Evidence and Other Legislation Amendment Bill 2021

Explanatory Notes

Short title

The short title of the Bill is the Evidence and Other Legislation Amendment Bill 2021.

Policy objectives and the reasons for them

The objectives of the Bill are to:

- establish a statutory framework that allows protection against the disclosure of the identity of journalists' confidential informants (known as 'shield laws');
- introduce a legislative framework to support a pilot enabling video recorded statements taken by trained police officers to be used as an adult victim's evidence-in-chief in domestic and family violence (DFV) related criminal proceedings;
- provide a specific process for the viewing and examination of the body of a deceased person in a criminal proceeding to implement the Queensland Government's response to Recommendation 2 in the findings of the *Inquest into the disappearance and death of Daniel James Morcombe* (the Morcombe inquest findings);
- clarify the operation of computer warrants in relation to bail; and
- enable service as a magistrate in Toowoomba to constitute regional experience for the purpose of a transfer decision under the *Magistrates Act 1991* (Magistrates Act).

Shield laws

A free, independent, and effective media, and well-informed citizens, are crucial for a strong democracy. While journalists generally attribute the source of information in their reporting, they may depend on confidential informants to access sensitive information to fulfil their role as facilitators of free communication and report on matters of legitimate public concern. A journalist may need to promise to protect a confidential informant's identity to facilitate ongoing access to sensitive information.

Currently in Queensland, journalists do not have a common law privilege under which they can refuse to reveal the identity of a confidential informant.

The Commonwealth and all other Australian states and territories have introduced some form of statutory evidential privilege to protect against the disclosure of the identity of journalists' confidential informants. These statutory frameworks seek to recognise the public interest in the free flow of information into the public arena through the protection of informants' anonymity.

The Queensland Government has committed to introduce shield laws to better protect journalists' confidential informants.

Video recorded evidence

The giving of evidence in court by a victim of DFV[1] against the perpetrator can be traumatic and victims may be subject to intimidation from an accused person. Unlike civil proceedings under the *Domestic and Family Violence Protection Act 2012* (Domestic and Family Violence Protection Act), where the court is not bound by the rules of evidence, DFV victims in criminal proceedings are required to appear in court and provide direct oral evidence, subject to the use of special measures.

The underlying policy intent of the Bill's amendments is to remove the hearsay rule of evidence, so that out of court statements can be used as evidence of the existence of a fact contained in them. A similar provision already exists in section 93A of *Evidence Act 1977* (Evidence Act) which provides for the admissibility of statements made by children and persons with an impairment of the mind. Under section 93A, direct oral evidence of the fact must be otherwise admissible and the maker of the statement must be available to give evidence in the proceeding.

A range of other states and territories have introduced legislation facilitating the use of police recorded interviews with complainants in certain proceedings for domestic violence offences as their evidence-in-chief, particularly in the context of increased use of body worn cameras by frontline officers. For example, in Victoria a digitally recorded evidence-in-chief trial was established in October 2018, pursuant to amendments to the *Criminal Procedure Act 2009* (Vic), and was subject to an independent evaluation by Monash University (the Victorian evaluation). However, the evidence base in relation to the use of video recorded statements in DFV proceedings is emerging.

The use of video recorded evidence-in-chief offers potential benefits to DFV victims, including reducing the trauma for victims associated with re-telling their experiences in court, illustrating a victim's demeanor and experience close to the time of the event and reducing the capacity of the perpetrator to intimidate a victim.

The amendments in the Bill will support the Government's intention to develop a time-limited pilot enabling video recorded statements taken by police officers to be used as an adult victim's evidence-in-chief in DFV related criminal proceedings (VRE pilot). The VRE pilot will be subject to an independent evaluation which will enable evidence about the victim's experience and potential for unintended consequences, together with other practical and financial impacts for courts, police and prosecutors, to be properly assessed.

Viewing and examination of a deceased person's body

On 5 April 2019, the Morcombe inquest findings were delivered.

As part of the Morcombe inquest findings, the State Coroner made two recommendations under section 46(1) of the *Coroners Act 2003* (the Coroners Act) which enables a coroner to comment, wherever appropriate, on anything connected with the death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.

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[1] The term 'victim' is used to describe a person who has experienced DFV. It is acknowledged that some people may identify with or use different language. The term 'complainant' is used when describing the provisions of the Bill, consistent with the language in the Bill. The term 'perpetrator' is used to describe a person who commits acts of DFV. The terms 'accused person' and 'defendant' are used in reference to perpetrators in the Bill.

Recommendation 2 of the Morcombe inquest findings is that the Queensland Government amend the Criminal Code to ensure a time limit is imposed on the testing of human remains where the prosecution and defence fail to reach agreement on the identity of the deceased.

The rationale for Recommendation 2 is outlined at paragraphs 346 to 355 of the Morcombe inquest findings and was predicated on a lengthy delay between when Daniel's remains were found and when they were returned to his family for burial. The delay was on the basis that, as long as the accused person, Mr Cowan, contested that the skeletal remains belonged to Daniel, it was necessary for the remains to be retained in the event that they had to be retested. The State Coroner considered that where an accused wishes to prevent a burial or cremation for purposes of retesting, the appropriate course would be to seek a direction from a court under section 590AS (Viewing particular evidence) of the Criminal Code but noted, while the court could impose appropriate time limits to enable testing to occur, it is possible that a family would experience further delays while that occurred.

The Government agreed in principle to the Coroner's recommendation and gave a commitment to undertake further analysis, research, and consultation about how best to implement the underlying intent of the recommendation noting the complexities involved. The Bill contains amendments to implement the Government's response.

Computer warrants

The *Justices Act 1886* (Justices Act) authorises the use of computer warrants and the procedures for creating, storing, and otherwise managing warrants electronically. Under these provisions, a warrant may be created in the form of computer stored information under procedures prescribed by, or approved under, a regulation. The aim of computer warrants is to reduce the handling of warrants in the form of written documents.

Under section 33 of the *Bail Act 1980* (Bail Act), a defendant who fails to surrender into custody in accordance with their bail undertaking and who is apprehended under a warrant issued in relation to that failure (pursuant to section 28 or 28A of the Bail Act), commits an offence. In proceedings for the offence:

- production to the court of the warrant issued for the defendant's apprehension is evidence and, in the absence of evidence to the contrary, conclusive evidence of the undertaking and of the failure to surrender into custody and that the issue of the warrant was duly authorised by the decision or order of the court that issued the warrant; and
- judicial notice shall be taken of the signature of the person who issued the warrant and that that person was duly authorised to issue the warrant.

While section 68 of the Justices Act provides that the creation of a computer warrant by a person under the approved procedures has the same effect as the issue of the same type of warrant under the person's hand, to remove any potential for ambiguity, the Bill contains amendments to clarify the operation of computer warrants for the purposes of section 33 of the Bail Act.

Magistrates' regional service

Section 21 of the Magistrates Act provides that the advisory committee must make a transfer policy to guide decisions about which magistrates are to constitute Magistrates Courts at particular places. Under section 21, the transfer policy must take into account the amount of regional service a magistrate has undertaken within a specified period.

Section 21(6) provides that 'regional Queensland' means 'that part of Queensland outside the Beenleigh, Brisbane, Caboolture, Cleveland, Gold Coast, Ipswich, Maroochydore, Redcliffe and Toowoomba Magistrates Courts districts'.

The amendment in the Bill will ensure that service as a magistrate in Toowoomba constitutes regional experience for the purpose of a transfer decision under section 21.

Achievement of policy objectives

The Bill will achieve its policy objectives by amending:

- the Evidence Act to establish a framework for shield laws;
- the Evidence Act and related legislation to implement a framework for the use of video recorded statements taken by trained police officers as an adult victim's evidence-in-chief in DFV related criminal proceedings;
- the Criminal Code by inserting a new provision dealing with the process for viewing and examining the body of a deceased person which ensures consideration can be given to a coroner's obligations to release the body under the Coroners Act;
- the Bail Act to make it clear there is no requirement for a judicial officer to consider the signature of the person who issued a computer warrant in the context of dealing with a defendant under section 33 of the Bail Act; and
- the Magistrates Act to allow for service as a magistrate in Toowoomba to constitute regional experience for the purpose of a transfer decision.

Shield laws

The Bill amends the Evidence Act to establish a statutory framework to enable the better protection of the identity of journalists' confidential informants. The protection applies in circumstances where a person (an 'informant') gives information to a journalist in the expectation it may be published in a news medium, and the journalist promises not to disclose the informant's identity as the source of the information.

There are no requirements in relation to the form the promise must take; it may be oral or written. There is also no express requirement in relation to the time at which the promise must be given, however it is intended that the promise be reasonably proximate to when the informant gives the information to the journalist. A key purpose of shield laws is to enable journalists to access sensitive information that would not be provided in the absence of a promise of confidentiality.

The Bill contains a broad definition of news medium to ensure the diverse modes and methods of communicating news and observations on the news to the public are captured. The requirement that the medium be for the dissemination of news and observations on the news focusses the protection on journalistic news related activities rather than the sharing of any information. Whether a particular platform is a medium for disseminating news or observations on the news will be decided by the court on a case-by-case basis considering how a platform is used generally and how it is used by a particular person or organisation. What constitutes a 'medium' is not defined in the Bill, and the term will have its plain and ordinary meaning.

The Bill introduces a qualified privilege, which creates a presumption that a journalist is not compellable to give evidence or comply with a disclosure requirement if doing so would disclose the identity of the informant or enable their identity to be ascertained. The Bill extends

the protection to a 'relevant person', namely the journalist's current or previous employer or person who engaged them under a contract, as well as a person who is or has been involved in the publication of a news medium and works or has worked with the journalist in relation to publishing information in the news medium, such as editors, producers, and camera operators.

The amendments in the Bill do not prevent an informant from self-identifying or consenting to the giving of evidence or production of documents that discloses their identity, nor do they prevent a journalist, relevant person, or other person from giving evidence or producing documents that disclose the identity of the informant or enable their identity to be ascertained.

To reflect the contemporary media environment, the Bill contains a broad function-based definition of journalist which is focussed on whether the activities of the person are journalistic in nature, rather than on their employment status and organisational links. This approach accommodates the emergence of new and innovative modes and methods of communication, such as blogging and citizen journalism, and the shift away from traditional forms of news media. The requirement that the person must be engaged and active in journalistic activities, such as gathering and preparing information for publication in a news medium, recognises that journalistic activities may not be the focus of the person's occupation, such as academics who contribute to news mediums, and that the journalistic activity may not be the person's profession, such as a journalism student or someone who is otherwise not remunerated for the journalistic activities, while recognising protection should not be unlimited. The court may have regard to certain prescribed matters, as well as any other matter it considers relevant, when determining whether or not a person is a journalist for the purposes of the provisions in the Bill.

Trials and hearings

The Bill provides that journalist privilege applies in any proceeding before a court of record (a 'relevant proceeding'), except proceedings under the *Crime and Corruption Act 2001*, irrespective of whether the court is bound by the rules of evidence in the proceeding. Courts of record in Queensland are: the Supreme Court of Queensland; the District Court of Queensland; Magistrates Courts; the Coroners Court of Queensland; the Childrens Court of Queensland; the Industrial Magistrates Court; the Industrial Court; the Queensland Industrial Relations Commission; the Land Court; the Land Appeal Court; the Planning and Environment Court; the Mental Health Court; and the Queensland Civil and Administrative Tribunal.

A journalist or relevant person may claim journalist privilege when giving evidence in a trial or hearing before a court of record. The person making the claim has the onus of proving, on the balance of probabilities, that they are entitled to claim the privilege.

If a claim of journalist privilege is established, the court may, on the application of a party to the proceeding, make an order that the journalist or relevant person must give the evidence (despite the privilege) if satisfied the public interest in disclosing the informant's identity outweighs:

- any likely adverse effect of the disclosure on the informant or another person; and
- the public interest in the communication of facts and opinions to the public by the news media and the news media's ability to access sources of facts.

The applicant has the onus of proving, on the balance of probabilities, the grounds for the evidence to be given despite an established claim of privilege.

The court may have regard to prescribed matters, as well as any other matter it considers relevant, when deciding whether or not to make an order that the journalist or relevant person must give the evidence despite their established claim of journalist privilege.

The court must state reasons for making, or refusing to make, an order requiring the journalist or relevant person to give evidence despite a successful claim for privilege. If the court decides to make such an order, it may impose any conditions it considers appropriate.

To safeguard against circumstances in which a party or witness giving evidence in a trial or hearing may not be aware of their rights in relation to journalist privilege, the Bill requires that the court must be satisfied a person who may have grounds for claiming journalist privilege or making an application to require the evidence to be given despite privilege, is aware of provisions and has had an opportunity to seek legal advice.

Disclosure requirements

A journalist or relevant person may also object to complying with a disclosure requirement in relation to a relevant proceeding on the ground that it would disclose the identity of the informant or enable their identity to be ascertained. A disclosure requirement is defined as a process or order for disclosure of information or the delivery, inspection or production of a document or thing, including a summons, subpoena, a process for disclosure by a party, an order for non-party disclosure or discovery, an interrogatory, or a notice to a party to produce a document. A disclosure requirement does not include the prosecution's duty of disclosure in a criminal proceeding. For the identity of the informant, or information that would allow the identity of the informant to be ascertained, to be in the prosecution's possession, the journalist must either have voluntarily disclosed the information or been compelled to do so through other means. In these circumstances, it would unfairly prejudice the accused person to deny them access to the information.

Existing processes, including those under the *Uniform Civil Procedure Rules 1999* and *Criminal Practice Rules 1999*, for claiming a privilege in relation to, or objecting to, a disclosure requirement will apply to journalist privilege.

The court may decide that an objection to a disclosure requirement is established if satisfied the person is entitled to claim the privilege and the public interest in disclosing the informant's identity does not outweigh:

- any likely adverse effect of the disclosure on the informant or another person; and
- the public interest in the communication of facts and opinions to the public by the news media and the news media's ability to access sources of facts.

The court may have regard to certain prescribed matters, as well as any other matter it considers relevant, when deciding whether or not the objection to the disclosure requirement is established.

Search warrants

A journalist or relevant person may also object to the inspection, copying or seizing of a document or thing authorised under a search warrant on the ground that it would disclose the identity of the informant or enable their identity to be ascertained.

The document or thing is sealed or stored in a safe and secure way until the objection is determined. An application may be made to the Supreme Court for a decision as to whether or

not the document or thing may be dealt with as authorised under the warrant. If an application is made the document or thing must be delivered to the registrar for safekeeping. If an application is not made within seven days, the sealed or stored document or thing may be dealt with as authorised under the warrant.

The court hearing the application must first decide whether the grounds for the objection are established. The journalist or relevant person has the onus of proving, on the balance of probabilities, the grounds for the objection. The court may then decide, despite the grounds for the objection being established, that the sealed or stored document or thing may be dealt with as authorised under a warrant if satisfied the public interest in disclosing the informant's identity outweighs:

- any likely adverse effect of the disclosure on the informant or another person; and
- the public interest in the communication of facts and opinions to the public by the news media and the news media's ability to access sources of facts.

The court may have regard to certain prescribed matters, as well as any other matter it considers relevant, when deciding whether or not the objection is established. The court must state reasons for its decision.

If the court decides the document or thing may be dealt with as authorised under the warrant, it may make any order it considers appropriate including restricting how the document or thing may be dealt with.

Additional safeguards

The Bill provides safeguards for the privacy of the informant and an accused person's right to a fair hearing by providing that the court must hear and decide claims, objections, and applications in the absence of the jury and may exclude from the room all persons other than those it specifies may remain, including the journalist or relevant person and their legal representatives. However, in a criminal proceeding the court cannot exclude the accused person. Allowing the court to restrict who is present in the court room preserves, to the greatest extent possible, the confidentiality of information that may be disclosed for the court's consideration in deciding an objection or application.

Additional safeguards are included for the privacy, safety and wellbeing of the informant and other persons and to protect other confidential information that may be disclosed in relation to the court's consideration of journalist privilege, including for example Queensland Police Service intelligence, by providing that the court may make an order restricting access to documents or may make any other orders it considers appropriate.

Video recorded evidence

The Bill amends the Evidence Act and related legislation, including the Criminal Code and Justices Act, to establish a legislative framework for the giving of video recorded evidence-in-chief by adult DFV victims in criminal proceedings.

Under the provisions in the Bill, an adult victim (complainant) of an alleged domestic violence offence (as defined), whether or not the proceeding also involved other non-related domestic violence charges, will be able to give evidence-in-chief, wholly or partly, in the form of a recorded statement in domestic violence proceedings.

The Bill supports a pilot through the definition of 'domestic violence proceeding' by providing for certain matters to be prescribed by regulation. The provisions in the Bill also commence on a day to be fixed by proclamation to allow sufficient time for implementation activities to occur for the VRE pilot, including police training.

The Bill builds on the existing framework provided under section 93A of the Evidence Act for the use of recorded statements by children and persons with an impairment of the mind. It also adopts a range of safeguards based on the Victorian digitally recorded evidence-in-chief scheme, which commenced on 3 October 2018, under Chapter 8, Part 8.2, Division 7B of the *Criminal Procedure Act 2009* (Vic) which provides for the admissibility of statements made by a complainant in family violence offence proceedings.

Under the provisions in the Bill a recorded statement must be made as soon as practicable after the alleged domestic violence offence and taken by a trained police officer, which in practice will usually be via a body-worn camera which is placed on a tripod to record the statement.

Recorded statements may be admissible in a domestic violence proceeding as the complainant's evidence-in-chief if certain requirements are complied with. While generally a recorded statement must be in the form of a videorecording to be admissible, a court may admit a recorded statement in the form of an audio recording in exceptional circumstances. The Bill also contains specific provisions dealing with admissibility of recorded statements in committal proceedings which are regulated under the Justices Act.

The Bill includes a range of safeguards designed to limit trauma and protect the privacy of DFV victims providing evidence as complainants under the VRE pilot and protect against the misuse of recordings. These safeguards include the requirement that a recorded statement must be made with informed consent.

Further, the Bill provides that in determining whether or not to present the complainant's evidence-in-chief in the form of a recorded statement, the prosecution must consider certain factors, including the wishes of the complainant. While this provision is not intended to interfere with prosecutorial discretion, it is intended to provide victims with input in relation to the use of their recorded statement.

The Bill contains provisions to limit the disclosure of recorded statements and offences associated with unauthorised possession, supply, copying and publication of recorded statements. The provisions are not intended to impact on the court's powers to otherwise close the court and are intended to operate alongside existing provisions in relation to the evidence of special witnesses under Part 2, Division 4 of the Evidence Act.

The amendments in the Bill seek to safeguard the right of the accused person to receive a fair trial by including a requirement that the complainant be available for cross-examination and re-examination (unless parties to the proceeding consent to noncompliance with this requirement) and ensuring that a court can rule any or all of the statement inadmissible. The Bill does not impact the court's general overriding discretion to exclude evidence and includes a provision making it clear that certain provisions in Part 6 of the Evidence Act apply in relation to a recorded statement.

In line with the approach taken in relation to recorded statements, the Bill amends section 93A (Statement made before proceeding by child or person with an impairment of the mind) to clarify that the restrictions in the Justices Act relating to committal proceedings apply.

The Bill also makes related amendments to the existing offence provision in section 93AA of the Evidence Act which deals with the unauthorised possession of, or dealing in, section 93A criminal statements. While it is not intended the Bill will change the operation of the offence, the provision has been redrafted for clarity and alignment with the corresponding new offence relating to recorded statements. A new offence is similarly introduced relating to unauthorised publication of section 93A criminal statements, or section 93A transcripts.

Viewing and examination of the body of a deceased person

To achieve the underlying intent of the State Coroner's recommendation in the Morcombe inquest findings, the Bill amends Part 8, Chapter 62, Chapter Division 3 of the Criminal Code which deals with procedures relating prosecution disclosure. Section 590AB provides that this chapter division of the Criminal Code acknowledges that it is a fundamental obligation of the prosecution to ensure criminal proceedings are conducted fairly, with the single aim of determining and establishing the truth. There are a number of provisions that place mandatory disclosure obligations on the prosecution recognising the necessity of proper and timely disclosure to ensure that the accused is fully aware of the case against them. This is integral to a fair trial and also aims to balance the inequality of resources between the prosecution and the accused person.

New section 590ASA (Viewing bodies of deceased persons), which is inserted into the Criminal Code by the Bill, is a specific provision for viewing and examination of the body of a deceased person.

The new provision seeks to balance an accused's right to a fair trial with the right of families to have the remains of their loved one returned for burial as soon as possible.

Section 590ASA, whilst modelled on section 590AS (Viewing particular evidence), contains some variations to reflect the unique and solemn nature of this type of evidence.

Section 590ASA provides that a permitted person can view, or an appropriate person can view or examine, the body of a deceased person if:

(a) the prosecution allows it, on request, under the supervision of the prosecution and subject to any other conditions the prosecution considers appropriate to protect the integrity of the human remains and to ensure the release of the human remains under section 26 of the Coroners Act is not unnecessarily delayed;

(b) the court directs that the prosecution allow it subject to the conditions the court considers appropriate to protect the integrity of the human remains and to ensure the release of the human remains under section 26 of the Coroners Act is not unnecessarily delayed.

Section 26(2)(f) of the Coroners Act provides that a coroner stops having control of a body when the coroner decides that it is not necessary for the coroner's investigation to keep the body after an autopsy and the coroner orders the release of the body for burial. Section 26(3) provides that the coroner must release the body as soon as reasonably practicable after autopsy.

New section 590ASA, through the definitions of 'permitted person' and 'appropriate person', provides that the accused or their lawyer can view the body of the deceased but may not examine it. This approach seeks to balance the right of the accused person to a fair trial against the fact that only certain experts will have the necessary skills and qualifications appropriate to examine the deceased's body.

A 'body' is defined by reference to the Coroners Act and includes a part of a human body (e.g. human remains and samples of hair, bone, and blood).

Directions under the new section 590ASA can be sought prior to the presentation of an indictment under section 590AA of the Criminal Code.

Under section 41 of the Justices Act the laws relating to prosecution disclosure under the Criminal Code also apply to committal proceedings in the Magistrates Court. A direction may be made in the Magistrates Court about disclosure under section 83A of the Justices Act.

Computer warrants

The Bill amends section 33 of the Bail Act to ensure there is no requirement for a judicial officer to consider the signature of the person who issued a computer warrant in the context of dealing with a defendant under section 33. The Bill also includes a related transitional and validating provision to provide clarity in relation to part-heard and finalised proceedings.

Magistrates' regional service

The Bill amends section 21 of the Magistrates Act to provide that service as a magistrate in Toowoomba constitutes regional experience for the purpose of a transfer decision under that section.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than by legislative amendment.

Estimated cost for government implementation

Other than the VRE pilot, the amendments in the Bill are not expected to present any significant additional administrative or capital costs for government. Any implementation costs will be absorbed from existing agency resources.

While implementation of the VRE pilot is expected to result in some additional administrative and operational costs for government, particularly for Queensland Courts and registries, and police and prosecution agencies, these will also be funded from within existing resources, including the costs of an independent evaluation of the VRE pilot. There is also the potential for an additional impost on Government resources in several areas, including from additional court and judicial time required to deal with a potential increase in applications for cross-examination of complainants in proceedings or in relation to applications on admissibility of evidence, as well as the time taken to listen to taped evidence as opposed to reviewing a written statement (noting this was an issue raised in the Victorian evaluation). While it is not possible to fully estimate or assess the full impacts of the VRE pilot at this time, any impacts will be limited to the pilot locations and for the duration of the pilot. A detailed assessment of the resourcing and financial impacts of the pilot will be an important component of the evaluation.

Consistency with fundamental legislative principles

The Bill has been drafted having regard to the fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992* (LSA). Potential breaches of FLPs associated with the Bill are addressed below.

Legislation should have sufficient regard to the rights and liberties of individuals – Section 4(2)(a) of the LSA

The following areas have been identified as matters relevant to the consideration of whether the provisions in the Bill have sufficient regard to the rights and liberties of individuals.

Privacy and confidentiality

The right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues is relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

The shield laws provisions in clause 33 of the Bill provide that a court may order a journalist or relevant person to disclose the identity of a confidential informant or provide information that may enable their identity to be ascertained. The power to compel the disclosure may be a departure from FLPs in relation to privacy and confidentiality. The departure is justified as it is the result of the court balancing competing rights. Before making the order, the court must balance the public interest in disclosing the informant's identity against any likely adverse effect of the disclosure on the informant or another person, and the public interest in the communication of facts and opinion to the public by the news media and the ability of the news media to access sources of facts. The effects of the departure are also mitigated by providing that a court may only make such an order if it is in the public interest and may restrict who may have access to the disclosed information or how the information may be used or published.

Clause 37 allows for the video recording of a statement of a complainant in relation to a domestic violence offence, which may be in close proximity to a DFV incident, and which may subsequently be used and disclosed in a domestic violence proceeding. This may be a departure from FLPs in relation to privacy and confidentiality. This departure is justified, as it will allow the collection of evidence which illustrates the demeanour and experience of the complainant close to the time of the event and will minimise the need for the complainant to re-tell their story on subsequent occasions. It may also limit the ability of the accused to influence, coerce or intimate the complainant. The effect of the departure is mitigated by important safeguards, including requiring that the complainant give informed consent to making the recording, limiting disclosure of and access to the recorded statement, and including offences for any unauthorised possession, supply, copying and publication of recorded statements.

Freedom of speech

The right of individuals to exercise freedom of speech is relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

The shield laws provisions in clause 33 establish a qualified privilege meaning that a journalist or relevant person cannot be compelled to disclose the identity of a confidential informant who has been promised confidentiality unless a court considers that a balance of public interests requires the disclosure. If an order is made to require the disclosure, clause 33 also provides that the court may restrict who may access the information and what may be done with it. This

may be a departure from the FLP in relation to freedom of speech as it may limit news media and the general public's right to seek, receive, and express information. The departure is justified as it is the result of the court balancing competing rights, including the right to freedom of speech, the right to privacy, and the right to a fair hearing.

Reputation

The right of individuals to the protection of their reputation is relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

The shield laws provisions in clause 33 provide that a journalist or relevant person cannot be compelled to give evidence or comply with a disclosure requirement if giving the evidence or complying with the requirement would disclose the identity of a confidential informant or enable their identity to be ascertained, and that the court may refuse to make an order to require the disclosure. This may be a departure from the FLPs as maintaining the confidentiality of the informant may affect the outcome of the proceeding, which may be detrimental to a person's reputation, or may prevent a person whose reputation has been damaged as a result of information provided by the informant from taking legal action against the informant if they are unable to discover their identity. The departure is justified as the court's decision to refuse to make an order to compel disclosure is the result of the court balancing competing rights.

Retrospectivity

Legislation may not have sufficient regard to the rights and liberties of individuals if it adversely affects those rights and liberties or imposes obligations retrospectively.

A transitional and validation provision is included in clause 7 of the Bill to ensure that the amendments to section 33 of the Bail Act do not invalidate proceedings which have been finalised, already on foot or may be part heard. This provision applies retrospectively. However, this is a technical requirement to clarify the operation of procedural provisions and is considered justified as it is beneficial, curative or validating in nature.

Proportionality of offences

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, consequences are proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties which are proportionate to the offences.

The VRE pilot amendments in clause 37 create two new offences in relation to recorded statements relating to:

- the unauthorised possession of, or dealing in, recorded statements or transcripts of recorded statements; and
- publishing a recorded statement and transcripts of a recorded statement.

The maximum penalty for both offences is 100 penalty units, or 2 years imprisonment.

The Bill also includes, in clause 36, a new offence relating to publication of section 93A criminal statements or transcripts of section 93A criminal statements. The maximum penalty for this offence is 100 penalty units, or 2 years imprisonment.

Further, the existing offence provision under section 93AA of the Evidence Act in relation to the unauthorised possession of, or dealing in, section 93A criminal statements has been

redrafted but is not intended to change the operation of the existing offence and will not alter the penalty.

The penalties for these offences are considered proportionate and relevant to the action to which they apply, taking into account comparable existing offences, for example section 21AZC (Publishing a recording prohibited) of the Evidence Act and section 387L (Offences in relation to recorded statements) of the *Criminal Procedure Act 2009* (Vic).

Evidence rules

Legislation may not have sufficient regard to the rights and liberties of individuals if it alters the normal rules of evidence for legal proceedings.

The shield laws provisions in clause 33 provide that a journalist or relevant person cannot be compelled to give evidence or comply with a disclosure requirement if giving the evidence or complying with the requirement would disclose the identity of a confidential informant or enable their identity to be ascertained. This may be a departure from FLPs as it alters the normal rule of evidence that all persons are generally competent and compellable to give evidence in any case.[2] The departure is considered justified to protect the journalist-informant relationship and promote a free, independent, and effective media. The effects of the departure are also mitigated by providing that a court may require the journalist or relevant person to give the evidence or comply with the disclosure requirement if it is in the public interest.

The VRE pilot provisions in clause 37 of the Bill remove the hearsay rule of evidence which means that out of court statements can be used as evidence of the existence of a fact contained in them. While this represents a departure from the ordinary rules of evidence, the Bill includes a range of safeguards to protect an accused person's right to a fair trial, including a requirement that the complainant be available for cross-examination and re-examination (unless parties to the proceeding consent to noncompliance with this requirement) and ensuring that a court can rule any or all of the statement inadmissible. Further, the Bill does not impact the court's general overriding discretion to exclude evidence and includes a provision making it clear that certain provisions in Part 6 of the Evidence Act continue to apply in relation to a recorded statement.

This FLP breach is considered justified, having regard to the safeguards included in the Bill, and the potential benefits for DFV victims in being able to give their evidence in this way, including reducing the trauma associated with giving evidence in court.

Legislation should be consistent with the principles of natural justice – section 4(3)(b)

Section 4(3)(b) of the LSA provides that whether legislation has sufficient regard to the rights and liberties of individuals may depend on whether legislation is consistent with principles of natural justice. The following areas have been identified as matters relevant to the consideration of whether the provisions in the Bill are consistent with the principles of natural justice.

Limits on disclosure

Legislation should be consistent with the principles of natural justice, which encompasses the right of an accused person to be made aware of adverse evidence against them.

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[2] *Riddle v R* (1911) 12 CLR 622

The amendments in clause 21 of the Bill relating to the VRE pilot limit the disclosure of a recorded statement to an accused person and are a potential departure from this principle. However, the purpose of these provisions is to maintain the privacy of the victim and ensure an accused person is unable to share or misuse the recorded statement in a way that may further victimise or compromise their privacy. However, the Bill includes a range of safeguards to ensure that an accused person is still made aware of the contents of a recorded statement, including by requiring that the prosecution give the accused person a written notice which describes the recorded statement. If the accused person has a lawyer acting for them, the lawyer will be given a copy of the recorded statement, and if the accused is unrepresented, they will be allowed to view the statement in certain circumstances if the prosecution or court considers it is appropriate. This provision does not prevent the disclosure of a transcript to an unrepresented accused person or their lawyer, and the notice to an unrepresented accused person must state that prosecution must, on request, give the accused person a transcript of the recorded statement that is in the possession of the prosecution.

These provisions balance the rights and protections of a complainant against the rights of an accused person to have procedural fairness in a way that is considered consistent with FLPs.

Transparency to promote procedural fairness

Legislation should be consistent with the principles of natural justice, which encompass procedural fairness requirements such as ensuring that court processes are transparent. The Bill includes provisions that potentially breach this FLP by limiting access to court proceedings in certain circumstances in relation to the shield law amendments and the VRE pilot amendments.

The shield laws provisions in clause 33 provide that in deciding an objection or application regarding journalist privilege, the court may exclude from the room all persons other than the accused person in criminal proceedings and those it specifies may remain. If the court decides to make an order removing the privilege, it may impose any conditions that it considers appropriate. The court may also make any order that it considers appropriate, including restricting who may access a document or information and what may be done with it. This may be a departure from FLPs in relation to courts of law being open to the public to promote the proper administration of justice. The departure is justified to protect the journalist-informant relationship, promote a free, independent, and effective media, and to balance competing rights.

The VRE pilot provisions in clause 37 of the Bill include a provision to make it clear that new Part 6A does not limit the existing powers of a court under the Evidence Act or another Act to close the court or exclude particular persons from the court where a court is hearing a domestic violence proceeding. It is noted that the court may exercise this power to protect the privacy of DFV victims who are complainants in a proceeding

Whether legislation has sufficient regard to the institution of Parliament – section 4(2)(b) of the LSA

Section 4(4)(a) and (b) of the LSA provide that whether a Bill has sufficient regard to the institution of Parliament may depend on whether the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

Clause 37 of the Bill defines a ‘domestic violence proceeding’ for the purposes of the VRE pilot provisions by reference to certain matters that are to be prescribed by regulation, namely the type of proceeding and the location of the court at which the proceeding is held.

This clause may raise the FLP that legislation should have sufficient regard to the institution of Parliament as expressed in section 4(2)(b) of the LSA.

The sub-delegation of these powers is necessary to ensure that the legislation is sufficiently flexible to enable the scope and operation of the VRE pilot to be controlled (i.e. to be suspended, limited or expanded). This is consistent with the policy objective of the Bill, which is to enable to operation of these provisions on a pilot basis. It is therefore considered appropriate to delegate powers in this case. Further, any regulation pursuant to the delegation contained in the Bill will be subject to scrutiny of the Legislative Assembly in accordance with the usual notification, tabling and disallowance provisions of the *Statutory Instruments Act 1992*, as well as examination by the relevant portfolio committee under section 93 of the *Parliament of Queensland Act 2001*.

Consultation

The amendments in the Bill to establish a statutory framework to enable the protection of the identity of journalists' confidential informants were informed by public consultation, guided by the discussion paper entitled: *Shielding confidential sources: balancing the public's right to know and the court's need to know*. Feedback was received on the discussion paper from a range of stakeholders including media organisations, legal stakeholders, academics, and individual community members, through responses to an online survey and written submissions.

Consultation during drafting of the Bill was also undertaken with legal, DFV, media and other interested stakeholders. Feedback received during this process was taken into account in finalising the Bill.

The Chief Justice, Chief Judge, Chief Magistrate, President of the Childrens Court, President of the Land Court, President of the Industrial Court, President of the Mental Health Court, and President of the Queensland Civil and Administrative Tribunal were also consulted during the drafting of the Bill and their comments taken into account in finalising the Bill. The amendment to the Magistrates Act was requested by the Chief Magistrate.

Consistency with legislation of other jurisdictions

The amendments in the Bill are specific to the legislative framework of the State of Queensland.

The introduction of shield laws in Queensland will broadly align with the laws in all other Australian jurisdictions that have existing legislative frameworks to protect the identity of journalists' confidential informants.

There are legislative provisions in most other Australian jurisdictions that enable the use of recorded interviews with complainants in proceedings for domestic violence offences as their evidence-in-chief. In particular, as outlined above, the provisions in the Bill have been informed by the legislative model in Victoria.

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill may be cited as the *Evidence and Other Legislation Amendment Act 2021*.

Clause 2 provides that certain provisions in the Bill (introducing shield laws and to support the VRE pilot and related provisions) commence on a day to be fixed by proclamation.

Part 2 Amendment of Bail Act 1980

Clause 3 provides that part 2 amends the Bail Act.

Clause 4 amends a note in section 16 of the Bail Act consequential to the amendment in clause5.

Clause 5 amends section 33 of the Bail Act to provide that judicial notice of the person's signature on a computer warrant (issued under the Justices Act) is not required and renumbers existing subsections.

Clause 6 amends the heading of Part 5 of the Bail Act to include a reference validation consequential to the amendment in clause 7.

Clause 7 inserts a transitional and validation provision relating to the amendment to section 33 in clause 5.

Part 3 Amendment of Criminal Code

Division 1 Preliminary

Clause 8 provides that part 3 amends the Criminal Code.

Division 2 Amendments commencing on assent

Clause 9 amends section 590AS (Viewing particular evidence) which deals with original evidence consequential to the new section 590ASA relating to deceased persons inserted by clause 10.

Clause 10 inserts new section 590ASA (Viewing bodies of deceased persons).

Subsection 590ASA(1) provides that the section applies if a written notice has been disclosed to the accused person under section 590AH(2)(i) or section 590AJ.

Subsection 590ASA(2) provides that the prosecution is not required to allow the accused person to view or examine the body other than as set out in the provision.

Subsection 590ASA(3) provides that the prosecution may, on request, allow a permitted person to view, or an appropriate person to view or examine, the body under the supervision of the prosecution and subject to any other conditions considered relevant to protect the integrity of

the human remains and to ensure the release of the human remains under section 26 of the Coroners Act is not unnecessarily delayed. Such a condition may include a specified time frame for examination.

Subsection 590ASA(4) provides the court may direct that the prosecution allow a permitted person to view, or an appropriate person to view or examine, the body subject to the conditions the court considers appropriate to protect the integrity of the human remains and to ensure the release of the human remains under section 26 of the Coroners Act is not unnecessarily delayed. However, subsection (5) provides that the court may make the direction only if it is satisfied the terms of the direction can ensure the integrity of the body is protected and release under the Coroners Act is not unnecessarily delayed.

Subsection 590ASA(6) defines the terms which are used in the new section.

A 'body' is defined by reference to the Coroners Act and includes a part of a human body. This definition covers samples of hair, bone, and blood.

Clause 11 amends section 590AV (Disclosure directions under particular provisions) to insert a reference to new section 590ASA.

Clause 12 inserts a transitional provision relating to new section 590ASA.

Division 3 Amendments commencing by proclamation

Clause 13 inserts definitions into section 1 (Definitions) for the terms 'associate', of a lawyer, 'end', of the proceedings for a relevant charge, 'recorded statement' and 'relevant charge' for chapter 62, chapter division 3, by reference to new section 590AD.

Clause 14 amends section 590AA (Pre-trial directions and rulings) to include a reference to new part 6A (Recorded statements) of the Evidence Act inserted by the Bill.

Clause 15 amends section 590AD (Definitions for ch div 3) by inserting definitions for the terms 'associate', of a lawyer, 'end', of the proceedings for a relevant charge, 'recorded statement' and 'relevant charge'. The existing definition of 'prescribed summary trial' is also amended to include a charge for a domestic violence offence heard in a domestic violence proceeding, by reference to new sections 103B (Meaning of domestic violence offence) and section 103C (Meaning of domestic violence proceeding) of the Evidence Act.

Clause 16 amends section 590AI (When mandatory disclosure must be made) to combine paragraphs (1)(b) and (c) into one paragraph and include in the amended paragraph reference to new section 590AOB (Disclosure of recorded statement). The intent of these amendments is to apply this section, including the timeframes for disclosure stipulated within it, to written notices required to be given by the prosecution to an accused person under new section 590AOB (Disclosure of recorded statement).

Clause 17 amends section 590AJ (Disclosure that must be made on request) by inserting as an example under subsection (2)(f) a reference to a transcript of a recorded statement.

Clause 18 amends section 590AK (When requested disclosure must be made) to combine subparagraphs (1)(b)(ii) and (b)(iii) into one subparagraph and include in the amended subparagraph a reference to new section 590AOB (Disclosure of recorded statement).

Clause 19 amends subsection (1AA) of section 590AO (Limit on disclosure of sensitive evidence) to provide that the section does not apply to a recorded statement.

Clause 20 amends of section 590AOA (Evidence Act section 93A device statement) by omitting subsection (9) and replacing it with a revised subsection to make necessary changes consequential to the redrafting of section 93AA of the Evidence Act in the Bill, and by removing the definitions for the terms 'associate, 'end of proceedings' and 'relevant charge' from subsection (11), consequential to the amendments made by clauses 15 and 29 of the Bill.

Clause 21 inserts new section 590AOB (Disclosure of recorded statement) which sets out the disclosure requirements for recorded statements.

Subsection (1) provides that the prosecution must not give the accused person a copy of a recorded statement for a relevant proceeding otherwise than as required under this section.

Subsections (2) and (3) provide that where the prosecution would otherwise be required to give the accused person a copy of a recorded statement, they must instead give the accused person a written notice describing the recorded statement and specifying other matters, including certain matters which vary depending on whether or not the accused person has a lawyer acting for them.

Subsection (4) applies if an accused person has a lawyer acting for them, in which case the notice must state that the prosecution will give the lawyer a copy of the recorded statement subject to specified conditions relating to the handling of the copy, including that the lawyer must not give a copy of the recorded statement to the accused person and that the copy must only be given to persons, other than the accused person, stipulated in the subsection and in accordance with the conditions in the subsection and for a legitimate purpose connected with the relevant proceeding or a proceeding for a relevant charge.

Subsection (5) applies if the accused person does not have a lawyer acting for them, in which case the notice must state that the prosecution will not give the accused person either a copy or the original of the recorded statement but will, on request, allow an appropriate person to view the statement for the purposes of the relevant proceeding at a stated place. An 'appropriate person' is defined in subsection (11) and, in addition to the accused person, includes a Legal Aid lawyer appointed under 21O(4) of the Evidence Act for the purpose of cross-examining a protected witness, another lawyer providing legal advice or assistance to the accused person or another person engaged by the accused person where the prosecution or the court considers it is appropriate for the other person to view the recorded statement, for example, an interpreter or an expert. Subsection (5) also provides that the notice must state that the prosecution must, on request, give the accused person a transcript of the recorded statement that is in the possession of the prosecution.

Subsection (6) deals with the situation where the prosecution does not accept a person nominated by the accused person as an 'appropriate person' to view the recorded statement, and provides that the court may direct the prosecution to accept the person as an appropriate person to view the statement subject to any conditions the court considers appropriate.

Subsection (7) limits the circumstances in which the court can direct the prosecution to accept a person as an appropriate person under subsection (6) by providing that the court must be satisfied that the terms of its direction can ensure certain matters, including that the recorded statement will only be viewed for a legitimate purpose connected with the relevant proceeding.

Subsection (8) clarifies that an act done in contravention of a condition of a notice or court direction under the section is not done for a legitimate purpose related to a domestic violence proceeding for the purposes of applying new offence section 103Q (Unauthorised possession of, or dealing in, recorded statements) of the Evidence Act.

Subsection (9) clarifies that making a transcript of the contents of a recorded statement is not making a copy of a recorded statement to which the offence in section 103Q(1)(c) applies.

Subsection (10) clarifies that a reference to a recorded statement under new section 590AOB may include a reference to a lawfully edited copy of a recorded statement.

Subsection (11) defines the terms 'appropriate person' and 'copy' of a recorded statement.

Clause 22 amends subsection (1) of section 590AS (Viewing particular original evidence – generally) to ensure that the section does not apply to recorded statements.

Clause 23 amends section 590AV (Disclosure directions under particular provisions) by amending the definition of 'disclosure direction' under subsection (4) to ensure that disclosure directions under this section can be made in respect of a relevant proceeding under new section 590AOB.

Part 4 Amendment of Disability Services Act 2006

Clause 24 provides that part 4 amends the *Disability Services Act 2006* (the Disability Services Act).

Clause 25 amends section 138C (Chief executive's request for police information about relevant person) by amending subsection (3)(b) to include reference to a transcript of a recorded statement.

Clause 26 amends section 138M (Obtaining information from director of public prosecutions) by amending the definition of 'evidentiary material' under subsection (6)(d) to refer to a transcript of a recorded statement.

Clause 27 amends section 138ZG (Giving information to chief executive (working with children)) to insert a new paragraph into subsection (2) which refers to a section 93A transcript and a transcript of a recorded statement.

Clause 28 amends section 138ZH (Giving information to NDIS worker screening unit or working with children screening unit) by replacing subsection (4) with a provision that provides that the chief executive must not give the work screening unit or working with children screening unit a section 93A transcript or information contained in a section 93A transcript or a transcript of a recorded statement or information contained in a transcript of a recorded statement.

Clause 29 amends Schedule 8 (Dictionary) to insert a definition of 'recorded statement' and to amend the definition of 'section 93A transcript', consequential to the relocation of the definition to schedule 3 of the Evidence Act.

Part 5 Amendment of Domestic and Family Violence Protection Act 2012

Clause 30 provides that part 5 amends the Domestic and Family Violence Protection Act.

Clause 31 amends section 169J (Limits on information that may be shared), consequential to the relocation of the definition of a section 93AA criminal statement to schedule 3 of the Evidence Act, and to insert a new subparagraph (iv) into paragraph (d) to ensure that a recorded statement, or a transcript of a recorded statement, within the meaning of the Evidence Act may not be shared under Part 5A, Division 2 of the Domestic and Family Violence Protection Act.

Part 6 Amendment of Evidence Act 1977

Clause 32 provides that part 6 amends the Evidence Act.

Clause 33 inserts new part 2, division 2B 'Journalist privilege'.

Subdivision 1 Preliminary

New section 14Q (Application of division) provides that new division 2B will apply if a person gives information to a journalist, in the normal course of the journalist's activities as a journalist, in the expectation the information may be published in a news medium, and the journalist promises not to identify them as the source of the information.

Subsection (2) states that, to remove any doubt, the new division does not prevent a person from disclosing the informant's identity as the source of the provided information. This includes a situation where the informant consents to disclosure.

New section 14R (Who is a *journalist*) defines 'journalist' to capture persons engaged and active in gathering and assessing information about matters of public interest and preparing the information, or providing comment or opinion on or analysis of the information, for publication in a news medium. The provision also sets out various matters that the court may consider in determining whether a person is a journalist.

New section 14S (Meaning of *relevant proceeding*) defines 'relevant proceeding' for new division 2B as a proceeding heard by a court of record whether or not the court of record hearing the proceeding is bound by the rules of evidence for the proceeding. Proceedings under the *Crime and Corruption Act 2001* are expressly excluded from the meaning of a relevant proceeding.

New section 14T (Definitions for division) provides definitions for 'authorised officer', 'disclosure requirement', 'informant', 'journalist', 'news medium', 'provided information', 'relevant person', and 'relevant proceeding', which are key terms used in new division 2B.

Subdivision 2 Relevant proceedings

New section 14U (Application of subdivision) provides that subdivision 2 applies in relation to relevant proceedings.

New section 14V (Journalist privilege relating to identity of informants) provides that a journalist or a relevant person for the journalist cannot be compelled, in relation to the relevant proceeding (which does not include proceedings under the *Crime and Corruption Act 2001*), to give evidence or comply with a disclosure requirement if doing so would disclose the identity of the informant as the source of the provided information or enable the identity of the informant as the source of the provided information to be ascertained. The provision only applies in relation to a relevant person if they became aware of the identity of the informant as the source of the provided information in the normal course of their work with the journalist, or in the course of, or as a result of, a relevant proceeding.

New section 14W (Claims of journalist privilege at hearings of relevant proceedings) provides that a journalist or relevant person who is called to give evidence in a relevant proceeding may claim journalist privilege in relation to the giving of particular evidence. The journalist or relevant person has the onus of proving the claim is established on the balance of probabilities. The court must hear and decide the claim in the absence of the jury and may order that all persons, other than the accused person in a criminal proceeding and any other person specified by the court, be excluded from the room.

New section 14X (Applications for orders requiring giving of evidence despite journalist privilege) provides that a party to the proceeding may apply for an order that the journalist or relevant person must give evidence despite a claim of journalist privilege being established under section 14W. The applicant has the onus of proving each of the grounds of the application on the balance of probabilities. The court must hear and decide the application in the absence of the jury and may order that all persons, other than the accused person in a criminal proceeding and any other person specified by the court, be excluded from the room.

New section 14Y (Deciding applications under s 14X) sets out the test for the court making an order that the journalist or relevant person must give evidence despite a claim of journalist privilege being established under section 14W. The court must be satisfied the public interest in disclosing the informant's identity outweighs any likely adverse effect of the disclosure on the informant or another person and the public interest in the communication of facts and opinion to the public by the news media and the ability of the news media to access sources of facts. In deciding whether or not to make the order the court may have regard to the matters set out in subsection (2).

The provision clarifies that in deciding the application, the court may consider a written or oral statement made by the informant outlining the adverse effects the informant or another person is likely to suffer if an order is made requiring the journalist or relevant person to give the evidence despite section 14V.

The provision also provides that the court must state its reasons for making or refusing to make the order, and that the order may be subject to any terms and conditions the court considers appropriate.

New section 14Z (Objections to disclosure requirements on grounds of journalist privilege) sets out the test for the court deciding that a journalist or a relevant person's objection to complying with a disclosure requirement on the grounds of journalist privilege. The court may decide the objection is established only if satisfied that section 14V applies in relation to complying with the disclosure requirement and the public interest in disclosing the informant's identity does not outweigh any likely adverse effect of the disclosure on the informant or another person and the public interest in the communication of facts and opinion to the public by the news media

and the ability of the news media to access sources of facts. In considering the public interest component of the test the court may have regard to the matters set out in section 14Y(2). The court may consider a written or oral statement made by the informant outlining the adverse effects the informant or another person is likely to suffer if the objection is not established.

The provision also provides that the court may order that all persons, other than the accused person in a criminal proceeding and any other person specified by the court, be excluded from the room.

The provision clarifies that if the court decides the objection is not established, the journalist or relevant person for the journalist must comply with the disclosure requirement. However, the requirement for the person to comply with a disclosure requirement in these circumstances does not interfere with any other ground or basis the person may have for refusing to comply with a disclosure requirement, such as an objection on another ground or a different order of the court.

New section 14ZA (Other orders court may make) provides that if a party to a proceeding applies for an order that the journalist or relevant person must give evidence despite a claim of journalist privilege being established or the court is deciding an objection to a disclosure requirement, the court may make an order restricting access to a document or any other order it considers appropriate.

New section 14ZB (Court to inform of particular rights) provides that if it appears to a court of record that a person may have grounds to claim journalist privilege in relation to giving evidence, or to apply for an order to require another person to give evidence despite an established claim of journalist privilege, the court must satisfy itself that the person is aware of the provisions relating to journalist privilege in relevant proceedings and has had an opportunity to seek legal advice.

Subdivision 3 Search warrants

New section 14ZC (Application of subdivision) provides the circumstances in which subdivision 3 applies.

New section 14ZD (Procedures if objections made) sets out the relevant procedures if a journalist or relevant person objects to a document or thing being dealt with as authorised under a search warrant. The authorised officer may ask the journalist or relevant person to agree to the document or thing being immediately sealed in a container, or stored in another secure way specified by the officer and held by the officer for safe keeping.

If a request is made, the authorised officer must tell the journalist or relevant person that if they do not agree the authorised officer may deal with the document or thing in a way authorised under the warrant, and if they do agree they may make an application to the Supreme Court under section 14ZE(2) in relation to the document or thing.

The provision also provides that if an application is made to the Supreme Court under section 14ZE(2), the authorised officer must ensure the sealed or stored document or thing is given to the registrar of the Supreme Court for safe keeping until the application is decided. If an application is not made, the authorised officer must ensure the sealed or stored document or thing is kept in safe custody until the end of the period mentioned in section 14ZE(3) (i.e. seven days), after which it may be dealt with in a way authorised under the warrant.

New section 14ZE (Applications to Supreme Court in relation to objections) provides that prescribed persons may apply to the Supreme Court to decide whether a sealed or stored document or thing may be dealt with as authorised under a warrant. The application must be made within seven days after the authorised officer made the request under section 14ZD(1). In hearing the application, the court may order that all persons other than those specified by the court be excluded from the room.

New section 14ZF (Decisions on applications) sets out the test for the court deciding whether or not the sealed or stored document or thing may be dealt with in a way authorised under the warrant. The court must first decide whether the grounds for the journalist or relevant person's objection under section 14ZC(b) are established. If grounds for the objection are established the court may decide the sealed or stored document or thing may be dealt with in a way authorised under the warrant if satisfied the public interest in disclosing the informant's identity outweighs any likely adverse effect of the disclosure on the informant or another person and the public interest in the communication of facts and opinion to the public by the news media and the ability of the news media to access sources of facts. In deciding whether or not the sealed or stored document or thing may be dealt with in a way authorised under the warrant the court may have regard to the matters set out in subsection (4).

The provision clarifies that in deciding the application, the court may consider a written or oral statement made by the informant outlining the adverse effects the informant or another person is likely to suffer if the sealed or stored document or thing is dealt with in a way authorised under the warrant.

The provision also provides that the court must state its reasons for its decision.

New section 14ZG (Other orders court may make) provides that if an application is made to the Supreme Court for a decision in relation to a search warrant, the court may make an order restricting access to a document in relation to the application or any other order it considers appropriate.

Clause 34 amends section 21AAA (Exclusion of particular persons while particular evidence is presented) by inserting new paragraph (d) into subsection (1) to allow the court, on its own initiative, or on an application made by a party to the proceeding, to exclude persons (other than the person charged) from the court where the evidence of a special witness contained in a recorded statement is to be presented at a proceeding.

Clause 35 amends section 93A (Statement made before proceeding by child or person with an impairment of the mind) to insert new subsection (3B) which clarifies that section 93A is not intended to affect the application of sections 110A to 110C of the Justices Act to a committal proceeding in relation to section 93A statements. This amendment is intended to clarify that the usual limitations on when a person may be called to give evidence and how cross examination may be conducted under the Justices Act apply, similar to the approach taken in relation to recorded statements.

Clause 36 replaces existing section 93AA (Unauthorised possession of, or dealing in, s 93A criminal statements) with a new section 93AA (Unauthorised possession of, or dealing in, section 93A criminal statements or section 93A transcripts) and new section 93AB (Permitted use of section 93A transcript by employment-screening applicant or applicant's lawyer), and inserts new section 93AC (Publishing section 93A criminal statements or section 93A

transcripts prohibited). New sections 93AA and 93AB are not intended to change the operation of the existing offence in section 93AA.

Subsection (1) of new section 93AA (Unauthorised possession of, or dealing in, section 93A criminal statements or section 93A transcripts) replicates existing subsection (1) with changes to wording in line with current drafting practice and to clarify that the offence applies to a section 93A transcript. No change is made to the maximum penalty.

Subsection (2) provides that a person may do something mentioned in subsection (1):

- for a legitimate purpose related to the proceeding for which the section 93A criminal statement or section 93A transcript was made or another proceeding;
- if required or permitted under an employment-screening Act (other than to the extent stated in subsection (3)); or
- if permitted under section 93AB.

A person may be required or permitted to do a range of things under an employment-screening Act, for example, the police commissioner is required under section 312(1) of the *Working with Children (Risk Management and Screening) Act 2000* (Working with Children Act) to comply with a request from the chief executive (working with children) to provide a section 93A transcript. The director of public prosecutions is also required under section 318(4) of the Working with Children Act to comply with a request from the chief executive (working with children) to provide evidentiary material (which includes a section 93A transcript) about an offence. Similar obligations exist in the Disability Services Act.

In addition, under section 229 of the Working with Children Act, when inviting submissions from a person, the chief executive (working with children) is required to give the person a written notice stating any other information about the person that the chief executive is aware of that the chief executive reasonably believes is relevant to whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person. This requirement provides the basis for the chief executive to put a summary of a section 93A transcript to the person as part of the blue card assessment process. A similar requirement exists under the Disability Services Act.

Subsection (3) in new section 93AA provides a qualification on the operation of subsection (2)(b) to ensure that a person acting under an employment-screening Act for the purpose of making an employment-screening decision must only supply, or offer to supply, a summary of a section 93A transcript to the employment-screening applicant. This qualification is consistent with the existing limitation in current section 93AA.

It is intended, despite section 11 of the Criminal Code, that section 20 of the *Acts Interpretation Act 1954* would operate to ensure that the re-drafted section 93AA in the Bill does not affect any proceedings being commenced, continued or completed in relation to the form of the offence that existed prior to commencement. No substantive changes to the offence in section 93AA are intended.

New section 93AB (Permitted use of section 93A transcript by employment-screening applicant or applicant's lawyer) applies if an employment-screening applicant is given a written summary of a section 93A transcript in relation to an employment screening decision that has been or is proposed to be made.

Subsection (2) provides that the applicant may possess the summary. Subsection (2) also provides that the applicant may supply (or offer to supply) the summary to an Australian lawyer to obtain legal advice, or copy (or permit another person to copy) the summary for this purpose. Subsection (3) allows a lawyer to possess a copy of the summary for the purposes or providing legal advice to the employment-screening applicant in relation to the employment-screening decision.

The definition of 'section 93A transcript' as inserted by clause 39 of the Bill provides that a section 93A transcript means a transcript of a section 93A criminal statement and will include, if the context permits, a summary or copy of a summary of a transcript of a section 93A criminal statement.

New section 93AC (Publishing section 93A criminal statements or section 93A transcripts prohibited) creates an offence for publishing all or part of a section 93A criminal statement or transcript of a section 93A criminal statement. This offence is inserted for consistency with the new offence under new section 103S of the Evidence Act in relation to publishing recorded statements or transcripts of recorded statements and the existing offence under section 21AZC of the Evidence Act in relation to publishing a recording.

This new provision provides a person must not publish (as defined in the section) all or part of a section 93A criminal statement or a section 93A transcript unless the publication is approved by the court presiding at the domestic violence proceeding at which the section 93A criminal statement is presented and complies with any condition attached to the court's approval, which, under subsection (2), may only be given in exceptional circumstances. The maximum penalty for the offence is 100 penalty units or 2 years imprisonment for an individual, or 1,000 penalty units for a corporation.

Clause 37 inserts new Part 6A (Recorded statements) into the Evidence Act.

Division 1 Preliminary

New section 103A (Definitions for part) defines key terms used in new Part 6A.

New section 103B (Meaning of domestic violence offence) defines the term 'domestic violence offence' in a way that mirrors the definition of 'domestic violence offence' under section 1 of the Criminal Code and also includes any offence against Part 7 (Offences) of the Domestic and Family Violence Protection Act.

New section 103C (Meaning of domestic violence proceeding) defines the term 'domestic violence proceeding' as a criminal proceeding that relates to a charge for a domestic violence offence, whether or not the proceedings also relates to other offences, where the proceeding is of a type prescribed by regulation and held before a court at a place prescribed by regulation. This definition is intended to provide flexibility for construction of a pilot in relation to the place, court jurisdiction and type of proceeding.

Division 2 Use of recorded statements

New section 103D (Use of recorded evidence as complainant's evidence-in-chief) deals with how a recorded statement may be used as a complainant's evidence-in-chief and provides under subsection (1) that the evidence-in-chief of a complainant in a domestic violence proceeding may be given, either wholly or partly, in the form of a recorded statement under new part 6.

Subsection (2) provides for the matters that the prosecution is required to take into account when determining whether to present all or part of a complainant's evidence-in-chief as a recorded statement. This provision is not intended to interfere with prosecutorial discretion.

New section 103E (Requirements for making recorded statements) sets out the requirements that must be met for making a recorded statement.

Subsection (1) requires that the statement be made as soon as practicable after the events happen that constitute the alleged domestic violence offence and that the statement be taken by a trained police officer. Subsection (4) defines a 'trained police officer' for the purposes of this section. Subsection (2) provides that failure to comply with these requirements does not prevent a complainant's evidence being taken or recorded under Part 6A or affect the admissibility of any recorded statement so taken.

Subsection (3) sets out the following requirements for a complainant's recorded statement to be admissible under new section 103H (Admissibility of recorded statements generally):

- that it must be made with the complainant's informed consent (see new section 103F);
- that it must include an acknowledgement, or declaration under the *Oaths Act 1867*, by the complainant that the recorded statement is true to the best of the complainant's knowledge and belief and that the complainant knows that they may prosecuted for making a false statement; and
- that it must contain an oral translation of any part of the recorded statement that is in a language other than English.

New section 103F (When a recorded statement is made with informed consent) sets out the requirements for informed consent. Subsection (2) provides that a recorded statement will be made with the informed consent of the complainant if the police officer taking the statement informs the complainant before taking the recorded statement:

- of certain matters about how the recorded statement may be used and disclosed, including that it may be presented as the complainant's evidence-in-chief in a court and can be disclosed to, and used by, the accused person and other persons (for example, an accused person's lawyer or another appropriate person, such as an interpreter or translator, under new section 590AOB (Disclosure of recorded statement) of the Criminal Code);
- that if the complainant's statement is presented as the complainant's evidence-in-chief in a court, the complainant may be required to attest to the truthfulness of the statement in court and may also be required to give further evidence in court (under section 103H(1)(d) for a recorded statement to be admissible as a complainant's evidence-in-chief, at the hearing of the proceeding the complainant must attest to the truthfulness of the statement and be available for cross-examination by the accused person or their lawyer and re-examination by the prosecution); and
- that they may refuse to consent to the making of the recorded statement.

Subsection (3) further requires that the complainant must, after being informed of these matters, indicate in the recorded statement that they understand and consent to the making of the recorded statement.

Division 3 Admissibility of recorded statements

New section 103G (References to recorded statement) provides that a reference to a recorded statement under division 3 is to include, if the context permits, a lawfully edited copy of a recorded statement (see new section 103O (Editing or otherwise altering recorded statements)).

New section 103H (Admissibility of recorded statements generally) sets out the requirements for the admissibility of a recorded statement in a domestic violence proceeding as the complainant's evidence-in-chief.

Subject to subsection (2), which provides that a court may rule as inadmissible the whole or any part of a recorded statement and that where the court makes such a ruling, that the recorded statement may be edited or otherwise altered to delete the part that is inadmissible, a recorded statement is admissible if the following requirements under subsection (1) are met:

(a) the recorded statement complies with the requirements under section 103E(3);

(b) the recorded statement is in the form of a videorecording;

(c) the disclosure requirements under new section 590AOB of the Criminal Code have been complied with for the recorded statement; and

(d) at the hearing of the proceeding, the complainant attests to the truthfulness of the contents of the recorded statement and is available for cross-examination and re-examination.

Subsection (3) allows the court to admit a recorded statement despite non-compliance with the requirements in 103E(3) provided the court is satisfied that there was substantial compliance and that it would be in the interests of justice for the recorded statement to be admitted. The subsection also allows the court to admit a recorded statement as an audio recording, if the court is satisfied that there are exceptional circumstances for the audio recording to be admitted, and the defendant would not be unfairly prejudiced.

Subsection (4) allows the parties to a proceeding to consent to the admissibility of a recorded statement despite noncompliance with the disclosure requirements or the requirement for the complainant to attest to the truthfulness of the recorded statement and be available for cross-examination and re-examination. However, subsection (5) provides that if the defendant does not have a lawyer acting for them, they may only consent if the court is satisfied the defendant understands the consequences of giving such consent.

New section 103I (Admissibility of recorded statements in particular committal proceedings) sets out the requirements for admissibility for a recorded statement in a domestic violence proceeding that is a committal proceeding having regard to the requirements under section 110A of the Justices Act.

New section 103J (Application of particular provisions to recorded statements) applies particular provisions (sections 94 (Admissibility of evidence concerning credibility of persons responsible for statement), 98 (Rejection of evidence), 99 (Withholding statement from jury room), 101 (Witness's previous statement, if proved, to be evidence of facts stated) and 102 (Weight to be attached to evidence)) under part 6 of the Evidence Act, with all necessary changes, to a recorded statement or a transcript of a recorded statement that is admissible in a domestic violence proceeding under new sections 103H or 103I.

Section 103K (Relationship with other Acts) provides for necessary changes to be read into section 111 of the Justices Act and section 4 of the *Criminal Law Amendment Act 1892* to allow

these sections to apply to a recorded statement or a transcript of a recorded statement that is admissible in a domestic violence proceeding under new sections 103H or 103I.

Section 103L (Limitation on cross-examination under Justices Act not affected) clarifies that nothing in new Part 6A affects the application of section 110C (Limitation of cross-examination) of the Justices Act to a domestic violence proceeding. This means that where a complainant's recorded statement has been admitted in a committal proceeding as the complainant's evidence-in-chief pursuant to a direction under section 83A (Direction hearing) of the Justices Act requiring the prosecution to call the complainant, any cross-examination of the complainant is to be subject to the limitations expressed in the Justices Act.

New section 103M (Powers to close court not limited) clarifies that new part 6A does not limit the existing powers of a court under the Evidence Act or another Act to close the court while particular evidence is presented in a domestic violence proceeding.

New section 103N (Orders, directions and rulings in relation to complainants) provides that, without limiting certain existing powers of the court to give directions or rulings under section 21A of the Evidence Act, 590AA of the Criminal Code and section 83A of the Justices Act, a court hearing a domestic violence proceeding may on its own initiative or on application by a party to the proceeding make orders or given directions or rulings it considers appropriate for new Part 6A.

Division 4 Editing or otherwise altering recorded statements

New section 103O (Editing or otherwise altering recorded statements) provides for when a recorded statement may be edited or altered. This may occur only:

- with the consent of the parties to the domestic violence proceeding in which the recorded statement is, or is to be, presented (subject to subsection (2) if the defendant does not have a lawyer acting for them); or
- where editing or altering the recorded statement is required to either avoid disclosure of material that does not need to be, or must not be, disclosed to the defendant, or, to comply with a direction or order of the court.

Division 5 Offences relating to recorded statements

New section 103P (References to recorded statement, transcript of recorded statement, or summary of transcript) sets out the meaning of references to a recorded statement, a transcript of a recorded statement, and a summary of a transcript of a recorded statement for the purposes of new division 5. The section provides that a reference to a recorded statement includes a reference to a copy of a recorded statement. Further, if the context permits:

- subsection (1)(b) provides that a reference to a transcript of a recorded statement includes a reference to a copy of a transcript of a recorded statement, or a summary or a copy of a summary of a transcript of a recorded statement; and
- subsection (1)(c) provides that a reference to a summary of a transcript of a recorded statement includes a reference to a copy of a summary of a recorded statement.

Subsection (2) provides that a reference to a copy of a recorded statement does not include a copy that is part of a record or a transcript of a record of a legal proceeding under the *Recording of Evidence Act 1962*. Subsection (3) provides that section 4 (Meaning of *copy* of document

etc.) of the Evidence Act does not apply to a reference to a copy of a recorded statement in division 5.

New section 103Q (Unauthorised possession of, or dealing in, recorded statements) creates an offence in relation to the unauthorised possession, supply and copying of recorded statements.

Subsection (1) provides that a person commits an offence in the following circumstances:

- the person possesses a recorded statement or a transcript of a recorded statement;
- the person supplies, or offers to supply, a recorded statement, or a transcript of a recorded statement to another person; or
- the person copies, or permits another person to copy, a recorded statement or a transcript of a recorded statement.

The maximum penalty for the offence is 100 penalty units or 2 years imprisonment for an individual, or 1,000 penalty units for a corporation.

Subsection (2) provides that a person may do something mentioned in subsection (1):

- for a legitimate purpose related to a domestic violence proceeding or another proceeding; or
- if required or permitted to do so under an employment-screening Act (other than to the extent stated in subsection (3)); or
- if permitted under new section 103R (Permitted use of a transcript of recorded statement by employment-screening applicant or applicant's lawyer).

Following the commencement of the amendments relating to recorded statements, a person may be required or permitted to do a range of things under an employment-screening Act, for example, the police commissioner will be required under section 312(1) of the Working with Children Act to comply with a request from the chief executive (working with children) to provide a transcript of a recorded statement. The director of public prosecutions will also be required under section 318(4) of the Working with Children Act to comply with a request from the chief executive (working with children) to provide evidentiary material (which will include a transcript of a recorded statement) about an offence. Similar obligations will exist in the Disability Services Act.

In addition, under section 229 of the Working with Children Act, when inviting submissions from a person, the chief executive (working with children) is required to give the person a written notice stating any other information about the person that the chief executive is aware of that the chief executive reasonably believes is relevant to whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person. This requirement will provide the basis for the chief executive to put a summary of a transcript of a recorded statement to the person as part of the blue card assessment process. A similar requirement exists under the Disability Services Act.

Subsection (3) provides a qualification on the operation of subsection (2)(b) to ensure that a person acting under an employment-screening Act for the purpose of making an employment-screening decision must only supply, or offer to supply, a summary of a transcript of a recorded statement to the employment-screening applicant. This qualification is consistent with the existing limitation in current section 93AA.

New section 103R (Permitted use of transcript of recorded statement by employment-screening applicant or applicant's lawyer) applies if an employment screening applicant is given a written summary of a transcript of a recorded statement because an employment screening decision has been, or is proposed to be, made about the person.

Subsection (2) provides that the applicant may possess the summary. Subsection (2) also provides that the applicant may supply, or offer to supply, the summary to an Australian lawyer to obtain legal advice in relation to an employment-screening decision, or copy (or permit another person to copy) the summary for this purpose. Subsection (3) allows a lawyer to possess or copy the summary for the purposes or providing legal advice to the employment-screening applicant in relation to the employment-screening decision.

New section 103S (Publishing a recorded statements or transcripts of recorded statements prohibited) creates an offence for publishing all or part of a recorded statement, or a transcript of a recorded statement. A person must not publish (as defined in the section) all or part of a recorded statement or a transcript of a recorded statement unless the publication is approved by the court presiding at the domestic violence proceeding at which the recorded statement is presented and complies with any condition attached to the court's approval, which, under subsection (2), may only be given in exceptional circumstances. The maximum penalty for the offence is 100 penalty units or 2 years imprisonment for an individual, or 1,000 penalty units for a corporation.

Clause 38 inserts new division 12 (Evidence and Other Legislation Amendment Act 2021) into part 9.

New section 157 (Journalist privilege) provides the transitional arrangements for new part 2, division 2B (Journalist privilege). The new division 2B applies in relation to information given to a journalist before or after the commencement of the new division. The provisions in subdivision 2 (Relevant proceedings) apply in relation to relevant proceedings only if the proceeding starts on or after the commencement of the new subdivision. The provisions in subdivision 3 (Search warrants) apply in relation to a warrant mentioned in section 14ZC only if the warrant is issued on or after the commencement of the new subdivision.

New section 158 (Domestic violence proceedings) provides that new Part 6A only applies in relation to a domestic violence proceeding if the originating step (as defined in the section) for the proceeding is taken on or after the commencement, irrespective of whether the act or omission constituting the domestic violence offence happened, or the recorded statement was made, before the commencement. This means new Part 6A will not apply to proceedings which are already on foot at commencement. However, a recorded statement taken prior to commencement may be used in a domestic violence proceeding started after commencement but must still comply with the admissibly and other requirements under the Bill.

Clause 39 amends the dictionary in schedule 3 of the Evidence Act to insert definitions for 'Australian lawyer', 'authorised officer', 'civil proceeding arising from the commission of a relevant offence', 'complainant', 'disclosure requirement', 'domestic violence offence', 'domestic violence proceeding', 'employment-screening Act', 'employment-screening applicant', 'employment-screening decision', 'informant', 'journalist', 'jurisdiction', 'news medium', 'parentage order relationship', 'prescribed relationship', 'provided information', 'recorded statement', 'relevant person', 'section 93A criminal statement', 'section 93A transcript', and 'step relationship'. The provision also amends the definitions of 'lawfully edited copy' and 'relevant proceeding'.

Part 7 Amendment of Justices Act 1886

Clause 40 provides that part 7 amends the Justices Act.

Clause 41 amends section 83A (Direction hearing) by inserting a new paragraph (i) into subsection (5) to include matters relating to new Part 6A of the Evidence Act.

Clause 42 amends section 154 (Copies of record), consequential to the relocation of the definition of a section 93AA criminal statement to schedule 3, and to insert a new paragraph (d) into subsection (3) to include a recorded statement under new section 103A of the Evidence Act.

Part 8 Amendment of Magistrates Act 1991

Clause 43 provides that part 8 amends the Magistrates Act.

Clause 44 amends section 21 (Transfer policy) to amend the definition 'regional Queensland' by removing Toowoomba from the list of places outside of which mean regional Queensland.

Clause 45 inserts new division 10 (Transitional provision for Evidence and Other Legislation Amendment Act 2021) in part 10 which includes a transitional provision (new section 73) for the amendment to section 21 in clause 44.

Part 9 Amendment of Working with Children (Risk Management and Screening) Act 2000

Clause 46 provides that part 9 amends the Working with Children Act.

Clause 47 amends section 311 (Chief executive may ask police commissioner for information) by amending subsection (3) to insert a new paragraph (c), which applies where there is police information about a person, to include reference to a transcript of a recorded statement. This amendment is to ensure that the chief executive may ask the police commissioner for a transcript of a recorded statement relating to an offence mentioned in the police information to inform employment-screening decisions under the Working with Children Act.

Clause 48 amends section 318 (Obtaining information from director of public prosecutions) by amending the definition of 'evidentiary material' in subsection (9)(d), to also refer to a transcript of a recorded statement.

Clause 49 amends section 344 (Giving information to chief executive (disability services)) to insert a new paragraph in subsection (3) which refers to information related to police information about a person including a section 93A transcript and a transcript of a recorded statement.

Clause 50 amends section 384 (Confidentiality of protected information) to ensure that the ability of a person to disclose or give access to protected information for the purpose of obtaining advice for, or giving advice to the Minister does not extend to disclosing or giving access to a section 93A transcript or a transcript of a recorded statement.

Clause 51 amends Schedule 7 (Dictionary) to insert a definition of 'recorded statement' consequential to the amendments in the Evidence Act in the Bill and to amend the existing definition of section 93A transcript.

Part 10 Acts amended

Clause 52 provides that schedule 1 amends the Acts it mentions.

Schedule 1 Acts amended

Part 1 Amendments commencing on assent

Part 1 of Schedule 1 of the Bill makes minor amendments to legislation listed in the schedule, including to address incorrect cross-references and convert references from 'commissioner of the police service' to 'police commissioner' and 'editor's note' to 'note', in line with current drafting practice.

Part 2 Amendments commencing on proclamation

Part 2 of Schedule 1 makes consequential amendments to include references to the new section 103Q of the Evidence Act inserted by the Bill.