105]
>
> *(b) the QIRC* [Queensland Industrial Relations Commission] *has its own process for enforcing its decisions and orders;*
>
> *(c) it will be simpler for users, including court registry staff, for the process of enforcing QCAT orders to be self-contained within the QCAT Act*.[106]

The department advised that it notes the Commission's suggested amendment and will brief the Attorney-General and Minister for Justice and Minister for Training and Skills on the issue.[107]

The Commission further contended that consideration should be given to the inconsistency between the functions conferred on QCAT under the AD Act and the enforcement of QCAT decisions. It recommended that s 174A(a)(iii) of the AD Act be amended so that it is consistent with the requirement for QCAT to file agreements made before referral, and with the practice of QCAT in relation to enforcement of its decisions and orders.[108] The department noted this proposal but stated that it is beyond the scope of the Bill.[109]

2.17 Amendments to the Retail Shop Leases Act 1994

The Bill proposes to amend the *Retail Shop Leases Act 1994* (RSL Act) to:

- give permanent effect to a transitional regulation clarifying that the RSL Act will continue to apply to leases greater than 1000m^2 and employee/agent leases entered into before commencement of the *Retail Shop Leases Amendment Act 2016* (RSLA Act)
- correct an inadvertent omission (effected by the RSLA Act) to reinstate a provision clarifying when a lessee can terminate a retail shop lease based on a defective disclosure statement given by the lessor.[110]

2.17.1 Stakeholders' views and department's response

The Shopping Centre Council of Australia and EVAWQ expressed their support for both the amendments proposed to be made to the RSL Act.[111]

The QLS was not in favour of the reinstatement of the subsection regarding a lessor's failure to comply with disclosure obligations. It considered that the current provision does not need to be changed because it 'does not allow termination for a minor (non-material) error or omission but enables a lessee to determine, based on the nature of the error or omission, whether it has a remedy as a result of the inaccuracy'.[112] The QLS contended that the practical effect of the amendment will be 'to deprive retail lessees of any real remedy if an inaccurate disclosure statement is given, except in cases of blatant fraudulent behaviour'.[113] It further argued that it would be very difficult for a lessee to prove to a court

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104 Anti-Discrimination Commission Queensland, submission 2, p 6.

105 As a result of an amendment to the *Anti-Discrimination Act 1991* (AD Act) in 2016, the references to 'tribunal' in sections 164 and 189 of the AD Act mean the Queensland Industrial Relations Commission for work-related complaints and the Queensland Civil and Administrative Tribunal for other complaints. See *Industrial Relations Act 2016*, s 1096.

106 Anti-Discrimination Commission Queensland, submission 2, p 7.

107 Department of Justice and Attorney-General, correspondence dated 20 April 2017, p 3.

108 Anti-Discrimination Commission Queensland, submission 2, p 7.

109 Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 2.

110 Explanatory notes, p 5.

111 Shopping Centre Council of Australia, submission 1, p 1; Ending Violence Against Women Queensland Inc., submission 10, p 2.

112 Queensland Law Society, submission 9, p 7.

113 Queensland Law Society, submission 9, p 7.

or tribunal that a lessor had acted dishonestly or unreasonably, and that the provision is 'unclear and open to different interpretations'.[114]

In response to the QLS's concerns, the department advised, '[t]he amendment at clause 220 of the Bill will restore the status quo that existed under former section 22 of the RSL Act. The Attorney-General will be briefed on the QLS submission.'[115]

2.18 Amendments to the Succession Act 1981

The Bill proposes to amend the *Succession Act 1981* (Succession Act) to clarify when the stepchild relationship ends (for family provision applications) and to revoke certain dispositions in a will upon the end of a de facto relationship.[116]

2.18.1 Stakeholders' views

The QLS, EVAWQ and PACT supported the proposed amendments to the Succession Act.[117]

2.19 Amendments to the Trusts Act 1973

The Bill proposes to amend the *Trusts Act 1973* (Trusts Act) to remove the requirement that the delegation of the administration of a trust is to be made by power of attorney executed as a deed, consistent with the *Powers of Attorney Act 1998*. It also proposes to streamline the publication requirements relating to a proposed distribution of trust property or an estate.[118]

With respect to the provisions relating to the validation of execution of power of attorney, the department advised:

> *The purpose of the amendments are to say that if you have used that particular approved form under the Powers of Attorney Act, which was common practice, it is not invalid because of the fact it has not been done under seal; it has been done in the approved form. That amendment has been made retrospective to ensure that that inconsistency does not invalidate arrangements that people have entered into in all genuineness.*[119]

2.19.1 Stakeholder's view

EVAWQ did not support the amendment to the Trusts Act that removed the requirement that the delegation of the administration of a trust is to be made by power of attorney executed as a deed.[120] The organisation did not elaborate on its position.[121]

2.20 Amendments to the Vexatious Proceedings Act 2005

The Bill proposes to amend the *Vexatious Proceedings Act 2005* (VP Act) to allow a vexatious litigant's application for leave to institute proceedings to be dealt with without an oral hearing and with or without their consent. The amendment would allow the court to decide such applications 'on the papers', saving court time and resources.[122]

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114 Queensland Law Society, submission 9, p 7.
115 Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 12.
116 Explanatory notes, p 5.
117 Queensland Law Society, submission 9, p 8; Protect All Children Today Inc., submission 6, p 1; Ending Violence Against Women Queensland Inc., submission 10, p 2.
118 Explanatory notes, p 6.
119 Public briefing transcript, 18 April 2017, p 6.
120 Ending Violence Against Women Queensland Inc., submission 10, p 2.
121 See also, Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 13.
122 Department of Justice and Attorney-General, correspondence dated 20 April 2017, p 4. There are currently 24 people who are subject to vexatious proceeding orders: Queensland Courts, List of Persons against whom a Vexatious Proceedings Order has been made pursuant to the *Vexatious Proceedings Act 2005*, http://www.courts.qld.gov.au/__data/assets/pdf_file/0006/93912/vexatious-proceedings-orders.pdf.

2.20.1 Stakeholder's view

The QLS supported the proposed amendments to the VP Act.[123]

2.21 Streamlining of processes and clarification of particular legislation

Brisbane City Council, EVAWQ, PACT and Soroptimist International supported the amendments in the Bill that seek to improve the efficiency and effectiveness of the courts and agencies, and clarify, strengthen and update particular legislation.[124]

2.22 Matters outside the scope of the Bill

Some submitters commented on matters during the course of the committee's inquiry that were outside the scope of the Bill. These included:

- a proposal by PACT that the privacy legislation be amended 'to ensure child victims of sexual assault are adequately supported during the daunting criminal justice process'[125]
- a recommendation by the WLAQ that the appointment of acting magistrates be considered because the Magistrates Act does not provide any limitation on the duration of their appointment and a number of acting magistrates have held the position for some years, and also there is some uncertainty whether the appointment of acting magistrates under the proposed changes will fall within the scope of the Judicial Appointments Panel[126]
- a suggestion by the QLS that the amount payable under the ACF be increased because, according to the QLS, the current limit is 'inadequate and ought to be removed or increased'[127]
- questioning by QLS whether costs in QCAT would be determined under the Uniform Civil Procedure Rules (UCPR). The QLS commented that providing for all costs to be assessed under the UCPR would 'promote consistency and certainty for parties'.[128]
- a recommendation by QLS that s 59(4)(b) of the *Civil Proceedings Act 2011* be clarified because the QLS considered the provision, which deals with interest on costs, to be confusing in its operation[129]
- the QLS seeking broader changes to the Trusts Act than those proposed by the Bill, specifically that s 67 of the Trusts Act would apply to informal administrators and therefore would offer the same protection to those personal representatives as is afforded to a personal representative who has obtained a grant.[130]

[123] Queensland Law Society, submission 9, p 9.

[124] Brisbane City Council, submission 3, p 1; Soroptimist International, submission 4, p 1; Ending Violence Against Women Queensland Inc., submission 10, p 1; Protect All Children Today Inc., submission 6, p 1.

[125] Protect All Children Today Inc., submission 6, p 2. The department advised that '[i]t is unlikely that amendments to the IP Act will have significant effect in ensuring that child victims of sexual assault are adequately supported through the criminal justice system': Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 3.

[126] Women Lawyers Association of Queensland, submission 7, p 2. See also, Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 4.

[127] Queensland Law Society, submission 9, p 2. The department advised that the Attorney-General will be briefed on the QLS's submission regarding the prescribed limit: Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 8.

[128] Queensland Law Society, submission 9, p 6. The department noted the QLS suggestion: Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 12.

[129] Queensland Law Society, submission 9, p 6. The department noted the proposed amendment but commented that it is beyond the scope of the Bill: Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 12.

[130] Queensland Law Society, submission 9, pp 8-9. The department advised that the suggestion 'will be considered separately to the Bill': Department of Justice and Attorney-General, correspondence dated 20 April 2017, p 4.

3 Compliance with the Legislative Standards Act

Section 4 of the *Legislative Standards Act 1992* (LS Act) states that fundamental legislative principles (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals, and the institution of Parliament.

The committee has examined the application of the FLPs to the Bill and brings the following to the attention of the Legislative Assembly.

3.1 Rights and liberties of individuals

Clauses 129, 132 and 182 raise the issue of whether the Bill has sufficient regard to the rights and liberties of individuals.

3.1.1 Clause 129

Clause 129 proposes to amend schedule 3, section 11 (Limits on Disclosure) of the *Information Privacy Act 2009* (IP Act).

The amendment would allow agencies which are subject to the Information Privacy Principles the ability to disclose personal information to the Australian Security Intelligence Organisation (ASIO) if a number of conditions are satisfied. Pursuant to clause 129(1) these conditions include:

(i) *ASIO has asked the agency to disclose the personal information;*

(ii) *an officer or employee of ASIO authorised in writing by the director-general of ASIO for this paragraph has certified in writing that the personal information is required in connection with the performance by ASIO of its functions;*

(iii) *the disclosure is made to an officer or employee of ASIO authorised in writing by the director-general of ASIO to receive the personal information …*

Clause 129 also amends schedule 3, section 11(3) to replace the words 'to the agency' with 'by the agency'. Section 11(3) currently provides that an agency must take all reasonable steps to ensure that a relevant entity will not use or disclose information for a purpose other than the purpose for which the information was disclosed.

Potential FLP issue

The disclosure of an individual's personal information, and in turn the loss of privacy and confidentiality as a result, potentially breaches section 4(2)(a) of the LS Act which provides that legislation should have sufficient regard to the rights and liberties of individuals.

The explanatory notes recognise the potential FLP breach and provide the following justification:

> *The potential breach is justified, however, in the interests of national security and on the basis that disclosure will only be allowed in limited circumstances. Further, ASIO is subject to robust accountability and oversight mechanisms, designed to ensure maximum transparency, consistent with the requirements of national security, including parliamentary oversight of its intelligence activities, ministerial accountability (see, for example, the Attorney-General's Guidelines on Security Intelligence which set out the Attorney-General's expectations of ASIO in the collection and handling of personal information) and independent oversight by the Inspector-General of Intelligence and Security and the Australian National Audit Office.*[131]

Committee comment

The committee notes the justification provided on the basis of national security and the limited circumstances in which the disclosure of information would occur. It would appear that this is aimed at preventing any terrorist related activities which have emerged in recent times. It is also noted that in

[131] Explanatory notes, pp 10-11.

terms of its intelligence and evidence gathering activities, ASIO is subject to parliamentary and independent oversight.

3.1.2 Clause 132

Clause 132 proposes to amend section 43 (Prohibition on use of listening devices) of the IP Act. Section 43(1) currently provides that a person is guilty of an offence if a person uses a listening device to overhear, record, monitor or listen to a private conversation. Section 43(2) provides exceptions to subsection (1), including where the person using the listening device is a party to the private conversation and where the unintentional hearing of a private conversation occurs by means of a telephone.

New section 43(2)(e) provides further exceptions in relation to the use of a listening device in circumstances where a government network radio is activated by a communications centre operator for a public safety entity. The exemptions occur when:

(i) an officer of the entity has activated a duress alarm; or

(ii) an officer of the entity has contacted the communications centre operator to ask for assistance; or

(iii) the communications centre operator has reasonable grounds to believe there may be a risk to the life, health or safety of an officer of the entity.

Pursuant to new section 43(7) a 'public service entity' can include an entity established under the *Ambulance Service Act 1991* or the Queensland Police Service; or any of the following entities established under the *Fire and Emergency Services Act 1990* including the Queensland Fire and Emergency Service; the State Emergency Service; an emergency service unit; or a rural fire brigade registered under the *Fire and Emergency Services Act 1990*.

The explanatory notes advise that a government network radio permits 'public safety entities communications centre operators (CCOs) to activate an 'open mic' function on a selected officer's radio, allowing the operator to monitor conversations within range of the radio microphone. A government network radio would fall within the definition of 'listening device' in the Act'.[132]

Potential FLP issue

The amendment would potentially allow police and emergency services communications centre operators to record the private conversations of individuals when using the government network radio when they use the 'open mic' function. This potential breach of privacy infringes section 4(2)(a) of the LS Act which provides that legislation should have sufficient regard to the rights and liberties of individuals.

The explanatory notes acknowledge the potential breach and provide the following justification:

> *The proposed amendment potentially breaches the fundamental legislative principle that legislation should have sufficient regard to rights and liberties of individuals, particularly in relation to the right to privacy. However, the potential breach is justified on the basis that it is necessary to ensure officer safety and as use of the remote activation feature will be used only in limited circumstances.*[133]

The explanatory notes also advise that the exception would be limited to circumstances where a duress alarm has been activated; when a CCO has been contacted by an officer for assistance or when the CCO has reasonable grounds to believe that there is a risk to an individual's health, safety or life.[134]

Committee comment

The amendment provided by clause 132 would allow police and emergency services communications operators the ability to hear the private conversations of individuals. In considering the amended clause,

[132] Explanatory notes, p 28.

[133] Explanatory notes, p 11.

[134] Explanatory notes, p 29.

the committee notes that it has been introduced to ensure officer safety and would be used in limited circumstances.

3.1.3 Clause 182

Clause 182 proposes to insert new sections 78A-78C into the *Ombudsman Act 2001* to enable the Ombudsman to obtain information from the Police Commissioner about the criminal history of a person who is being considered for employment or secondment as an officer of the Ombudsman.

Pursuant to new section 78B(a) and (b), the Ombudsman may ask the Police Commissioner for a written report about the criminal history of a person and also a brief description of the circumstances of a conviction mentioned in the criminal history. Pursuant to section 78(2), the Ombudsman may make the request only if the person has provided the Ombudsman with written consent.

Pursuant to new section 78C, a person must not, directly or indirectly, disclose the criminal history information to another person unless the disclosure is permitted under the provisions of section 78C(3). The maximum penalty for contravening the section is 100 penalty units.

Potential FLP issue

Clause 182 would allow the Ombudsman to make a request to the Police Commissioner for a potential employee's criminal history subject to the person providing written consent to the Ombudsman.

The ability of the Ombudsman to request a criminal history report potentially breaches the right to privacy of an individual pursuant to section 4(2)(a) of the *Legislative Standards Act 1992*.

The explanatory notes acknowledge the potential FLP breach and provide the following justification for the clause:

> *These provisions are required primarily because the Ombudsman has oversight of child safety complaints and complaints about state schools and officers may have direct or indirect contact with and access to personal details about children and young people. Because Ombudsman officers could be expected to deal with a range of matters and may not be confined to dealing with only one particular type of complaint, it is necessary for all prospective officers to be subject to the same screening regime. The provisions also include the following safeguards:*
>
> - *the person to which the criminal history information relates must be given the information and a reasonable opportunity to make representations to the Ombudsman about the information before the Ombudsman uses the information; and*
> - *the Ombudsman must ensure the criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested from the Police Commissioner.*
>
> *New section 78C(2) includes a new offence for a person who possesses criminal history information because the person is or was the Ombudsman or an officer of the Ombudsman and, directly or indirectly, discloses a person's criminal history information to another person. This offence is appropriate as a safeguard for the protection of criminal history information obtained by the Ombudsman and to deter unlawful disclosure of a person's criminal history.*[135]

Committee comment

The committee is aware that it is now standard practice across the public service to carry out criminal history checks on prospective employees. It is also becoming more common that criminal history checks are enshrined in legislation. For example, recent legislation before the Legislative Assembly, such as the Grammar Schools Bill 2016, has contained very similar provisions in relation to criminal history checks.

The committee also notes the primary justification provided in the explanatory notes - the Ombudsman has oversight of child safety complaints, and officers may have contact with children and young people.

[135] Explanatory notes, pp 11-12.

Further, there are also safeguards provided in that a person must provide written consent to a criminal history check being carried out.

The committee considers that, on balance, the provisions have sufficient regard to fundamental legislative principles.

3.2 Protection against self-incrimination

Clauses 175 and 178 raise the issue of whether the Bill provides appropriate protection against self-incrimination.

3.2.1 Clauses 175 and 178

Clause 175 proposes to amend section 30 (Compliance with investigation requirement) of the *Ombudsman Act 2001*. Section 30(1) provides that a person who receives an investigation requirement must comply with the requirement, unless the person has a reasonable excuse. However, by way of clause 175, new section 30(4), it is not a reasonable excuse pursuant to section 30(1) that complying with the investigation requirement might tend to incriminate a person.

Clause 178 proposes to amend section 48 (Inadmissibility of particular information in proceedings) of the *Ombudsman Act 2001*. Section 48 currently provides that should a person give a document to the Ombudsman pursuant to an investigation requirement, and the document was created for the purposes of complying with the investigation requirement, the document is not admissible in evidence against a person in civil or criminal proceedings.

The current section applies to documents, however new section 48(1) would apply to an individual who gives information and/or documents to the Ombudsman under an investigation requirement.[136] Pursuant to new section 48(2)(a), information given by an individual under an investigation requirement and the fact of this giving (primary evidence), is not admissible in any proceeding. Section 48(2)(b) provides that any information obtained as a direct or indirect result of primary evidence (derivative evidence), is also not admissible.

Potential FLP issues

In providing that self-incrimination is not an reasonable excuse in relation to an investigation requirement, new section 30(4) potentially breaches section 4(3)(f) of the *Legislative Standards Act 1992* which provides that legislation should afford appropriate protection against self-incrimination.

The OQPC Notebook states, 'this principle has as its source the long established and strong principle of common law that an individual accused of a criminal offence should not be obliged to incriminate himself or herself'.[137]

The former Scrutiny of Legislation Committee (SLC) commented that denial of the protection afforded by the self-incrimination rule is only potentially justifiable if:

- *The questions posed concern matters that are peculiarly within the knowledge of the persons to whom they are directed, and which it would be difficult or impossible to establish by any alternative evidential means; and*
- *The bill prohibits use of the information obtained in prosecutions against the person; and*
- *In order to secure this restriction on the use of the information obtained, the person should not be required to fulfil any conditions (such as formally claiming a right).*[138]

The QLS expressed concern with the removal of self-incrimination as a protection, as provided for by the proposed changes to section 30. The QLS was also of the view that the changes to section 48 should be broader.

[136] Pursuant to section 48(4), information includes a document.

[137] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, p 52.

[138] Alert Digest 2000/1, p 7, para 57; Alert Digest 1999/31; and Alert Digest 1999/4, p 9, para 1.60.

The QLS advised:

> *Clauses 175 and 178 are examples of provisions which the Society finds very concerning. Any breach of a fundamental right, such as the right to claim privilege against self-incrimination, should be a last resort. Fundamental rights of this nature underpin the rule the law and the justice system as a whole. The High Court has found that fundamental rights can be lawfully abrogated either expressly or by implication by statute. Over the past 20 years there has been a trend to introduce legislation across the country which abrogates fundamental rights, more often than not, relating to the abrogation of self-incrimination privilege. If legislation of this nature continues to be implemented at its current rate the right, the ability to claim privilege against self-incrimination, will cease to exist within our justice system.*
>
> *If clause 178 will abrogate self-incrimination privilege as proposed by clause 175, then strong and specific protections of the admissibility and use of that evidence must be included in the statute. Clause 178(2) is strongly worded, however, should also protect against the use of derivative evidence being admissible against the individual. It is noted that the Act specifically refers to 'derivative evidence' being admissible to use against an individual in criminal proceedings about the falsity or misleading nature of the evidence (perjury type offences). However, the Act is silent on protecting against the otherwise use of derivative evidence against an individual.*[139]

The explanatory notes acknowledge the potential FLP breach and provide the following justification:

> *The abrogation of the privilege against self-incrimination is necessary because the information would generally be peculiarly within the knowledge of the person from whom it is requested and would otherwise be difficult to establish and it is in the public interest to ensure accountability of government. As a safeguard, the amendment to section 48 provides that the information or document and other evidence directly or indirectly derived from the information or document, is not admissible in any proceeding as evidence against the individual unless it pertains to the falsity or misleading nature of the information or document.*[140]

Committee comment

The justification provided in the explanatory notes provides that information the subject of an investigation would generally be within the knowledge of the person it is requested from, and no one else. This is consistent with the approach taken by the SLC in relation to a potential justification for legislation removing the privilege against self-incrimination.

The committee notes that new section 48 provides a safeguard in that evidence obtained from the information or document as a result of an investigation requirement is not admissible.

However, the committee also notes the concerns raised by the QLS in relation to the amended sections. The committee is satisfied that the safeguards provided by section 48 are sufficient to protect those individuals the subject of an investigation requirement.

3.3 Retrospectivity

Clauses 14 and 253 raise the issue of whether the Bill adversely affects rights and liberties, or imposes obligations, retrospectively.

3.3.1 Clauses 14 and 253

Clause 13 proposes to amend section 22 (Abortive proceedings and new trials after proceedings discontinued) providing the grounds on which an applicant is entitled to payment from the Appeal Costs Fund (ACF). Pursuant to new section 22(1)(b), this would include circumstances where an appeal against the conviction on indictment succeeds on the ground that there was a miscarriage of justice and a new trial is ordered.

[139] Queensland Law Society, submission 9, p 5.

[140] Explanatory notes, p 12.

New section 22(1B) provides that the costs that are entitled to be paid from the ACF, are the costs the board considers have been thrown away, or partly thrown away. These throw away costs in relation to proceedings are defined to include costs that are reasonably incurred but are wasted, because: the proceedings are rendered abortive, the conviction is quashed or the hearing of the proceedings is discontinued.

Clause 14 proposes to insert new section 31, which provides that the amendments apply to applications submitted, but not decided, prior to the commencement of the provision.

Potential FLP issues

New section 31 would apply to applications submitted prior to the commencement of the provision and therefore operate retrospectively. Applications which have already been decided would not be subject to the new provision. The provision potentially breaches section 4(3)(g) of the LS Act which provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

The QLS expressed concern that the new section would disadvantage some parties. The QLS advised:

> *Finally, we note the amendment to insert section 31 into the Act gives retrospective effect to the above. The Society opposes the proposed amendment on this basis it is unfair to parties who are yet to receive monies or benefit from the Fund. The adoption of the amendment may create unjust and unforeseeable outcomes and may be contrary to section 4(3)(g) of the Legislative Standards Act 1992.*[141]

The explanatory notes acknowledge the potential FLP and provide the following justification:

> *The proposed transitional provision (which will apply both of these amendments to applications submitted, but not determined, prior to commencement) arguably raises a fundamental legislative principle issue regarding retrospectivity.*
>
> *However, the retrospective operation of the first amendment is justified as it is beneficial in nature (i.e. it will clarify that the grounds on which a person convicted on indictment can claim from the ACF include where an appeal against the conviction based on miscarriage of justice is successful). The retrospective operation of the second amendment is also justified on the basis that it aligns with current practice of the ACF Board; and is consistent with the underlying premise of appeal costs fund legislation that reimbursement should be determined by reference to costs thrown away.*[142]

Committee comment

The committee notes the concerns raised by the QLS but is satisfied with the justification provided in the explanatory notes.

3.3.2 Clause 253

Clause 251 proposes to amend section 56 of the *Trusts Act 1973* to omit the requirement that a trustee may delegate a power of attorney, executed as a deed.

Clause 253 inserts new section 123 (Validation of execution of power of attorney for s 56) into the *Trusts Act 1973*. Section 123 provides for the situation where, before the commencement of the amendments to section 56, a trustee makes a delegation under section 56 by a power of attorney using the approved form under section 11 of the *Powers of Attorney Act 1998*. Section 123(2) states that such power of attorney is taken to be, and to always have been, as valid as if it had been executed as a deed under previous section 56.

[141] Queensland Law Society, submission 9, p 2.

[142] Explanatory notes, p 10.

Potential FLP issue

Clause 253 would allow for the delegation by deed, of a power of attorney before commencement in the approved form. This potentially breaches section 4(3)(g) of the LS Act which provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively.

The explanatory notes provide the following justification for the clause:

> *The retrospective nature of the amendments is justified as they will ensure that the intent of delegations that were made in good faith using the approved form under the PA Act is achieved, and will provide certainty in the administration of trusts by persons who have relied on delegations.*[143]

Committee comment

The amended section would allow for the operation of a power of attorney used for delegation by trustee, before the commencement of the Act.

In light of the justification provided, the committee considers that the retrospective operation of the clause is appropriate in the circumstances.

3.4 Immunity from proceedings

Clause 249 raises the issue of whether the Bill confers immunity from proceeding or prosecution without adequate justification.

Summary of provisions

Clause 249 inserts new section 13B into the *Supreme Court Library Act 1968*.

Section 13B(1) provides that a member of the Supreme Court Library Committee (SCLC) is not civilly liable for an act done, or omission made, in good faith under this Act.

Pursuant to section 13B(2), should subsection (1) prevent civil liability attaching to a member, the liability attaches instead to the committee.

Potential FLP issues

Clause 249 provides immunity from civil liability for an SCLC member for an act or omission done in good faith. This potentially breaches section 4(3)(h) of the LS Act which provides that legislation should not confer immunity from proceeding or prosecution without adequate justification.[144]

The OQPC Notebook states, 'a person who commits a wrong when acting without authority should not be granted immunity. Generally a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees. The preferred provision provides immunity for actions done honestly and without negligence … and if liability is removed it is usually shifted to the State.'[145]

The explanatory notes provide the following justification:

> *This immunity is considered justified because it is appropriate that the members of statutory bodies are not exposed to liability for carrying out their statutory functions. Similar protection applies to the members and employees of other statutory bodies. The immunity does not deprive a person who has suffered harm or damage of the right to seek redress for any civil wrong, but expressly provides that liability that may have attached to a SCLC member instead attaches to the SCLC.*[146]

[143] Explanatory notes, p 10.

[144] *Legislative Standards Act 1992*, s 4(3)(h).

[145] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, p 64.

[146] Explanatory notes, p 13.

Committee comment

The committee notes that the clause would prevent civil liability from attaching to a member and not criminal liability. An aggrieved person may also still seek recourse against the SCLC as opposed to an individual SCLC member.

In light of the justification provided, the committee considers that sufficient regard has been given to fundamental legislative principles in this instance.

3.5 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix A – List of submitters

Sub No.	Submitter
001	Shopping Centre Council of Australia
002	Anti-Discrimination Commission Queensland
003	Brisbane City Council
004	Soroptimist International Inc
005	Queensland Ombudsman
006	Protect All Children Today Inc.
007	Women Lawyers Association of Queensland Inc.
008	City of Gold Coast
009	Queensland Law Society
010	Ending Violence Against Women Queensland
011	Prostitution Licensing Authority

Appendix B – Witnesses at the public briefing and public hearing

Public briefing	18 April 2017
Department of Justice and Attorney–General (Strategic Policy and Legal Services) • Mrs Leanne Robertson, Acting Assistant Director-General • Ms Imelda Bradley, Director • Ms Jane Flower, Acting Principal Legal Officer	

Public hearing	18 April 2017
Queensland Law Society • Ms Christine Smyth, President • Mr Tony Deane, Litigation Rules Committee Chair • Mr Glenn Matthew, Member, Property and Development Law Committee, Queensland	
Legal Aid Queensland • Mr Anthony Reilly, Chief Executive Officer	
The Ombudsman • Mr Phil Clarke, Queensland Ombudsman • Ms Lisa Hendy, General Counsel	
Office of the Public Guardian • Ms Shayna Smith, Acting Deputy Public Guardian	
The Information Commissioner • Ms Jenny Mead, Acting Information Commissioner	
Privacy Commissioner • Mr Philip Green, Privacy Commissioner	

Appendix C – Amendments included in the lapsed Justice and Other Legislation Amendment Bill 2014[147]

Note: There may be drafting differences between the relevant provisions in the Justice and Other Legislation Amendment Bill 2014 (JOLAB 2014) and the Court and Civil Legislation Amendment Bill 2017 (CCLAB 2017)

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984	Amendments to remove the requirement for gazettal of notices of appointment and revocation for community justice group members and instead require a written notice to be given to the member and the notice to be published on the Queensland Courts website.	**Clause 4 Amendment of s 20 (Membership)** (1) Section 20(1A)— *omit, insert*— (1A) The Minister is to— (a) appoint the members of each community justice group by written notice given to each member; and (b) publish notice of the appointments on the Queensland Courts website. (2) Section 20(4A)— *omit, insert*— (4A) If the Minister decides a member of a community justice group is no longer eligible or suitable for appointment to the membership of the community justice group, the Minister must— (a) revoke the member's appointment by written notice given to the member; and (b) publish notice of the revocation on the Queensland Courts website. (3) Section 20(5)— *insert*— ***Queensland Courts website*** means— (a) <www.courts.qld.gov.au>; or (b) another website authorised by the chief executive for this section.	**Clause 4 Amendment of s 20 (Membership)** (1) Section 20(1A)— *omit, insert*— (1A) The Minister— (a) may appoint the members of a community justice group by publishing notice of the appointments on the Queensland Courts website; and (b) must give each member written notice of the member's appointment. (2) Section 20(4A)— *omit, insert*— (4A) If the Minister decides a member of a community justice group is no longer eligible or suitable for appointment to the membership of the community justice group, the Minister must— (a) revoke the member's appointment by written notice given to the member; and (b) publish notice of the revocation on the Queensland Courts website. (3) Section 20(5)— *insert*— ***Queensland Courts website*** means— (a) www.courts.qld.gov.au; or (b) another website authorised by the chief executive for this section. (4) Section 20(1A) to (5)— *renumber* as section 20(2) to (7).

[147] Table provided by the Department of Justice and Attorney-General.

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
Acts Interpretation Act 1954	Amendments to provide that approved forms can be notified by publication on a local government website in the case of local government, and a stated website for all other entities, instead of in the gazette.	**Clause 6 Amendment of s 48 (Forms—notification and availability)** (1) Section 48(5), 'in the gazette'— *omit, insert—* on the relevant government website (2) Section 48(6)— *omit, insert—* (6) Subsection (5) may be complied with by publishing on the relevant government website either of the following— (a) a notice stating— (i) the form's approval or availability; and (ii) the form's heading, number and version number; and (iii) a place or places where copies of the form are available; and (iv) the date on which the notice is published; (b) the form and the date on which the form is published. (6A) For subsection (5), a thing is published on the relevant government website if it is published on, or accessible through, the relevant government website. (3) Section 48— *insert—* (9) In this section— ***local government entity*** means a local government. ***relevant government website*** means— (a) for publication in relation to a form approved or made available by a local	**Clause 6 Amendment of s 48 (Forms—notification and availability)** (1) Section 48(5), after 'in the gazette'— *insert—* or on a relevant website (2) Section 48(6)— *omit, insert—* (6) Subsection (5) may be complied with by— (a) publishing in the gazette or on a relevant website— (i) the form or the new version; or (ii) a notice stating— (A) the approval or availability of the form or the new version; and (B) the heading, number and version number of the form or the new version; and (C) a place or places where copies of the form or the new version are available; and (b) if the form or the new version, or the notice, is published on a relevant website—stating on the website the date on which it is first published. (6A) For subsection (5), a form, a new version of a form or a notice is published on a relevant website if it is published on, or accessible through, the website. (3) Section 48— *insert—* (9) In this section— ***relevant department***, in relation to an entity that approves or makes available forms under an

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		government entity—the local government's website; or (b) for publication in relation to a form approved or made available by another entity—the whole-of-government website. ***whole-of-government website*** means— (a) <www.qld.gov.au>; or (b) another website prescribed by regulation. **<u>Clause 7</u> Insertion of new s 52A** Part 13— *insert*— **52A Regulation-making power** The Governor in Council may make regulations under this Act. **<u>Clause 8</u> Insertion of new pt 14, div 3** After section 57— *insert*— **Division 3 Transitional provision for Justice and Other** **Legislation Amendment** **Act 2014** **58 Form approved or made available, but not notified in gazette, before commencement** (1) This section applies if before the commencement— (a) a form was approved or made available by an entity under an authorising law; and (b) there had been no notification of the approval or availability in a way that	authorising law, means the department in which the authorising law is administered. ***relevant website*** means— (a) for publication in relation to a form, or a new version of a form, approved or made available by a local government—the local government's website; or (b) for publication in relation to a form, or a new version of a form, approved or made available by another entity— (i) the whole-of-government website; or (ii) the entity's website; or (iii) if the entity does not have a website— (A) the relevant department's website; Or (B) a website identified on the relevant department's website as a website for this purpose. ***whole-of-government website*** means— (a) www.qld.gov.au; or (b) another website prescribed by regulation. (4) Section 48(6A) to (9)— *renumber* as section 48(7) to (10). **<u>Clause 7</u> Insertion of new ss 52A and 52B** Part 13— *insert*— **52A Evidentiary provision** (1) A certificate purporting to be signed by or for an approving entity and stating any of the following matters is evidence of the matter— (a) a stated form—

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		complied with previous section 48(5). (2) On or after the day of commencement, the entity may give notification of the approval or availability of the form by complying with— (a) previous section 48; or (b) revised section 48. (3) In this section— ***authorising law*** see section 48(1). ***form*** includes a new version of a form. ***previous***, if followed by a provision number, means the provision of that number as in force immediately before the commencement. ***revised section 48*** means section 48 as in force at any time after the commencement.	(i) was approved or made available by the entity under a stated authorising law on a stated day; and (ii) was first notified under section 48(5) on a stated relevant website on a stated day in a stated way; (b) a stated document is a copy of a stated form that was first notified under section 48(5) on a stated relevant website on a stated day in a stated way. (2) An approving entity may, in writing, authorise a person to issue certificates under subsection (1) for the entity. (3) In this section— ***approving entity*** means an entity authorised under an authorising law to approve forms or make forms available. ***authorising law*** see section 48(1). ***form*** *includes a new version of a form.* **52B Regulation-making power** The Governor in Council may make regulations under this Act. **<u>Clause 8</u> Insertion of new pt 14, div 3** Part 14— *insert*— **Division 3 Transitional provision for Court and Civil Legislation** **Amendment Act 2017** **58 Form approved or made available, but not notified in gazette, before commencement** (1) This section applies if before the commencement—

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
			(a) a form was approved or made available by an entity under an authorising law; and (b) there had been no notification of the approval or availability of the form under previous section 48(5). (2) On or after the day of commencement, the entity may notify the approval or availability of the form under amended section 48. (3) In this section— ***amended section 48*** means section 48 as in force after the commencement. ***authorising law*** see section 48(1). ***form*** includes a new version of a form. ***previous section 48(5)*** means section 48(5) as in force immediately before the commencement.
Anti-Discrimination Act 1991	Amendments to correct an editorial matter by replacing references to subsections with references to paragraphs.	**<u>Clause 10</u> Amendment of s 119 (Meaning of sexual harassment)** (1) Section 119, examples, 'Examples of subsection (1)(a)'— *omit, insert—* *Examples for paragraph (a)* (2) Section 119, examples, 'Example of subsection (1)(b)'— *omit, insert—* *Example for paragraph (b)* (3) Section 119, examples, 'Examples of subsection (1)(c)'— *omit, insert—* *Examples for paragraph (c)* (4) Section 119, examples, 'Examples of subsection (1)(d)'— *omit, insert—*	**<u>Clause 10</u> Amendment of s 119 (Meaning of *sexual harassment*)** (1) Section 119, examples, 'Examples of subsection (1)(a)'— *omit, insert—* *Examples for paragraph (a)* (2) Section 119, examples, 'Example of subsection (1)(b)'— *omit, insert—* *Example for paragraph (b)* (3) Section 119, examples, 'Examples of subsection (1)(c)'— *omit, insert—* *Examples for paragraph (c)* (4) Section 119, examples, 'Examples of subsection (1)(d)'— *omit, insert—* *Examples for paragraph (d)*

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		Examples for paragraph (d)	
Appeal Costs Fund Act 1973	Amendments to: remove redundant provisions relating to the administration of the Appeal Costs Fund (ACF); clarify that the circumstances in which a person convicted on indictment is entitled to payment from the ACF include where an appeal succeeds on the ground that there was a miscarriage of justice; and clarify that, where a new trial is ordered, the costs recoverable from the ACF are those costs that the ACF Board considers have been thrown away, or partly thrown away.	**Clause 12 Amendment of s 5 (Appeal Costs Fund)** (1) Section 5(3), 'subsections (7) and (8) of this section,'— *omit, insert—* subsection (6) and (2) Section 5(4) to (7)— *omit.* (3) Section 5(1A) to (9)— *renumber* as section 5(2) to (7). **Clause 13 Amendment of s 22 (Abortive proceedings and new trials after proceedings discontinued)** (1) Section 22(1)(b)— *omit, insert—* (b) an appeal on a question of law, or the ground that there was a miscarriage of justice, against the conviction of a person (the ***appellant***) convicted on indictment succeeds, and a new trial is ordered; or (2) Section 22(1), 'such costs as the board considers have been'— *omit, insert—* the costs the board considers have been thrown away or partly thrown away and were (3) Section 22, after subsection (1)— *insert—* (1B) For subsection (1), costs ***thrown away*** in relation to a proceeding include costs that are unnecessarily incurred, or are reasonably incurred but are wasted once the proceeding is rendered abortive or the conviction is	**Clause 12 Amendment of s 5 (Appeal Costs Fund)** (1) Section 5(3), 'subsections (7) and (8) of this section,'— *omit, insert—* subsection (6) and (2) Section 5(4) to (7)— *omit.* (3) Section 5(1A) to (9)— *renumber* as section 5(2) to (7). **Clause 13 Amendment of s 22 (Abortive proceedings and new trials after proceedings discontinued)** (1) Section 22(1)(b)— *omit, insert—* (b) an appeal on a question of law, or on the ground there was a miscarriage of justice, against the conviction of a person (the ***appellant***) convicted on indictment succeeds, and a new trial is ordered; or (2) Section 22(1), from 'such costs'— *omit, insert—* the costs the board considers have been thrown away or partly thrown away by the person or on the person's behalf in the proceedings. (3) After section 22(1)— *insert—* (1B) For subsection (2), costs ***thrown away*** in relation to proceedings include costs that are reasonably incurred before, but are wasted when— (a) the proceedings are rendered abortive; or (b) the conviction is quashed; or

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		quashed or the hearing of the proceedings is discontinued. **<u>Clause 14</u> Replacement of s 30 (Amendment of regulation—Justice and Other Legislation Amendment Act 2013)** Section 30— *omit, insert—* **30 Transitional provision for Justice and Other Legislation Amendment Act 2014** (1) This section applies in relation to a person's entitlement to a payment from the fund under section 22 if— (a) the entitlement arose under section 22 before the commencement; and (b) on the commencement, the board has not decided the amount of the payment to be made to the person under that section. (2) Section 22, as amended by the *Justice and Other Legislation Amendment Act 2014*, applies in relation to the person's entitlement to a payment from the fund.	(c) the hearing of the proceedings is discontinued. (4) Section 22(1A) to (3)— *renumber* as section 22(1) to (5). **<u>Clause 14</u> Insertion of new s 31** After section 30— *insert—* **31 Court and Civil Legislation Amendment Act 2017** (1) This section applies if, before the commencement— (a) a person had an entitlement to a payment from the fund under section 22; and (b) the board had not decided the amount of the payment. (2) Section 22, as amended by the *Court and Civil Legislation Amendment Act 2017*, applies in relation to the person's entitlement.
Civil Proceedings Act 2011	Amendments to remove unnecessary references to a business carried on 'under a style'.	**<u>Clause 32</u> Amendment of s 88 (Enforcement against property of a business)** Section 88(1)(a) and (b), 'or style'— *omit.* **<u>Clause 33</u> Amendment of s 89 (Variation of order in relation to a** **business name)** Section 89(1), 'or style'— *omit.*	**<u>Clause 21</u> Amendment of s 88 (Enforcement against property of a** **business)** Section 88(1)(a) and (b), 'or style'— *omit.* **<u>Clause 22</u> Amendment of s 89 (Variation of order in relation to a** **business name)** Section 89(1), 'or style'— *omit.*

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
Court Funds Act 1973 **(CF Act)**	Amendments to: provide for the preamble to mention the Magistrates Courts (to reflect that the Magistrates Courts are covered by the CF Act); and update a reference to the District Court as a fused court (which it has been since 1997).	**Clause 45 Amendment of long title** Long title, from 'to amend' to 'District Court,'— *insert*— to provide for the custody and investment of money paid into the Supreme Court, District Court and Magistrates Courts, **Clause 46 Amendment of s 4 (Definitions)** Section 4, definition *court*, 'or a District Court or Magistrates Court'— *omit, insert*— , District Court or a Magistrates Court	**Clause 108 Amendment of long title** Long title, from 'to amend' to 'District Court'— *omit, insert*— to provide for the custody and investment of money paid into the Supreme Court, the District Court and Magistrates Courts **Clause 109 Amendment of s 4 (Definitions)** Section 4, definition *court*— *omit, insert*— ***Court*** means the Supreme Court or the District Court, or a Magistrates Court into which an amount that is money in Court is paid.
Legal Profession Act 2007 **(LP Act)**	Amendments to provide that an incorporated legal practice going into liquidation or some other form of external administration is a show cause event and suitability matter for a legal practitioner director.	**Clause 78 Amendment of s 9 (Suitability matters)** (1) Section 9(1)— *insert*— (ba) whether the person is, or has been, a legal practitioner director of an incorporated legal practice while the practice is or was an externally-administered body corporate under the Corporations Act; (2) Section 9(1)(ba) to (n)— *renumber* as section 9(1)(c) to (o). **Clause 83 Insertion of new ch 10, pt 5** Chapter 10— *insert*— **Part 5 Transitional provisions for Justice and Other Legislation Amendment Act 2014**	**Clause 157 Amendment of s 9 (Suitability matters)** (1) Section 9(1)— *insert*— (ba) whether the person is or has been a legal practitioner director of an incorporated legal practice while the practice is or was an externally-administered body corporate under the Corporations Act; (2) Section 9(1)(ba) to (n)— *renumber* as section 9(1)(c) to (o). **Clause 164 Insertion of new ch 10, pt 6** Chapter 10— *insert*— **Part 6 Transitional provisions for Court and Civil Legislation Amendment Act 2017**

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		781 Application of s 9(1) and additional obligation to disclose suitability matter (1) This section applies if, before the commencement— (a) a person had applied to the board for a declaration in relation to a suitability matter under section 32(2) and the board had not done a thing mentioned in section 32(3) for the application; or (b) a person had applied to the Supreme Court for admission to the legal profession under section 34 and the Supreme Court had not decided the application under section 35; or (c) a person had applied to a regulatory authority for the grant or renewal of a local practising certificate under section 49 and the regulatory authority had not decided whether to grant or refuse the application under section 51. (2) Section 9(1)(c), as in force immediately after the commencement (***new section 9(1)(c)***), applies to the person for the application. (3) If new section 9(1)(c) applies to the person for the application, the person must, before the day stated in subsection (4), give the following a notice about that fact— (a) for an application mentioned in subsection (1)(a) or (b)—the board; (b) for an application mentioned in subsection (1)(c)—the regulatory authority for the application.	**784 Application of s 9(1) and additional obligation to disclose suitability matter** (1) This section applies if, before the commencement, a person had applied to a regulatory authority for the grant or renewal of a local practising certificate under section 49 and the regulatory authority had not decided the application under section 51. (2) Section 9(1)(c), as in force after the commencement (***new section 9(1)(c)***), applies to the person for the application. (3) If the person is or has been a legal practitioner director of an incorporated legal practice as mentioned in new section 9(1)(c), the person must, within 7 days after the day of commencement, give the regulatory authority a notice about that fact. **785 Application of amended *show cause event* definition and additional obligation to give notice and statement** (1) This section applies to a person who is a local legal practitioner, or a locally registered foreign lawyer, and who— (a) on the commencement, is a legal practitioner director of an incorporated legal practice that is an externally-administered body corporate under the Corporations Act; or (b) at any time before the commencement, was a legal practitioner director of an incorporated legal practice while it was an externally-administered body corporate under the Corporations Act.

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		(4) For subsection (3), the day is— (a) for an application mentioned in subsection (1)(a) or (c)—the day that is 8 days after the commencement; or (b) for an application mentioned in subsection (1)(b), the earlier of the following— (i) the day the application is heard and decided by the Supreme Court under section 35(1); (ii) the day that is 8 days after the commencement. **782 Application of amended *show cause event* definition and additional obligation to give** **notice and statement** (1) This section applies to a person who— (a) is, or has been, a legal practitioner director of an incorporated legal practice while the practice is or was an externally-administered body corporate under the Corporations Act; and (b) is a local legal practitioner or a registered foreign lawyer. (2) It is declared that the matter mentioned in subsection (1)(a) is a show cause event that has happened in relation to the person. (3) The person must comply with the following for the show cause event— (a) if the person is a local legal	(2) It is declared that the matter mentioned in subsection (1)(a) or (b) is a show cause event that has happened in relation to the person. (3) The person must comply with the following for the show cause event— (a) if the person is a local legal practitioner—section 68; (b) if the person is a locally registered foreign lawyer—section 193. (4) For subsection (3), the show cause event is taken to have happened on the commencement. **<u>Clause 165</u> Amendment of sch 2 (Dictionary)** (1) Schedule 2, definition *show cause event*— *insert*— (ca) the person being a legal practitioner director of an incorporated legal practice that becomes an externally-administered body corporate under the Corporations Act; or (2) Schedule 2, definition *show cause event*, paragraphs (ca) and (d)— *renumber* as paragraphs (d) and (e).

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		practitioner—section 68; (b) if the person is a registered foreign lawyer—section 193. (4) For subsection (3), the show cause event is taken to have happened on the commencement. **<u>Clause 84</u> Amendment of sch 2 (Dictionary)** (1) Schedule 2, definition *show cause event*— *insert*— (ca) his or her being a legal practitioner director of an incorporated legal practice that becomes an externally-administered body corporate under the Corporations Act; or (2) Schedule 2, definition *show cause event*, paragraphs (ca) and (d)— *renumber* as paragraphs (d) and (e).	
	Amendment to clarify that employees or agents of public service offices, as defined in the *Public Service Act 2008*, are 'government legal officers' for the purposes of the LP Act and are not required to hold a current practising certificate when engaged in legal work in the course of their employment.	**<u>Clause 79</u> Amendment of s 12 (Meaning of *government legal officer* and *engaged in government work* and related matters)** Section 12(1)(a)— *insert*— *Note*— Under the *Public Service Act 2008*, section 22, this Act applies to a public service office stated in schedule 1 of that Act and its public service employees as if the office were a department.	**<u>Clause 158</u> Amendment of s 12 (Meaning of *government legal officer* and *engaged in government work* and related matters)** Section 12(1)(a)— *insert*— *Note*— Under the *Public Service Act 2008*, section 22, this Act applies to a public service office mentioned in schedule 1 of that Act and its public service employees as if the office were a department.
***Professional Standards Act 2004* (PS Act)**	Amendments to provide that notices under the PS Act	**<u>Clause 95</u> Amendment of s 15 (Commencement of schemes)**	**<u>Clause 191</u> Amendment of s 15 (Commencement of schemes)**

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
	which are subordinate legislation are to be notified on the Queensland legislation website, rather than be gazetted.	Section 15(1) and (2), 'gazetted'— *omit, insert*— notified **Clause 96 Amendment of s 16 (Challenges to schemes)** Section 16(1), 'gazetted'— *omit, insert*— notified **Clause 97 Amendment of s 18 (Amendment and revocation of schemes)** Section 18(6), note— *omit, insert*— *Note*— An instrument that amends a scheme operating in another jurisdiction may be submitted to the Minister administering the corresponding law of that jurisdiction under section 13 with a view to notice being given of the instrument. Notice of an instrument made under the corresponding law of another jurisdiction that amends an interstate scheme may be notified under section 14. **Clause 98 Amendment of s 18A (Notice of revocation of scheme)** (1) Section 18A(1), 'gazettal'— *omit, insert*— notification (2) Section 18A(2), 'gazetted'— *omit, insert*— notified	Section 15(1) and (2), 'gazetted'— *omit, insert*— notified **Clause 192 Amendment of s 16 (Challenges to schemes)** Section 16(1), 'gazetted'— *omit, insert*— notified **Clause 193 Amendment of s 18 (Amendment and revocation of schemes)** Section 18(6), note— *omit, insert*— *Note*— Under section 13, as applied under subsection (4), an instrument that amends a scheme operating in this jurisdiction and another jurisdiction must be given to the Minister administering the corresponding law of the other jurisdiction with a view to notice being given of the instrument. Notice of an instrument made under the corresponding law of another jurisdiction that amends an interstate scheme must be notified under section 14. **Clause 194 Amendment of s 18A (Notice of revocation of scheme)** Section 18A(1), 'gazettal'— *omit, insert*— notification **Clause 195 Amendment of s 18B (Termination of operation of interstate schemes in this jurisdiction)** Section 18B(5) and (6), 'gazetted'—

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
			omit, insert— notified **<u>Clause 197</u> Amendment of s 43 (Functions of council)** Section 43(1)(a)(i), 'the publication in the gazette'— *omit, insert—* notification, or the publication in the gazette,
		<u>Clause 99</u> Amendment of s 18B (Termination of operation of **interstate schemes in this jurisdiction)** Section 18B(5) and (6), 'gazetted'— *omit, insert—* notified **<u>Clause 100</u> Amendment of s 43 (Functions of council)** Section 43(1)(a)(i), 'publication in the gazette'— *omit, insert—* notification	
Property Law Act 1974	Amendments to prohibit statutory instruments (other than prescribed subordinate legislation) from rendering void, unenforceable or subject to termination, contract or dealings concerning property that are made, entered into or effected contrary to the statutory instrument.	**<u>Clause 102</u> Amendment of s 57A (Effect of Act or statutory** **instrument)** (1) Section 57A(1)— *omit, insert—* (1) A statutory instrument, other than prescribed subordinate legislation, does not and can not— (a) render void or unenforceable any contract or dealing concerning property that is made, entered into or effected contrary to the statutory instrument; or (b) for a contract for the sale of land—give a right to a party to terminate the contract for a failure by another party to comply with the statutory instrument. (2) Section 57A(3)— *omit, insert—* (3) In this section—	**<u>Clause 199</u> Amendment of s 57A (Effect of Act or statutory** **instrument)** (1) Section 57A(1)— *omit, insert—* (1) A statutory instrument, other than prescribed subordinate legislation, does not and can not— (a) render void or unenforceable any contract or dealing concerning property that is made, entered into or effected contrary to the statutory instrument; or (b) for a contract for the sale of land—give a party to the contract a right to terminate the contract for a failure by another party to the contract to comply with the statutory instrument. (2) Section 57A(3)— *omit, insert—* (3) In this section— ***prescribed subordinate legislation*** means subordinate legislation that is prescribed by regulation. (3) Section 57A—

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		subordinate legislation prescribed under a regulation for this definition. **<u>Clause 103</u> Insertion of new pt 24** After part 23— *insert—* **Part 24 Transitional provisions for Justice and Other Legislation Amendment Act 2014** **357 Application of s 57A** (1) For a statutory instrument other than subordinate legislation, amended section 57A— (a) applies on and from the commencement, regardless of when the statutory instrument was made; and (b) has effect in relation to a contract or dealing concerning property mentioned in that section only if the contract or dealing is made, entered into or effected on or after the commencement. (2) For subordinate legislation, amended section 57A— (a) applies on and from the day that is 1 year after the commencement, regardless of when the subordinate legislation was made; and (b) has effect in relation to a contract or dealing concerning property mentioned in that section only if the contract or dealing is made, entered into on or effected after the day mentioned in paragraph (a).	*insert—* *Note—* See section 357 in relation to the application of this section. **<u>Clause 200</u> Insertion of new pt 24** After part 23— *insert—* **Part 24 Transitional provisions for Court and Civil Legislation Amendment Act 2017** **357 Application of s 57A** (1) For a statutory instrument other than subordinate legislation, amended section 57A— (a) applies from the commencement, regardless of when the statutory instrument was made; but (b) does not apply in relation to a contract or dealing concerning property mentioned in that section if the contract or dealing was made, entered into or effected before the commencement. (2) For subordinate legislation, amended section 57A— (a) applies on and from the relevant day, regardless of when the subordinate legislation was made; but (b) does not apply in relation to a contract or dealing concerning property mentioned in that section if the contract or dealing was made, entered into or effected before the relevant day. (3) Section 57A, as in force immediately before the commencement, continues to apply in relation to subordinate legislation during the transitional

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		(3) Section 57A, as in force immediately before the commencement, continues to apply in relation to subordinate legislation until 1 year after the commencement, as if the section were not amended by the *Justice and Other Legislation* *Amendment Act 2014*. (4) In this section— ***amended section 57A*** means section 57A as in force on the commencement. **358 Saving provision for s 57A** Section 57A(3), as in force immediately before the commencement, is declared to be a law to which the *Acts Interpretation Act 1954*, section 20A applies.	period as if the section had not been amended by the *Court and Civil Legislation Amendment Act 2017*. (4) In this section— ***amended section 57A*** means section 57A as amended by the *Court and Civil Legislation Amendment Act 2017*. ***relevant day*** means the earlier of the following— (a) the day that is 1 year after the commencement; (b) the day prescribed by regulation. ***transitional period*** means the period— (a) starting on the commencement; and (b) ending immediately before the relevant day. **358 Saving provision for s 57A** Section 57A(3), as in force immediately before the commencement, is declared to be a law to which the *Acts Interpretation Act 1954*, section 20A applies.
Public Guardian Act 2014	Amendments to clarify: that the functions and powers of the Public Guardian in relation to a relevant child can be exercised from the time an application for an order under the *Child Protection Act 1999* is filed until the application is finalised and arrangements are no longer in place for that child; and that it is the Public Guardian who is	**<u>Clause 105</u> Amendment of s 52 (When is a child a *relevant child*)** (1) Section 52— *insert*— (1A) A child is also a ***relevant child*** if the child is the subject of an application for the making, extension, variation or revocation of an order mentioned in subsection (1)(a), (b), (c) or (f). (2) Section 52(2)(a), after 'subsection (1)'— *insert*—	**<u>Clause 214</u> Amendment of s 52 (When is a child a *relevant child*)** Section 52(1) to (3)— *omit, insert*— (1) A child is a ***relevant child*** if— (a) the child is subject to any of the following— (i) a temporary assessment order under the Child Protection Act, section 27(1); (ii) a court assessment order under the Child Protection Act, section 44;

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
	responsible for the termination of community visitor appointments.	or the subject of an application mentioned in subsection (1A) (3) Section 52(3)(a), from 'agreement,'— *omit, insert—* agreement, or the subject of the application, the public guardian was providing particular help to the child and the public guardian believes— (i) it is appropriate to finish providing the help to the child; or (ii) the child may be the subject of a further application and continues to be in need of particular help for the period before the application is made; or **<u>Clause 106</u> Amendment of s 89 (Chief executive (child safety) to** **advise public guardian when child is subject to particular orders, etc.)** (1) Section 89(1)— *insert—* (c) becoming aware a child is subject to an interim order under section 67(1)(a) of the Child Protection Act. (2) Section 89(2), 'intervention or agreement of a kind mentioned in section 52(1)'— *omit, insert—* intervention, agreement or interim order of a kind mentioned in subsection (1)(b) or (c)	(iii) a temporary custody order under the Child Protection Act, section 51AE; (iv) a child protection order under the Child Protection Act, section 61, including a child protection order that continues in force— (A) under a transition order made under section 65A of that Act; or (B) by operation of section 65A(4) of that Act; (v) an intervention, with the child's parents' agreement, by the chief executive (child safety) under the Child Protection Act, chapter 2, part 3B, division 2; (vi) a care agreement under the Child Protection Act, section 51ZE; or (b) the child is the subject of an application for an order mentioned in subsection (1)(a)(i) to (iv). (2) A child stops being a ***relevant child*** if— (a) subject to subsection (3)— (i) the child stops being subject to an order, intervention or agreement mentioned in subsection (1)(a)(i) to (vi); or (ii) if the child is the subject of an application mentioned in subsection (1)(b)—the application is withdrawn or refused; or (b) subject to subsection (4), the child turns 18. (3) A child to whom subsection (2)(a) refers continues to be a ***relevant child*** if— (a) immediately before the child stopped being subject to the order, intervention or agreement, or the

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		Clause 107 Amendment of s 113 (Duration of appointment as community visitor) Section 113(6) and (7), 'chief executive'— *omit, insert—* public guardian	application in relation to the child was withdrawn or refused, the public guardian was providing particular help to the child and the public guardian believes— (i) it is appropriate to finish providing the help to the child; or (ii) the child— (A) may be the subject of a further application for an order mentioned in subsection (1)(a)(i) to (iv) or a further intervention or agreement; and (B) continues to be in need of particular help during the period before the application is made, the intervention starts or the agreement is entered into; or (b) the public guardian believes the child requires particular help to review— (i) a decision ending the order, intervention or agreement; or (ii) a decision to withdraw or refuse an application mentioned in subsection (1)(b). **Clause 215 Amendment of s 113 (Duration of appointment as community visitor)** Section 113(6) and (7), 'chief executive'— *omit, insert—* public guardian
Queensland Civil and Administrative Tribunal Act 2009	Amendments to: remove the requirement for a person wishing to enforce a final decision of the Queensland and Civil Administrative Tribunal (QCAT) to obtain a certified	**Clause 109 Replacement of ss 131–132** Sections 131 and 132— *omit, insert—* **131 Monetary decisions** (1) This section applies to a final decision of the tribunal	**Clause 217 Replacement of ss 131 and 132** Sections 131 and 132— *omit, insert—* **131 Monetary decisions** (1) This section applies to a final decision of the tribunal in a proceeding that is a monetary

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
	copy of the decision from the QCAT registry for filing in the registry; and remove unnecessary references to 'style' in relation to business names.	in a proceeding if it is a monetary decision. (2) The final decision is taken to have been filed in a court of competent jurisdiction for enforcement under the *Uniform Civil Procedure Rules 1999*, chapter 19 on the day the decision is made. *Note—* The final decision is a money order of the court for the purposes of the *Uniform Civil Procedure Rules 1999*, chapter 19. **132 Non-monetary decisions** (1) This section applies to a final decision of the tribunal in a proceeding— (a) if it is not a monetary decision; or (b) if it is a monetary decision—to the extent the decision does not require payment of an amount to a person. (2) The final decision is taken to have been filed in a relevant court for enforcement under the *Uniform* *Civil Procedure Rules 1999*, chapter 20 on the day the decision is made. (3) For subsection (2), the final decision is taken to be a non-money order of the relevant court for the purposes of the *Uniform Civil Procedure Rules 1999*, chapter 20. (4) The Supreme Court may transfer to a lower court a proceeding for the enforcement of an order	decision, to the extent the decision requires payment of an amount to a person. (2) A person may enforce the final decision by filing a copy of the decision in the registry of a court of competent jurisdiction. (3) On filing a copy of the final decision under subsection (2), the decision is taken to be a money order of the court in which it is filed and may be enforced accordingly. *Note—* See the *Uniform Civil Procedure Rules 1999*, chapter 19. **132 Non-monetary decisions** (1) This section applies to a final decision of the tribunal in a proceeding that— (a) is not a monetary decision; or (b) is a monetary decision, to the extent the decision does not require payment of an amount to a person. (2) A person may enforce the final decision by filing a copy of the decision in the registry of the relevant court. (3) On filing a copy of the final decision under subsection (2), the decision is taken to be a non-money order of the relevant court in which it is filed and may be enforced accordingly. *Note—* See the *Uniform Civil Procedure Rules 1999*, chapter 20. (4) The Supreme Court may transfer to a lower court a proceeding for the enforcement of a non-money

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		pending in the Supreme Court if— (a) the order is of a kind that may be made by the lower court; or (b) the order is otherwise capable of being enforced in the lower court. (5) If a proceeding is transferred to a lower court under subsection (4)— (a) the order is taken to be an order of the lower court and may be enforced accordingly; and (b) the proceeding for the enforcement of the order is taken to have been started before the lower court when it was started in the Supreme Court. (6) In this section— ***lower court*** means a District Court or Magistrates Court. ***relevant court*** means— (a) for a final decision of the tribunal relating to a minor civil dispute—the Magistrates Court; or (b) for another final decision of the tribunal—the Supreme Court. **<u>Clause 110</u> Amendment of sch 2 (Subject matter for rules)** Schedule 2, sections 4(2) and 8(b), 'or style'— *omit.*	order pending in the Supreme Court if— (a) the order is of a kind that may be made by the lower court; or (b) the order is otherwise capable of being enforced in the lower court. (5) If a proceeding is transferred to a lower court under subsection (4)— (a) the order is taken to be an order of the lower court and may be enforced accordingly; and (b) the proceeding for the enforcement of the order is taken to have been started before the lower court when it was started in the Supreme Court. (6) In this section— ***lower court*** means the District Court or a Magistrates Court. ***relevant court*** means— (a) for a final decision of the tribunal relating to a minor civil dispute—a Magistrates Court; or (b) for another final decision of the tribunal—the Supreme Court. **<u>Clause 218</u> Amendment of sch 2 (Subject matter for rules)** (1) Schedule 2, section 4(2), 'or style'— *omit.* (2) Schedule 2, section 8(b), 'or style'— *omit.*
Supreme Court Library Act 1968	Amendment to provide a statutory indemnity from civil liability for members of the Supreme Court Library Committee.	**<u>Clause 132</u> Insertion of new s 13B** Part 2— *insert*—	**<u>Clause 249</u> Insertion of new s 13B** After section 13A— *insert*—

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		13B Protection from liability of members (1) A member of the committee is not civilly liable for an act done, or omission made, in good faith under this Act. (2) If subsection (1) prevents a civil liability attaching to a member, the liability attaches instead to the committee.	**13B Protection from liability of members** (1) A member of the committee is not civilly liable for an act done, or omission made, in good faith under this Act. (2) If subsection (1) prevents a civil liability attaching to a member, the liability attaches instead to the committee.
Trusts Act 1973	Amendments to achieve consistency with the *Power of Attorney Act 1998* by removing the requirement that the delegation of the administration of a trust is to be made by power of attorney executed as a deed.	**Clause 139 Amendment of s 56 (Power to delegate trusts)** Section 56(1), 'executed as a deed'— *omit.* **Clause 140 Insertion of new pt 13** After part 12— *insert*— **Part 13 Validation provision for Justice and Other Legislation Amendment Act 2014** **123 Validation of powers of attorney for the purposes of s 56** (1) This section applies if— (a) before the commencement, a trustee purported to give a power of attorney to another person for the execution or exercise of a matter under previous section 56; and (b) the power of attorney was given in the approved form under the *Powers of Attorney Act 1998*, section 11. (2) The power of attorney delegating to a person any of the matters mentioned in section 56(1) is taken	**Clause 251 Amendment of s 56 (Power to delegate trusts)** Section 56(1), 'executed as a deed'— *omit.* **Clause 253 Insertion of new pt 13** After part 12— *insert*— **Part 13 Validation provision for Court and Civil Legislation Amendment Act 2017** **123 Validation of execution of power of attorney for s 56** (1) This section applies if— (a) before the commencement, a trustee purported to delegate, by power of attorney, the execution or exercise of a matter under previous section 56; and (b) the power of attorney was made in the approved form under the *Powers of Attorney Act 1998*, section 11. (2) The power of attorney is taken to be, and to have always been, as valid as if it had been executed as a deed under previous section 56. (3) In this section— ***previous section 56*** means section 56 as in force from time to time before the commencement.

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		to be, and to have always been, validly given under previous section 56.	
Vexatious Proceedings Act 2005	Amendments to allow vexatious litigants' applications for leave to institute proceedings to be dealt with without an oral hearing.	**Clause 142 Amendment of s 12 (Dismissing application for leave)** Section 12(2)— *omit, insert—* (2) The Court may dismiss the application— (a) without an oral hearing; or (b) if the Court considers an oral hearing is necessary—even if the applicant does not appear at the hearing. (3) If the Court dismisses the application, the Court must give the applicant a copy of— (a) the order dismissing the application; and (b) the Court's reasons. **Clause 143 Insertion of new pt 4A** After section 16— *insert—* **Part 4A Transitional provision for Justice and Other Legislation Amendment Act 2014 16A Pre-amended Act continues to apply to particular applications made before commencement** (1) This section applies if, immediately before the commencement, an application had been made under section 11 but not decided. (2) This Act continues to apply in relation to the application as if the *Justice and Other Legislation*	**Clause 255 Amendment of s 12 (Dismissing application for leave)** Section 12(2)— *omit, insert—* (2) The Court may dismiss the application— (a) without an oral hearing; or (b) if the Court considers an oral hearing is necessary—even if the applicant does not appear at the hearing. (3) If the Court dismisses the application, the Court must give the applicant a copy of— (a) the order dismissing the application; and (b) the Court's reasons. **Clause 256 Insertion of new pt 4A** After section 16— *insert—* **Part 4A Transitional provision for Court and Civil Legislation Amendment Act 2017** **16A Application of Act to applications not decided before commencement** (1) This section applies if an application under section 11 was made, but not decided, before the commencement. (2) This Act continues to apply in relation to the application as if the *Court and Civil Legislation Amendment Act 2017*, section 255 had not been enacted.

Act	Summary of amendments	Clauses – JOLAB 2014	Clauses – CCLAB 2017
		Amendment Act 2014 had not been enacted.	
Repeal of redundant companies Acts	Amendments to repeal the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*, the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*, the *Companies (Application of Laws) Act 1981*, the *Futures Industry (Application of Laws) Act 1986* and the *Securities Industry (Applications of Laws Act 1981*.	**Clause 144 Repeals** The following Acts are repealed— • Companies (Acquisition of Shares) (Application of Laws) Act 1981, No. 47 • Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981, No. 49 • Companies (Application of Laws) Act 1981, No. 110 • Futures Industry (Application of Laws) Act 1986, No. 47 • Securities Industry (Application of Laws) Act 1981, No. 48.	**Clause 257 Repeals** The following legislation is repealed— • Classification of Publications (Approval of Codes of Conduct) Order 1992, SL No. 415 • Companies (Acquisition of Shares) (Application of Laws) Act 1981, No. 47 • Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981, No. 49 • Companies (Application of Laws) Act 1981, No. 110 • Futures Industry (Application of Laws) Act 1986, No. 47 • Land Court (Transitional) Regulation 2017, SL No. 2 • Retail Shop Leases (Transitional) Regulation 2016, SL No. 224 • Securities Industry (Application of Laws) Act 1981, No. 48.

Non-Government Members' Statement of Reservation

Statement of Reservation – Court and Civil Legislation Amendment Bill 2017

We appreciate that the *Court and Civil Legislation Amendment Bill 2017* is designed to amend legislation within the justice portfolio to improve the efficiency and effectiveness of the courts and agencies and clarify the relevant legislation.

We want to note our concerns with certain aspects of the Bill, specifically concerns raised through the Committee's consideration.

For ease of reference, these concerns are contained in evidence provided by the Queensland Law Society (QLS).

We do not support the proposed amendments regarding the changes to the qualifications for a candidate to be considered worthy of nomination as Chief Executive Officer of Legal Aid Queensland. The current requirement is that a candidate must be a lawyer of at least 5 years' experience.

As the QLS outline in their submission to the Committee,

"There is significant value in having a lawyer as the CEO of Legal Aid Queensland. Lawyers owe and understand their duties to the Court, to their client and understand the rule of law. A lawyer will be able to comprehend the intricacies of the work that Legal Aid Queensland performs and is equipped to assess the merits, quality and risks of the services provided. A CEO who is a lawyer will also appreciate the consequences of decisions made by the CEO on the legal and ethical obligations of the lawyers, both within and outside the organisation.

We do not believe that our concerns will be addressed by the proposal for a Legal Aid lawyer, whether a "primary holder" or a "reserve holder", to hold a practising certificate. This additional position is unnecessary duplication which could be avoided if the CEO was legally qualified.

If the Act is amended in this way, we believe there ought to be clear delineation between the role of the CEO and the persons nominated under clause 73A so that the CEO is not in a position to compromise privilege or the integrity of the work that Legal Aid performs."

The position is an extremely important position in that it oversees the operations of an organisation designed to provide timely and appropriate legal advice to vulnerable Queenslanders. Highly experienced, legally qualified candidates would seem the most appropriate to lead an organisation of this nature.

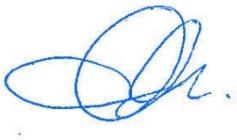
The QLS outlined a number of other issues which need clarification.

Their suggestion that the *Legal Profession Act 2007* is amended to allow for the electronic conveyance of bills, as of right seems more than appropriate – particularly given the nature of conveyancing in a modern technological and digital world. We support their suggestion in that regard.

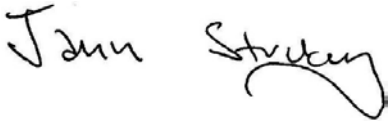
In relation to amendments to the *Retail Shop Leases Act 1994*, we note the concerns from the QLS that the new clause 220 does not address their concerns and goes against the fundamental principles of the Act. They raise concerns that small business, i.e. tenants or lessees, may not be able to terminate a lease unless blatant cases of fraudulent behaviour can be established. Further, they believe that

"The proposed changes are, in the Society's opinion, unnecessary and significantly detract from the intended purpose of the disclosure statement as a small business protection measure."

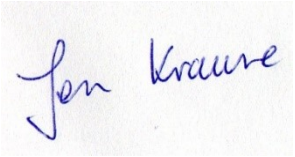
We support that position and have concerns that the new clause has not effectively dealt with the original issues raised last year by the QLS as part of the debate on changes made to the *Retail Shop Leases Act 1994*, earlier in this term of Parliament.



Mr Michael Crandon MP



Mrs Jann Stuckey MP



Mr Jon Krause MP