Parliamentary Committees

Justice and Other Legislation Amendment Bill 2013

Report No. 39

Legal Affairs and Community Safety Committee

August 2013

Legal Affairs and Community Safety Committee

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Acknowledgements

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Abbreviations

Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
Bill	Justice and Other Legislation Amendment Bill 2013
Committee	Legal Affairs and Community Safety Committee
Department	Department of Justice and Attorney-General
lapsed Bill	Law Reform Amendment Bill 2011
QAILS	Queensland Association of Independent Legal Services Inc.
QLS	Queensland Law Society
SCAG	Standing Committee of Attorneys-General

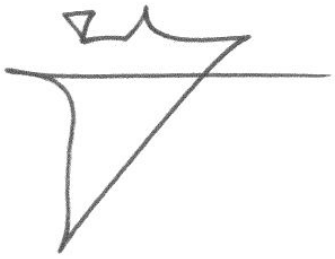
Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's (Committee) examination of the Justice and Other Legislation Amendment Bill 2013 (Bill).

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

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Committee's Secretariat and the Department of Justice and Attorney-General.

I commend this Report to the House.



Ian Berry MP

Chair

Recommendations

The Committee recommends the Justice and Other Legislation Amendment Bill 2013 be passed.

The Committee recommends the Attorney-General and Minister for Justice give further consideration to including an Editor's Note or example with the amendments to the *Domestic and Family Violence Protection Act 2012* to improve the clarity of how the processes relating to temporary protection orders are to operate.

The Committee recommends an additional provision be included in the Bill to amend the *Legal Profession Act 2007* to provide the Queensland Law Society with discretion as to whether it reports a matter under section 706(2) of that Act.

The Committee recommends that prior to the development of the Domestic and Family Violence Protection Rules further consultation takes place with stakeholders, such as the Queensland Law Society, to ensure the new rules operate as intended, without inconsistency.

The Committee recommends the Attorney-General and Minister for Justice consult further with Queensland Association of Independent Legal Services Inc. and other community legal service organisations, prior to the second reading debate of the Bill, to ensure that the proposed definition of 'community legal service' in the *Personal Injuries Proceedings Act 2002* is workable and includes all organisations that it is intended to include.

The Committee recommends Clause 146 of the Bill be amended to include applications or referrals made under the *Child Protection Act 1999* in the list of exceptions contained in section 46(2) of the *Queensland Civil and Administrative Tribunal Act 2009.*

The Committee recommends clause 150 of the Bill, which inserts a new section 122(4) into the *Queensland Civil and Administrative Tribunal Act 2009* - be amended to omit sections 51, 57 and 62(1) from the list of sections with which a request for written reasons is not required to be complied.

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Justice and Other Legislation Amendment Bill 2013 (Bill) was introduced into the Legislative Assembly and referred to the Committee on 5 June 2013. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 12 August 2013.

1.2 Inquiry process

On 7 June 2013, the Committee wrote to the Department of Justice and Attorney-General (Department) seeking advice on the Bill. The Committee also invited stakeholders and subscribers to lodge written submissions on the Bill.

The Committee received written advice from the Department and received 11 submissions (see **Appendix A**). The Department provided its response to the matters raised in submissions.

The Committee determined that it would not hold a public hearing in relation to the Bill.

1.3 Policy objectives of the Justice and Other Legislation Amendment Bill 2013

The objective of the Bill is to make miscellaneous amendments to over 30 Acts administered by the Attorney-General and Minister for Justice (Attorney-General), including to:

- improve provisions concerning the operation of various commission, court, tribunal and registry processes;
- implement model provisions to allow for accession to international conventions;
- implement red tape reduction measures concerning boards and mechanisms for appointments;
- improve the safety of people who suffer or fear domestic violence;

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

- clarify that the Information Commissioner may publish the name of declared vexatious applicants; and
- update or clarify definitions and references or make technical amendments.[2]

A number of the amendments in the Bill were contained in the Law Reform Amendment Bill 2011 (the lapsed Bill), which was introduced by the previous government and lapsed on the dissolution of the 53rd Parliament in February 2012.

Where relevant, the Committee has referred to the provisions of the lapsed Bill throughout this Report.

1.4 Consultation on the Bill

Due to the array of Acts being amended by the Bill, and the manner in which the development of the various amendments have been progressed, consultation on the Bill has varied.

The Explanatory Notes reveal that many of the amendments contained in the Bill were '*exposed to the public through the introduction of the lapsed Law Reform Amendment Bill 2011'.*[3] The Committee has had the benefit of being able to access the public submissions provided to the former committee in relation to the lapsed Bill.

Consultation on the amendments to the uniform electronic transactions legislation, and the accession to international conventions on international wills, was through the former Standing Committee of Attorneys-General (SCAG). In relation to the amendments on international wills, the Queensland Law Society (QLS), the Bar Association of Queensland and the Public Trustee were also consulted.[4]

Other targeted consultation on amendments in the Bill occurred as follows:

- the QLS was consulted on the amendments to the *Legal Profession Act 2007*;
- the QLS, the Queensland Association of Independent Legal Services and the Aboriginal and Torres Strait Islander Legal Service were consulted on the definition of 'community legal service' proposed to be inserted in the *Personal Injuries Proceeding Act 2002*;
- the Queensland Justices Association was consulted on proposed amendments to uncommenced amendments to the *Justices of the Peace and Commissioners for Declarations Act 1991*;
- the relevant heads of jurisdiction were consulted on the various amendments to court and tribunal legislation; and
- the Adult Guardian, the State Coroner, the Anti-Discrimination Commission Queensland, and the Office of the Information Commissioner were consulted on amendments relevant to their respective areas of operation.[5]

2 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 1.
3 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 6.
4 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 6.
5 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 6.

1.5 Should the Bill be passed?

Standing order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed. The Bill makes a number of practical amendments to improve processes and clarify other matters across the justice portfolio.

After examination of the Bill, including the policy objectives which it will achieve and consideration of the information provided by the Department and from submissions, the Committee has no hesitation in recommending that this Bill be passed.

Recommendation 1

The Committee recommends the Justice and Other Legislation Amendment Bill 2013 be passed.

2. Examination of the Justice and Other Legislation Amendment Bill 2013

This section discusses issues raised during the Committee's examination of the Bill. Each piece of legislation amended by the Bill has been considered in the order appearing in the Bill.

2.1 *Aboriginal and Torres Strait Islander Land Holding Act 2013*

The amendments to the *Aboriginal and Torres Strait Islander Land Holding Act 2013* are consequential to the amendments being made to the *Land Court Act 2000* also proposed in this Bill.

Clause 4 of the Bill effectively removes section 139 (Amendment of section 32J (Land Court has power of the Supreme Court for particular purposes)) from the *Aboriginal and Torres Strait Islander Land Holding Act 2013*. Section 139 has not yet commenced and will be made redundant by the changes being made to the *Land Court Act 2000* proposed by this Bill.[6]

The Committee supports the proposed amendment which is necessary to reflect changes being made to the *Land Court Act 2000*. The Committee discusses issues related to the amendment of the *Land Court Act 2000* later in this report.

2.2 *Acts Interpretation Act 1954*

The Bill amends the *Acts Interpretation Act 1954* replacing the current definition of 'lawyer' to reflect its meaning in the *Legal Profession Act 2007*. This will clarify that '*the term 'lawyer' refers to a person admitted to the legal profession but does not require the holding of a practising certificate*.'[7]

The Committee has not identified any issues associated with this amendment and considers that it will improve the consistency of the definition of lawyer across all Acts.

The Committee notes however that the placement of the definition, as set out in the Bill,[8] is made in anticipation of changes proposed in the Treasury and Trade and Other Legislation Amendment Bill 2013.[9] The Bill amends the definition of 'lawyer' as it appears in Schedule 1 of the *Acts Interpretation Act 1954.* At the time the Bill was introduced and indeed at the time of tabling this Report, the *Acts Interpretation Act 1954* does not contain a Schedule 1.

Advice received from the Department is that the changes in the Bill will be timed to commence after the Treasury and Trade and Other Legislation Amendment Bill 2013 has taken effect. In theory, this should operate as intended, provided there is no incident with the passage of the other Bill. The Explanatory Notes do not contain any explanation as to why the amendments have been drafted in this manner or that the amendment is contingent on another Bill passing through the House.

Further comment on this aspect of the Bill appears in part 3 of this Report under Fundamental Legislative Principles.

6 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 8.

7 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 1.

8 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 8, which provides for the amendment of Schedule 1 of the *Acts Interpretation Act 1954*. The definition is currently located in section 36 of that Act.

9 Treasury and Trade and Other Legislation Amendment Bill 2013, clauses 49(3) and (4) and clause 56.

2.3 *Anti-Discrimination Act 1991*

As explained by the Attorney-General in his introductory speech, '*the bill amends the* Anti-Discrimination Act 1991 *to expand the grounds on which the Anti-Discrimination Commission Queensland may reject or lapse a complaint and to allow for a 28-day cooling-off period when complainants give notice that they wish to withdraw a complaint*.'[10]

The bulk of the amendments to the *Anti-Discrimination Act 1991* were contained in the lapsed Bill.

Under clause 8 of the Bill, the grounds on which the Anti-Discrimination Commissioner may reject or stay a complaint have been expanded to include circumstances where the Commissioner is of the reasonable opinion that the subject of the complaint may be more effectively or conveniently dealt with by another entity, or has already been adequately dealt with by another entity.

Clause 11 of the Bill contains the steps required to be taken by the Commissioner in these circumstances, including providing the complainant with a 'show cause notice' and other due processes.

Where a complaint lapses for being frivolous etc., the Bill will amend the Act to provide that a complainant cannot make a further complaint relating to the act or omission that was the subject of the complaint.[11] The Explanatory Notes detail this amendment achieves consistency with other sections of the Act which provide for the lapsing of a complaint in certain circumstances.[12] Also for consistency, the Bill will provide for written notice to be given to a complainant where the Commissioner is of the opinion that a complaint will lapse for being frivolous etc., or because the complainant loses interest.[13]

A complaint may also be withdrawn by a complainant. Clause 13 of the Bill will replace the existing section 170 of the Act to provide that, when a complainant gives notice to the Commissioner that they do not want to continue a complaint, a 28 day 'cooling off' period will commence, during which time they may give notice that they intend to continue with the complaint.[14] If, at the end of the 28 day period, no notice has been given, the complaint will lapse and the complainant will be unable to make a further complaint relating to the same act or omission.

The Bill also contains some transitional arrangements in relation to the amendments. The effect of these provisions is as follows:

- if before commencement, a complaint made to the Commissioner has not been accepted, rejected or stayed, the amended provisions will apply;
- if before commencement, a complaint has been accepted and lapsed, the complainant cannot make a further complaint in relation to the act or omission the subject of the complaint;
- if before commencement, a complaint has been accepted but not finally dealt with or referred to the tribunal, the amended provisions apply.[15]

10 *Record of Proceedings (Hansard)*, 5 June 2013, page 1944.
11 Justice and Other Legislation Amendment Bill 2013, clause 10.
12 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 8.
13 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, clauses 10 and 12; page 9.
14 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, clauses 10 and 12; page 9.
15 Justice and Other Legislation Amendment Bill 2013, clause 14.

Only the submission from the QLS raised issues with some of the changes proposed to the *Anti-Discrimination Act 1991.* Issues raised with the Committee included:

- requiring the Commissioner to invite the applicant to make submissions before a decision is made to reject a complaint dealt with elsewhere (proposed section 140(1)(b)); and
- providing for other due processes in circumstances where a complaint lapses, such as obliging the Commissioner to provide reasons, ability to extend timeframes and appeal mechanisms (sections 168, 168A, 169 and 170).[16]

In relation to the suggestions made by the QLS regarding the proposed amendments to section 140 of the Anti-*Discrimination Act 1991,* the Department stated:

> *The proposed new grounds for rejection or staying of a complaint are similar to the grounds for declining or discontinuing dispute resolution processes in other jurisdictions including under the Australian Human Rights Commission Act 1986 (Cth), the Equal Opportunity Act 2010 (Vic) and the Anti-Discrimination Act 1998 (Tas). The Fair Work Act 2009 (Cth) also contains anti-double dipping provisions which prohibit employees from taking multiple actions in relation to their dismissal i.e. an employee has to choose whether to claim unfair dismissal before Fair Work Australia or claim their termination was unlawfully discriminatory under State-based anti-discrimination legislation but cannot take both actions.*
>
> *The new grounds are discretionary and the Commissioner would consider a range of relevant factors in making a decision, including the availability of comparable remedies.*
>
> *The amendments creating new grounds for rejection do not change the current framework for decision making and will be applied consistently with the current framework.*
>
> *Like all administrative decision makers, the Anti-Discrimination Commission Queensland (ADCQ) must observe the principles of natural justice in carrying out its functions under the Anti-Discrimination Act 1991 (the Act). If the Commissioner is making a decision against the interests of a complainant it is the ADCQ practice, in the normal course of events, to seek submissions from the complainant although there is no express statutory requirement to do so.*
>
> *It should also be noted that decisions of the Commissioner to reject a complaint are subject to judicial review.*[17]

With specific reference to the QLS's comments regarding the insertion of new section 168A(4), the Department outlined:

> *[New] Section 168A is generally consistent with the scheme of sections 168 and 169 which deal with other grounds for lapsing of complaints. Section 168A requires that the commissioner "reasonably consider" that the act or omission has adequately been dealt with by another entity or may effectively or conveniently be dealt with by another entity before issuing a "show cause" notice. i.e. the commissioner cannot arbitrarily issue a show cause notice but must turn his or her mind to a range of relevant factors before forming the view that the act or omission has adequately been dealt with by another entity or may effectively or conveniently be dealt with by another entity.*

[16] Queensland Law Society, Submission No. 9, pages 1-2.

[17] Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, pages 5-6.

> *As noted above, like all administrative decision makers the ADCQ must observe the principles of natural justice in carrying out its functions under the Act. It is standard practice of the commissioner to provide reasons to a complainant for a decision to lapse a complaint.*
>
> *Existing section 172 in the Act allows the Commissioner to extend a time limit specified in Part 1 for the doing of anything if the commissioner is of the reasonable opinion that the extension will not cause undue hardship to any party and there are reasonable grounds for granting the extension. This would apply to the time limits under new section 168A.*
>
> *The Act provides appropriate rights of review in that a complainant can seek judicial review of a Commissioner's decision to lapse a complaint.* [18]

The Committee is satisfied with the Department's response to the issues raised and does not consider that any amendment is required to the provisions in the Bill amending the *Anti-Discrimination Act 1991*. The Committee is satisfied that an applicant may still request reasons for decision to reject a complaint, such process being consistent with the existing provisions where the Commissioner makes a decision to reject or stay a complaint elsewhere in the Act.

The Act currently contains sufficient rights of review and does not consider that the Bill requires any further amendment in this regard.

2.4 *Appeal Costs Fund Act 1973* and Appeal Costs Fund Regulation 2010

The amendments to the *Appeal Costs Fund Act 1973* largely relate to matters of staffing and remuneration of staff of the Appeal Costs Board – the entity responsible for administering the Appeal Costs Fund.

In his introductory speech, the Attorney-General stated the Bill will '*simplify appointment arrangements for the Secretary to the Appeal Costs Board*'.[19] Currently, the Secretary of the Appeal Costs Board (and other officers of the Board) are appointed by the Governor in Council and paid such fees and allowances as are prescribed from time to time.[20] The Bill achieves this objective by providing that the Secretary and any other staff of the Board are employed under the *Public Service Act 2008* and that the prescription of fees and allowances applies to Board members only.[21]

The Bill also clarifies that the costs of staff are to be met out of the Appeal Costs Fund.[22]

A consequential change, reflecting the relocation of a sub-section in the *Appeal Costs Fund Act 1973* proposed in the Bill, is made to the Appeal Costs Fund Regulation 2010.

No issues were raised in submissions relating to this aspect of the Bill and the Committee is satisfied with the proposed amendments.

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18 Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, pages 6-7.

19 *Record of Proceedings (Hansard)*, 5 June 2013, page 1945.

20 *Appeal Costs Fund Act 1973*, section 9.

21 Justice and Other Legislation Amendment Bill 2013, clauses 17 and 18.

22 Justice and Other Legislation Amendment Bill 2013, clause 16.

2.5 *Births, Deaths and Marriages Registration Act 2003*

The Bill amends the *Births, Deaths and Marriages Registration Act 2003* to '*simplify appointment arrangements for the registrar and deputy registrar*.'[23] This is achieved by removing the requirement for the appointment of the registrar and deputy registrar by the Governor in Council and specifying that those appointments are made under the *Public Service Act 2008*.[24]

This is similar to the lapsed Bill which removed the requirement for these appointments to be made by Governor in Council, stipulating instead that they were to be made by the chief executive.

The Bill also includes a transitional provision to clarify that persons holding office as the registrar or deputy registrar before commencement continue in those positions.[25]

No issues were raised in submissions relating to this aspect of the Bill and the Committee is satisfied with the proposed amendments.

2.6 *Child Employment Act 2006* and Child Employment Regulation 2006

The Bill amends the *Child Employment Act 2006* and Child Employment Regulation 2006 '*to prohibit the employment of minors in the unregulated live adult entertainment industry.*'[26] This is primarily achieved through the insertion of section 8C (prohibition on inappropriate roles and situations). Section 8C incorporates existing section 12 of the Child Employment Regulation 2006 (prohibitions on inappropriate roles and situations) with amendments. The operation of proposed section 8C is described in the Explanatory Notes:

> *Clause 28 inserts a new section 8C (Prohibition on inappropriate roles and situations) which makes it an offence for an employer to require or permit a child to work in an inappropriate role or situation. The provision prohibits persons aged under 18 years from engaging in work concerned with inappropriate adult entertainment type activities. The provision will complement current Liquor Act 1992 and Criminal Code provisions concerning children working in licensed premises. The provision maintains its original application concerning roles and situations in the general entertainment industry (such as theatrical and recorded performances and in advertising).*[27]

Consequential changes are also made to the Child Employment Regulation 2006.[28]

The need for these changes was explained by the Department:

> *The adult entertainment industry is regulated by the Adult Entertainment Permit system established under the Liquor Act 1992. The Bill proposes amendments to the child employment legislation to protect children aged 16 and 17 years employed in the unregulated adult entertainment industry. Unregulated live adult entertainment in venues not covered by the Liquor Act 1992 operates with fewer restrictions.*
>
> *The Criminal Code which criminalises child sexual offending in the unregulated adult entertainment industry does not extend to the protection of children who are over the age of consent (16 years). The Crime and Misconduct Commission (CMC) in its 2004 report*

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23 *Record of Proceedings (Hansard)*, 5 June 2013, page 1945.

24 Justice and Other Legislation Amendment Bill 2013, clauses 23 and 24.

25 Justice and Other Legislation Amendment Bill 2013, clause 25; *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 10.

26 *Record of Proceedings (Hansard)*, 5 June 2013, page 1945.

27 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 11.

28 Justice and Other Legislation Amendment Bill 2013, clauses 31-32.

> *Regulating Adult Entertainment - A review of the Live Adult Entertainment Industry in Queensland, identified this gap and recommended regulatory reform.*
>
> *It is therefore proposed to amend the Child Employment Act 2006 to insert a new section which prohibits an employer from requiring or permitting a child to work in a role or situation that is inappropriate for the child, which includes prohibiting exposure of the child to adult entertainment type activities in the course of their employment and prohibiting exposure to situations where a child is likely to be distressed or embarrassed.*[29]

The amendments are identical to those proposed in the lapsed Bill and no issues were raised in submissions relating to this aspect of the Bill. The Committee is satisfied with the proposed amendments.

2.7 *Civil Proceedings Act 2011*

The Bill amends an uncommenced provision of the *Justices of the Peace and Commissioners for Declarations Act 1991* (currently contained in the *Civil Proceedings Act 2011*), removing the right of Justices of the Peace and Commissioners for Declarations to take copies of personal identification information although they will still be permitted to record all or part of that information.[30]

As explained by the Department, this amendment:

> *… responds to privacy and information security concerns raised during consideration of the Civil Proceedings Bill 2011*[31] *by the then Legal Affairs, Police, Corrective Services and Emergency Services Committee in relation to the secure, indefinite storage of the copies. Similar concerns were raised by the Queensland Justices Association and other individual JPs. It is proposed to instead allow all or part of identity information to be recorded, for example, the last numbers of a passport or driver licence.*[32]

The Committee considers the amendment to be a simple and sensible restriction in the process undertaken by Justices of the Peace (JPs) without hindering the services provided by JPs in the community. The Committee is therefore satisfied with the proposed amendments.

2.8 *Coroners Act 2003*

The amendments to the *Coroners Act 2003* are contained in clauses 35—42 of the Bill and mostly relate to matters of access. These amendments were explained by the Attorney-General:

> *The Coroners Act 2003 is amended to authorise the publication of inquest and investigation findings and inquest comments. The amendments to the Coroners Act will also allow Coroners to make appropriate orders concerning access to exhibits, broaden the grounds for access to investigation documents where in the public interest, and allow Coroners to take a urine sample regardless of the type of autopsy ordered.*[33]

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29 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 2.

30 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 11.

31 Legal Affairs, Police, Corrective Services and Emergency Services, Report No. 8, *Civil Proceedings Bill 2011*, page 27.

32 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, pages 2-3.

33 *Record of Proceedings (Hansard)*, 5 June 2013, page 1944.

Regarding publication, the amendments in the Bill will permit the publication of the coroner's inquest findings (including coroner's comments); and the coroner's investigation findings.[34] These changes were supported by the QLS,[35] although that body also raised issues with other proposed amendments to the *Coroners Act 2003* which are discussed in more detail below.

The proposed amendments will also require coroners to publish on the State Coroner's website the inquest findings and coroner's comments – unless the coroner orders otherwise. The Department advised it is currently standard practice for the Office of the State Coroner to publish inquest findings on the internet, however there is currently no provision in the Act that expressly provides for this.[36] The Committee questioned the operation of this proposed section to the extent that it provides the coroner with discretion to not publish matters, even though that section is prefaced with the word 'must'.

The Department responded:

> *The effect of section 46A is to establish a standard practice that will apply unless the coroner makes a specific order to the contrary. If the coroner does not make such an order, the effect of the section will be to operate as a standing order for publication of inquest findings and comments.*[37]

The Committee is satisfied with this explanation and accepts this provision will facilitate the intended standard practice.

Where a coroner has investigated a death, but did not hold an inquest, the coroner's findings can still be published, but only if the coroner considers the publication is in the public interest and to the extent practicable, has consulted with and had regard to the views of a family member of the deceased person. It is considered that '*publication is of benefit for death prevention, public awareness, to correct public misinformation and to inform clinicians and medical colleges*.'[38]

The amendments in the Bill will also extend the basis upon which access may be granted to investigation documents (section 54) and creates a new section dealing with access to the 'physical evidence exhibit', tendered at a coroner's inquest (proposed section 62A).[39]

In addition to granting access to persons who the coroner is satisfied has a sufficient interest in a document, the Bill will enable the coroner to give access to investigation documents under section 54 of the Act where access is considered to be in the public interest and to the extent practicable, the coroner has consulted with and had regard to the views of a family member of the deceased person.

Clause 42 will insert a new section 62A into the *Coroners Act 2003* that allows a person, other than the owner, to access a physical evidence exhibit with the consent of the coroner. For consistency, this new provision has similar criteria to that which applies to access to investigation documents and also permits access by a police officer, or person authorised by a police officer – again consistent with section 54.

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34 Justice and Other Legislation Amendment Bill 2013, clause 38.

35 Queensland Law Society, Submission No. 9, page 2.

36 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 3.

37 Letter from the Department of Justice and Attorney-General, 5 July 2013, page 1.

38 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 3.

39 Justice and Other Legislation Amendment Bill 2013, clauses 40 and 42.

The access changes were further explained by the Department:

> *Currently, there are no express provisions of the Act about access to exhibits and there is a risk that coroners may be allowing full public access to exhibits, even though some exhibits may contain highly sensitive and confidential information. The proposed amendments create a presumption against access unless the relevant criteria are satisfied.*[40]

In its submission, the QLS suggested that existing sections 55 and 56 of the *Coroners Act 2003* should also apply to new section 62A (access to physical evidence exhibit) enabling the coroner to also impose conditions on access and to refuse access if disclosure would not in the public interest.[41] The QLS also considered this new section should be subject to other access restrictions which also apply to investigation documents - specifically those outlined in section 52 of the Act, for example, where the physical evidence exhibit is subject to legal professional privilege, or where it contains information that is likely to prevent a person from receiving a fair trial.[42]

The Department responded to the concerns of the QLS as follows:

> *The purpose of section 62A is ensure a consistent approach to the provision of access to physical evidence exhibits and to clarify that the coroner can provide access to these exhibits if the coroner considers access is in the public interest.*
>
> *This is consistent with the amendment to section 54 which allows the coroner to provide access to investigation documents if the coroner considers access is in the public interest.*
>
> *Because the purpose of section 62A is to expressly provide that access to physical evidence exhibits can be given in the public interest, it is not logical to include a provision similar to section 56 to provide that access can be refused in the public interest.*
>
> *The definition of 'physical evidence exhibit' combined with the broad definition of 'investigation document' means that the access regime in section 62A will only apply to non-documentary exhibits tendered at an inquest – for example a hand gun, a scuba tank.*
>
> *The exceptions in section 52 would not be relevant to these exhibits.*[43]

The Committee accepts the Department's explanation and therefore does not recommend any amendment in this regard.

In relation to the amendment permitting a doctor to take a urine sample, the Department explained that the '*extension of this power to the taking of urine samples will allow coroners access to the full range of test results for their investigations as some substances can only be detected in urine. The procedure for taking urine samples is not more invasive than the procedure for taking blood samples*.'[44]

The Committee is satisfied with the proposed amendments.

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40 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 3.

41 Queensland Law Society, Submission No. 9, page 3.

42 Queensland Law Society, Submission No. 9, page 3.

43 Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, pages 7-8.

44 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 3.

2.9 *Criminal Law (Rehabilitation of Offenders) Act 1986*

The Bill amends the *Criminal Law (Rehabilitation of Offenders) Act 1986* '*to exempt certain court, departmental and private sector staff from compliance with some disclosure restrictions so as to enable them to properly carry out their duties*.'[45] That Act prohibits certain criminal convictions from being disclosed after a specified period of time, other than in limited circumstances.[46]

This is further explained in the Explanatory Notes:

> *Clause 44 amends section 7 (Section 6 not applicable in certain cases) to exempt persons who in the course of performing their official duties are required to make disclosures as part of giving access to, or a copy of, a record under a provision of an Act.*[47]

No issues were raised in submissions relating to this aspect of the Bill and the Committee is satisfied with the proposed amendments.

2.10 *Dispute Resolution Centres Act 1990*

The Bill abolishes the Dispute Resolution Centres Council[48] and provides for the continuation of secrecy obligations on (former) members.[49] The Department advised that the Council last met on 28 March 2008.[50]

According to the Department's website:

> *The Dispute Resolution Centres Council was established to provide advice to the minister on dispute resolution generally, and the provision of mediation services by the Dispute Resolution Branch (DRB).*
>
> *The council was established as an advisory council and conducts its business in accordance with the Dispute Resolution Centres Act 1990. The council meets for the purpose of discussing and advising on the activities of DRB and has provided advice to the minister. Information provided by the council, in almost all situations, is gathered and presented to the council by DRB.*
>
> *In 2009, recommendation 127 of the Independent Review of Government Boards, Committees and Statutory Bodies promoted abolition of the council, transfer of the function back into the department, and consequential amendments to the Act. The department is currently facilitating the changes to bring this about in 2009–10.*[51]

Similar amendments were proposed in the lapsed Bill to give effect to the recommendation of the Independent Review of Government Boards, Committees and Statutory Bodies.

No issues were raised in submissions relating to this aspect of the Bill and the Committee is satisfied with the proposed amendments. The Committee also notes the Bill also makes a minor amendment to the *Retirement Villages Act 1999* as a consequence of these amendments.

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45 *Record of Proceedings (Hansard)*, 5 June 2013, page 1944.

46 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 3.

47 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 12.

48 Justice and Other Legislation Amendment Bill 2013, clauses 46-56.

49 Justice and Other Legislation Amendment Bill 2013, clause 59.

50 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 3.

51 http://www.justice.qld.gov.au/corporate/general-publications/annual-report/08-09-jag-annual-report/appendices/appendix-1-dispute-resolution-centres-council-annual-report-2008-09 accessed July 2013.

2.11 *District Court of Queensland Act 1967*

The amendments to the *District Court of Queensland Act 1967* will '*facilitate the appointment of retired judges who have reached the age of 70 years but are less than 78 years - as acting judges and will amend section 113 to provide that the District Court, on appeal, has the same power as the Court of Appeal*.'[52]

The appointment of a retired District Court Judge will be made by the Governor in Council, on recommendation of the Attorney-General who is required to consult with the Chief Judge.[53] The provisions in relation to the appointment of acting judges to the District Court are similar to provisions in the Bill relating to the appointment of acting judges to the Supreme Court. These provisions are discussed generally later in this Report under the amendments to the *Supreme Court of Queensland Act 1991*.

The remaining amendments to the *District Court of Queensland Act 1967* are described in the Explanatory Notes as follows:

> *Clause 63 amends section 113 (Power of District Court on appeal from Magistrates Court) to remove an out-dated reference to the powers of the Supreme Court prior to the commencement of the District Courts Act 1958. The provision clarifies that the District Court has the same powers as the Court of Appeal, for an appeal from a Magistrates Court.*
>
> *Clause 64 inserts a transitional provision to continue the effect of existing section 113 (Power of District Court on appeal from Magistrates Court) for any current appeals.*[54]

Excluding the provisions relating to the appointment of acting Judges, no issues were raised in submissions relating to the amendments to the *District Court of Queensland Act 1967.* The provisions appropriately clarify the powers of the District Court, when it hears an appeal from the Magistrates Court and the Committee is satisfied with the amendments.

2.12 *Domestic and Family Violence Protection Act 2012*

One of the stated policy objectives in the Explanatory Notes is to '*improve the safety of people who suffer or fear domestic violence.*'[55] This is achieved by amending the *Domestic and Family Violence Protection Act 2012*. In that regard, the Bill intends to:

> *… provide that when a temporary protection order is made on an application to vary a domestic violence order, the existing domestic violence order is suspended until the variation application is finalised to ensure there is only one order in force and clarity as to the conditions the respondent must comply with.*[56]

In these circumstances, the temporary protection order may only be made if the court is satisfied it is necessary or desirable to protect the aggrieved, or another person named in the first domestic violence order.

The Bill also contains provisions on the way in which a respondent is to be informed about the temporary protection order and the revival of the first domestic violence order, which appear consistent with existing provisions in the Act.

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52 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 2.

53 Justice and Other Legislation Amendment Bill 2013, clause 62.

54 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 14.

55 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 1.

56 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 2.

Four of the eleven submissions received addressed this aspect of the Bill, all of them supporting the proposed amendments. In its submission, the Women's Legal Service stated:

> *[Women's Legal Service] supports clarity and any measures to improve the safety of people who suffer or fear domestic violence. In circumstances where a variation to an existing domestic violence order is made to include additional conditions of protection, we consider it crucial for the varied order to replace the previous order and to be enforceable as soon as possible. As the respondent being present/serviced/told about the varied order is required for the order to be enforceable, we support the inclusion of a wide range of means of communicating the conditions of the order to the respondent.*[57]

The QLS, while supporting this amendment suggested that for reasons of clarity, the Act be amended to include an '*editor's note or an example … that a temporary protection order may be varied (either by oral or written application) at any time*.'[58] The QLS referred to experience from its members that in practice, there appeared to be divergent practices as to whether a Magistrate would allow an application to vary a temporary protection order to be heard.[59]

In relation to this suggestion, the Department advised:

> *DJAG is of the view an editor's note is not required as it is clear from the Act that a temporary protection order can be varied at any time. It is anticipated that the Domestic and Family Violence Protection Rules which will be established under the head of power provided in clause 140 of the Bill will provide for when oral or written applications can be made.* [60]

The Committee notes the advice of the Department, however considers that the inclusion of a simple Editor's Note or example, as suggested by the QLS, may be of valuable assistance to legal practitioners who work in this area. Improving clarity, as to how the processes are intended to operate is consistent with the objectives of the amendment and the Committee considers this should be given further consideration by the Attorney-General.

Recommendation 2

The Committee recommends the Attorney-General and Minister for Justice give further consideration to including an Editor's Note or example with the amendments to the *Domestic and Family Violence Protection Act 2012* to improve the clarity of how the processes relating to temporary protection orders are to operate.

The Bill also includes an amendment concerning the application of various court rules to a proceeding or appeal under the Act:

> *Clause 67 amends section 142 of the Act and provides that the Domestic and Family Violence Protection Act Rules apply to all proceedings in a court under the Act. It provides that the Uniform Civil Procedure Rules 1999 apply to an appeal under the Act. It further provides that the Children's Court Rules 1997 and the Uniform Civil Procedure Rules 1999 do not apply to a proceeding under this Act.*[61]

57 Women's Legal Service Inc., Submission No. 3, pages 1-2.

58 Queensland Law Society, Submission No. 9, page 3.

59 Queensland Law Society, Submission No. 9, page 3.

60 Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, page 8.

61 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, pages 14-15.

The reason for the procedural changes was explained by the Department:

> *The Domestic and Family Violence Protection Act 2012 currently applies specific provisions of the Uniform Civil Procedure Rules 1999 to proceedings under the Act, but these are complex rules and are difficult for parties, the majority of whom are self-represented, to understand. Not all provisions of the Uniform Civil Procedure Rules 1999 apply resulting in confusion and uncertainty for parties, the courts and the registry. Stand-alone domestic and family violence protection rules will improve access to justice for parties and further promote the safety, protection and wellbeing of people who experience domestic violence.*[62]

This aspect of the Bill was also generally supported in submissions. Both the Women's Legal Service and the Immigrant Women's Support Service provided a number of suggestions to assist in the development of these rules.[63]

Apart from the suggested inclusion of an editor's note, the Committee is satisfied with the proposed amendments.

2.13 *Electronic Transactions (Queensland) Act 2001*

When the Bill was introduced, the Attorney-General explained the purpose of the amendments to the *Electronic Transactions (Queensland) Act 2001* as follows:

> *The Bill provides for the implementation of model provisions to allow for accession to international conventions. Amendments to the Electronic Transactions (Queensland) Act 2001 will provide a set of internationally accepted rules to remove legal obstacles and to provide a more secure environment for Queensland businesses using electronic communications in domestic and international trade.*[64]

The Bill will replace sections 23 (time of dispatch), 24 (time of receipt) and 25 (place of dispatch and receipt) of the Act, with noticeable changes.

Similarly, the Bill also introduces other significant changes with the insertion of a new chapter 2, part 4 – Additional provisions applying to contracts involving electronic communication. The Bill contains transitional arrangements in relation to the new part 4, providing that the new sections will apply to electronic communications, but not to contracts, occurring before commencement.[65]

The Department has confirmed that these amendments are based on the Model Bill agreed under by the former Standing Committee of Attorneys-General, and that the Commonwealth and each of the other States and Territories in Australia have already enacted similar provisions.[66]

The Model Bill enacts the United Nations Convention on the Use of Electronic Communications in International Contracts (the Convention). It is considered that implementation of this Convention will:

> *a) modernise Australia's laws on electronic commerce to reflect internationally recognised legal standards and enhance cross-border online commerce;*

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62 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 4.

63 Women's Legal Service Inc., Submission No. 3, pages 2-5; Immigrant Women's Support Service, Submission No. 10.

64 *Record of Proceedings (Hansard)*, 5 June 2013, page 1944.

65 Justice and Other Legislation Amendment Bill 2013, clause 76.

66 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, pages 4-5.

b) increase certainty for international trade by electronic means and thereby encourage further growth of electronic contracting; and

c) confirm Australia's commitment to facilitating electronic communications in international trade transactions, as reflected in Free Trade Agreements.[67]

No issues were raised in submissions relating to this aspect of the Bill and the Committee is satisfied the proposed amendments are required for consistency with other jurisdictions.

2.14 *Evidence Act 1977*

The Bill amends section 7 of the *Evidence Act 1977* to clarify that parties, or spouses of parties are competent and compellable in all non-criminal proceedings, whether or not both or either of them is a party to the proceedings.

A proceeding is defined to include an inquiry, reference or examination.[68]

This amendment was made in response to a Supreme Court decision which created some doubt about whether the current section applied to a hearing of the Crime and Misconduct Commission. This amendment will therefore clarify the intended operation of this section.[69]

The amendments are identical to those which were proposed in the lapsed bill and the Committee is satisfied with the amendments.

2.15 *Guardianship and Administration Act 2000*

The Bill amends the *Guardianship and Administration Act 2000* '*to allow the appointment of community visitors on a casual basis, and to simplify appointment arrangements for an acting Public Advocate*.'

This is achieved by permitting the appointment of an acting Public Advocate to be made by the Attorney-General rather than the Governor in Council, and amending section 231 of the Act to provide for the appointment of casual community visitors (in addition to full-time and part-time community visitors).[70]

These amendments are supported by the Office of the Adult Guardian.[71] In relation to the appointment of casual community visitors, Mr Kevin Martin, Adult Guardian made the following remarks:

> *Community Visitors play an essential role in protecting the fundamental human rights of individuals subject to intellectual disability or mental illnesses who are housed in community funded accommodation arrangements. This amendment will facilitate the appointment of people possessing unique skills to this vital role.*[72]

Amendments to the appointment of community visitors were also proposed in the lapsed Bill. No issues were raised in submissions on this aspect of the Bill and the Committee is satisfied with the proposed amendments.

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67 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 4.

68 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 2.

69 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 5. See *Callanan v Bush* [2004] QSC 088 at paragraph 9.

70 Justice and Other Legislation Amendment Bill 2013, clauses 82-83.

71 Office of the Adult Guardian, Submission No. 2.

72 Office of the Adult Guardian, Submission No. 2.

2.16 *Information Privacy Act 2009* and *Right to Information Act 2009*

The Bill clarifies that the Information Commissioner may publish the name of declared vexatious applicants together with the decision and reasons for that decision under the *Information Privacy Act 2009* and *Right to Information Act 2009*.

In addition, the Bill will also clarify that the Information Commissioner may publish the decision not to make a declaration and the reasons for that decision. No similar provision regarding the publication of the name in these circumstances has been included.[73] The Committee notes that the Queensland Courts have a long established process where a register of vexatious litigants is maintained and published on their website. It includes the names of individuals together with details of proceedings.[74]

This amendment realises a previous recommendation made by the Committee[75] arising out of its oversight responsibility of the Office of the Information Commissioner and is supported by the Committee and the Office of the Information Commissioner, who was consulted on the drafting of the clauses.[76]

The Committee has commented on the application of the fundamental legislative principles to this aspect of the Bill in Part 3 of this report.

2.17 *Judges (Pensions and Long Leave) Act 1957* and *Judicial Remuneration Act 2007*

The amendments to the *Judges (Pensions and Long Leave) Act 1957* and the *Judicial Remuneration Act 2007* are consequential to the amendments proposed in this Bill to facilitate the appointment of retired judges who have reached the age of 70 years but are less than 78 years as acting judges.

The changes to the *District Court of Queensland Act 1967* and the *Supreme Court of Queensland Act 1991* which are discussed in further detail elsewhere in this Report.

2.18 *Justices Act 1886*

The amendment to the *Justices Act 1886* is another example of the Government's commitment to reducing red tape. The amendments will allow the Attorney-General to delegate to the chief-executive (Director-General), a decision to release copies of records in certain proceedings and to allow for the sub-delegation of that decision.[77] Examples given are records pertaining to proceedings in the Children's Court, proceedings during which persons have been excluded from a court room and proceedings heard in closed court. It is considered this will streamline the process for granting access to relevant records in appropriate circumstances.[78]

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73 *Record of Proceedings (Hansard)*, 5 June 2013, page 1945; *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, pages 18 and 25; clauses 85 and 162.

74 http://www.courts.qld.gov.au/__data/assets/pdf_file/0006/93912/vexatious-proceedings-orders.pdf, accessed on 31 July 2013.

75 Legal Affairs and Community Safety Committee, Report No. 7, *Oversight of the Office of the Information Commissioner*, August 2012, pages 7-8.

76 Office of the Information Commissioner, Submission No. 1.

77 *Record of Proceedings (Hansard)*, 5 June 2013, page 1945; *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 2.

78 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, pages 5-6.

In addition, clause 96 of the Bill will amend section 104 of the Act (proceedings upon an examination of witnesses in relation to indictable offence) to reflect that the Director of Public Prosecutions is the prosecuting authority in a trial on indictment.[79] The Department has identified this as a minor amendment to update a reference.[80]

The amendment to section 154 of the Act which provides for delegation of Minister's powers to provide access to copies of records was also included in the lapsed Bill. However, the proposal to sub-delegate that power to 'an appropriately qualified officer or employee of the department' was not. This sub-delegation was raised as an issue by the QLS who suggested that further consideration should be given as to whether this is appropriate, having regard to the sensitive nature of the records in question.[81]

In response to the comments made by the QLS, the Department stated:

> *DJAG is conscious of the sensitivity of the records in question, and further consideration is being given to this matter.*[82]

The Committee notes that section 154 of the Act allows access to a considerable range of highly sensitive records in addition to those already outlined, amongst them records of proceedings where a court order is made prohibiting access to, or the disclosure or publication of, the record[83]; a part of a record that is an exhibit that the clerk of the court considers may risk a person's safety[84]; and records which contain confidential information.[85]

2.19 *Justices of the Peace and Commissioners for Declarations Act 1991*

The changes proposed to the *Justices of the Peace and Commissioners for Declarations Act 1991* will '*improve registry administration and allow the registrar to exempt appointees from gazettal*.'[86]

This was explained further by the Department as follows:

> *It is proposed to amend the Justices of the Peace and Commissioners for Declarations Act 1991 to ensure the registrar has access to the email addresses of JPs and C. decs and to provide that the register of JPs and C. decs may be kept electronically rather than in paper form. The register is distinct from the internet listing of JPs and C. decs that have provided their contact details for publication.*
>
> *Currently a person's name and home suburb are included in the Government Gazette on their appointment as a JP or C. dec. The registrar may withhold the contact details of a person from inspection if the registrar considers it necessary to protect the safety or wellbeing of the person (for example, a corrections officer) or a relative. It is proposed to extend this safeguard to providing exemption from gazettal of information.*[87]

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79 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 19.

80 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 6.

81 Queensland Law Society, Submission No. 9, page 4.

82 Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, page 9.

83 *Justices Act 1886*, section 154(2)(d)(i)

84 *Justices Act 1886*, section 154(2)(d)(ii)

85 *Justices Act 1886*, section 154(2)(d)(iii)

86 *Record of Proceedings (Hansard)*, 5 June 2013, page 1944.

87 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 6.

To achieve this, the Bill amends sections 3 (definition of 'contact details'), 13 (register of justices of the peace and commissioners for declarations), 21 (registration of justices of the peace and commissioners for declarations) and inserts new section 38 (access to register).

These amendments were also contained in the lapsed Bill.

No concerns about the proposed amendments were raised in any submissions. They are straightforward and designed to improve registry processes. The Committee supports the proposed amendments.

2.20 *Land Court Act 2000*

The Bill makes a number of amendments to the *Land Court Act 2000*, which are summarised in the Explanatory Notes as being for the following purposes:

- clarifying the jurisdiction of the Land Court;
- providing time limits on applications for rehearing of a judicial registrar's decision;
- providing that the Uniform Civil Procedure Rules 1999 will apply to record management procedures and policies in the Land Court to enable consistency of such procedures and policies within Queensland courts; and
- removing the requirement that the Land Court Registrar be appointed by the Governor in Council.[88]

Most of these amendments were contained in the lapsed Bill and as explained by the Department are included in the Bill to deal with concerns about the artificial distinction between the Land Court's power for exercising the jurisdiction of the former Land and Resources Tribunal versus the Court's other jurisdiction.[89]

The amendments will also allow parties to use the enforcement procedures in the Supreme Court for enforcing orders of the Land Court; achieve consistency with time limits for filing applications in the Court, and simplify court processes.

The amendments appear to be non-controversial in nature and will improve systems and procedures within the Land Court.

The Committee did however receive one submission which focussed particularly on clause 118 of the Bill.[90] That clause amends section 65 of the *Land Court Act 2000* to provide the court with discretion to extend the time limits for serving notice of appeals that are filed with the court. It was submitted that this amendment was sought by the Land Court to remedy an issue that occurred in a recent Land Court matter.[91]

The details of the alleged reasoning for the amendment are set out, in detail, in the submission from McCarthy Durie Lawyers. In summary, the issue relates to the actions required to be taken to comply with section 65 of the Act. That section states, inter alia:

> *1) A party intending to appeal against a decision of the Land Court must, within 42 days after the order containing the decision is made by the court,* ***serve notice of appeal*** *against the decision on—*

88 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, pages 2-3.

89 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 6.

90 McCarthy Durie Lawyers, Submission No. 11.

91 McCarthy Durie Lawyers, Submission No. 11, page 1.

a) all other parties to the proceeding on which the decision was made; and

b) the registrar of the Land Appeal Court.

The effect of this section is that in addition to filing the notice of appeal within the stipulated time period, it must also be served on all other parties to the proceeding within the same time period and not subsequently as is the case in many other court proceedings.

In the particular instance raised in the submission (the Hopes' matter), the notice of appeal was lodged in time but not served the other party until the following day, effectively after expiry of the time limit. The Land Appeal Court therefore struck out the appeal. The Committee understands a further appeal to the Queensland Court of Appeal was also unsuccessful, with the Court of Appeal finding that the subject provision was clear in its application and that the Land Appeal Court had no discretion to extend the period.[92]

The submission is seeking for the amendment to section 65 to be retrospective so as to rectify the issue that occurred in the Hopes' matter. It is stated the Hopes' matter is apparently the only case where the issue has been raised, so there is no question of a floodgates problem or unforeseen consequences for other court proceedings.[93]

The proposed new provision will clearly provide the Land Court with discretion to extend the period for serving a notice of appeal under section 65 of the subject Act. Should a similar situation arise in the future as occurred in the Hopes' matter, the Court may well exercise its discretion (it does not appear to be automatic) and allow an appeal to proceed.

The Office of the Queensland Parliamentary Council Notebook states that strong argument is required to justify retrospective legislation. Justification for retrospective legislation has, in the past, included clarification of an area of law that has been uncertain. That does not appear to be the situation in this case. There is no *error* or *fault* in the existing section and the amendment is not being made to remedy any such error or fault in the Act, it appears to be included in the Act to improve the operations and processes of the Court for future matters.

In this instance, while the law (as currently drafted) might be different to other processes for other courts, it is not unclear. It is certain, as determined by both the Land Appeal Court and the Queensland Court of Appeal. The Committee therefore does not consider that it would be appropriate for the Legislative Assembly to enact retrospective legislation with the intent of aiding a party, who had an adverse decision against them by the Court, due to their non-compliance with the provisions of an Act. It is not the role of the Parliament to enact retrospective legislation in the case where litigants and/or their legal advisors fail to properly comply with court processes.

The Committee therefore recommends no change to the amendments in the Bill relating to the *Land Court Act 2000*.

2.21 *Legal Aid Queensland Act 1997*

The Bill amends the *Legal Aid Queensland Act 1997* to clarify the nature of the contracting-out arrangements currently entered into by Legal Aid. In essence, the amendments replace the term 'Legal Aid Agent' in section 19(2) and the Schedule with 'Legal Aid service provider'. This is intended to '*properly characterise these arrangements',*[94] since the private legal practitioners are engaged as independent contractors and not agents.

92 Hope & Anor v Brisbane City Council [2013] QCA 198 (23 July 2013).

93 McCarthy Durie Lawyers, Submission No. 11, page 2.

94 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 7.

This is a minor technical change and not otherwise consequential as regards the operation of the existing Act. Schedule 1 to the Bill also makes consequential changes to the Act to reflect the terminology change.

The Committee supports the amendments.

2.22 *Legal Profession Act 2007*

The Bill amends section 662 of the *Legal Profession Act 2007* and inserts a new section 662A to enable legal practitioners employed by the QLS to provide legal support (on the proviso that it is a condition of their employment to do so) to the Legal Practitioners Admission Board, without adversely affecting the conditions of their practicing certificate.

The Committee sought further information from the Department in order to understand the need for and use of this amendment. The Department responded:

> *Under the Act, the Queensland Law Society (QLS) is required to provide administrative and secretariat support to the Legal Practitioners Admissions Board (the Board). The QLS employs a solicitor to perform a secretarial role, including representing the Board at admission hearings in the Supreme Court. The Secretary holds a practising certificate issued by the QLS which is subject to a condition imposed by section 353(2)(b) of the Act, requiring the certificate-holder not to engage in legal practice other than for providing in-house legal services. This is because they do not have professional indemnity insurance.*
>
> *The proposed amendments were made at the request of the QLS to overcome a possible technical breach of the Act by the solicitor employed by the QLS in providing support to the Board. Accordingly, the situation is of limited application.*[95]

In its submission, the QLS suggested that the words 'and legal' be inserted in section 662(1) of the Act to reflect the amended heading and to also make it consistent with the changes to section 662(3).[96]

In response to the amendment suggested by the QLS, the Department was of the view that no amendment was required and new section 662(2) was considered sufficient to allow the QLS to provide legal services to the board.[97] The Committee agrees.

The Committee also notes the QLS's suggested legislative change to its duty to report suspected offences under section 706 of the Act. The QLS submitted:

> *… it has come to the Society's attention that there are some in-house legal officers employed by statutory authorities and corporations engaging in legal practice who may not hold a practising certificate. This is mostly through inadvertence but, in those cases, the in-house legal officers are in breach of section 24(1) of the Legal Profession Act 2007.*
>
> *When there is a breach or a suspected breach of the Act, the Society has an obligation under section 706 of the Act, as the regulatory authority, to report those suspected offences to, relevantly, the Commissioner of Police, the Crime and Misconduct Commission and the Director of Public Prosecutions.*
>
> *The Society considers that, when these inadvertent and minor breaches occur, it would be preferable that the Society had a discretion as to whether that matter is reported based on its assessment of the severity of the suspected offence and the surrounding circumstances.*

95 Letter from the Department of Justice and Attorney-General, 5 July 2013, page 2.

96 Queensland Law Society, Submission No. 9, page 4.

97 Letter from the Department of Justice and Attorney-General, 15 July 2013, page 9.

> *This is similar to the discretion the Society already has in relation to matters concerning practising certificates and show cause notices.*
>
> *While this is not currently an amendment in the Bill, we consider that it would be timely for this issue to be addressed. Accordingly, the Society requests that consideration be given to amending section 706(2) to remove the word "must" and replacing it with the word "may".*[98]

The Committee considers that the proposed amendment is appropriate and would assist the QLS in carrying out is duties under the *Legal Profession Act 2007*. While the issue does not fall within the scope of the amendments contained in the Bill relating to that Act, given the miscellaneous nature of the amendments in the Bill, the Committee considers the additional amendment could be made.

Recommendation 3

The Committee recommends an additional provision be included in the Bill to amend the *Legal Profession Act 2007* to provide the Queensland Law Society with discretion as to whether it reports a matter under section 706(2) of that Act.

2.23 *Magistrates Act 1991*

The Bill proposes a number of amendments to the *Magistrates Act 1991,* the bulk of which are similar to the amendments in the lapsed Bill. The Department outlined the amendments as:

- expanding the powers of the Chief Magistrate to assist in exercising his functions;
- enabling the appointment by Governor in Council of more than one Deputy Chief Magistrate and similarly by the Chief Magistrate of more than one Acting Deputy Chief Magistrate;
- clarifying the appointment and remuneration for acting judicial registrars; and
- clarifying that a District Court Judge appointed as Chief Magistrate may exercise the jurisdiction, powers and functions of a Magistrate in circumstances where the Chief Magistrate is currently also a serving District Court Judge.[99]

The most significant amendments are those made to sections 11 and 12 of the Act.

Clause 131 amends section 11 to provide that a District Court judge appointed as Chief Magistrate is entitled to exercise all the jurisdiction, powers and functions conferred upon a magistrate by or under any State law.

Clause 132 amends section 12 to broaden the powers of the Chief Magistrate to:

- make decisions regarding the magistrates who are to constitute the Magistrates Courts at particular places appointed under the *Justices Act 1886*, section 22B(1)(c) or who are to perform particular functions;
- give directions about the practices and procedures of Magistrates Courts, magistrates or about particular functions of a magistrate;
- make decisions regarding the magistrates who are to exercise the jurisdiction and powers of Magistrates Courts in particular matters or particular classes of matters;

98 Queensland Law Society, Submission No. 9, pages 4-5.

99 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 7.

- allocate the functions to be exercised by particular magistrates and deciding how the functions are to be exercised;
- make decisions regarding the days, places and times for constituting a Magistrates Court at a place;
- nominate a magistrate to be a supervising magistrate or a coordinating magistrate for the purpose of allocating the work of a Magistrates Court;
- nominate a Deputy Chief Magistrate to act as the Chief Magistrate under section 14(b);
- give directions to an acting magistrate or acting judicial registrar about when the person is to carry out the duties of office of a magistrate or judicial registrar during the person's period of appointment.

The Committee notes that many of the powers set out in amended section 12 are provided in the existing section. For example existing section 12 currently gives the Chief Magistrate the power give directions about the practices and procedures of Magistrates Courts and allocating the functions to be exercised by particular magistrates. The Department explained '*the amendments are intended to clearly, and with greater specificity, states the powers of the Chief Magistrates*.'[100]

The Department also advised that the changes to sections 11 and 12 are being made at the request of the Chief Magistrate and will put beyond doubt that a District Court judge, appointed as a Chief Magistrate, may exercise all the jurisdiction, powers and functions of a magistrate and ensure the orderly and expeditious exercise of the jurisdiction and powers of Magistrates Courts.[101]

No opposition to this aspect of the Bill was raised in any submissions. The Committee is mindful of the importance of orderly and efficient operations of the Magistrates Court and, to this end, supports the amendments.

2.24 *Magistrates Courts Act 1921* and *Statutory Instruments Act 1992*

The Bill inserts a new section 57C of the *Magistrates Courts Act 1921* to provide a specific rule-making power enabling the Governor in Council to make stand-alone rules of court for proceedings other than an appeal pursuant to the *Domestic and Family Violence Protection Act 2012* or a registry of a court in relation to a related proceeding.

Section 85 of the *Supreme Court of Queensland Act 1991*, which outlines the Court's rule-making power, is also intended to be consequentially amended to refer to this new provision.

The Bill also makes a consequential amendment to the *Statutory Instruments Act 1992* by inserting a reference to rules of court made under the *Magistrates Courts Act 1921*.[102]

This aspect of the Bill was widely supported in submissions.

The Women's Legal Service's view is that stand alone rules will '*minimise confusion and ensure consistent practices and procedures, especially in this area of law which involves high numbers of self-represented parties*.'[103] The Women's Legal Service identified a range of matters that could ideally be taken into consideration in the development phase of the rules.[104] While the scope of this inquiry does not extend to reviewing and/or developing the rules, the Committee commends those suggestions to the Department for consideration.

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100 Letter from the Department of Justice and Attorney-General, 5 July 2013, page 3.

101 Letter from the Department of Justice and Attorney-General, 5 July 2013, page 2.

102 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, pages 25-26.

103 Women's Legal Service, Submission No. 3, page 2.

104 Women's Legal Service, Submission No. 3, pages 2-5.

Similarly, the Queensland Association of Independent Legal Services Inc. (QAILS) stated that the procedures in domestic and family violence proceedings '*can vary, and current procedural rules are contained in various pieces of legislation or rules that may not be relevant or appropriate, or there may be gaps … the development of specific rules … are an opportunity to make the process safer and clearer for a jurisdiction which is overwhelmingly full of unrepresented litigants*.'[105]

Similar themes were also picked up in the submission from the Immigrant Women's Support Service. It regarded new section 57C as providing a framework '*that supports a consistent approach, fosters efficiency and promotes equitable practices*.'[106]

The QLS suggested that consequential amendments to the Childrens Court Rules 1997 may be necessary as a result of new section 57C since domestic violence applications can also be made in the Childrens Court.[107] In response, the Department clarified that this is not the case, as the rules do not apply to proceedings under the *Domestic and Family Violence Protection Act 2012* even where the Childrens Court makes a domestic violence order.[108]

While the Committee has no concerns with the intent of new section providing a rule-making power for domestic and family violence matters, the Committee does have concerns about potential inconsistencies with Childrens Court matters where that court is exercising a role in domestic violence matters.

The Committee sought further information from the QLS on potential inconsistencies. The QLS provided the further information to the Committee by letter dated 2 August 2013, which highlighted what the Committee considers to be, potential issues that could arise when the Childrens Court considers making or varying domestic violence orders in a child protection hearing.

The QLS submitted:

> *It is unclear if the intended effect of the amendment is that:*
>
> - *the Childrens Court Rules would no longer apply to a proceeding under the Child Protection Act 1999 if the Childrens Court when hearing an application for a child protection order considers making or varying domestic violence orders in a child protection proceeding; or*
> - *the issues are dealt with by the same Court in two separate although sequenced proceedings, a child protection proceeding to which the Childrens Court Rules apply and a domestic violence proceeding to which the Domestic and Family Violence Protection Rules apply.*
>
> *… it may also be difficult to define the point at which the Court begins to consider making or varying a domestic violence order under the Domestic and Family Violence Protection Act 2012 and therefore, which rules are applicable at any point in the proceedings.*[109]

The Committee supports the amendments to streamline and standardise domestic and family violence proceedings however considers there is a need to ensure consistency and certainty in the operation of all court rules and procedures. If there is any doubt on the validity of the court rules, steps must be taken to remove such doubt.

105 Queensland Association of Independent Legal Services Inc., Submission No. 5, page 7.
106 Immigrant Women's Support Service, Submission No. 10, page 2.
107 Queensland Law Society, Submission No. 9, page 5.
108 Letter from the Department of Justice and Attorney-General, 15 July 2013, page 10.
109 Queensland Law Society, Submission No. 9 (Supplementary), page 2.

The Committee considers that appropriate consultation with stakeholders should occur in the development of the new rules to ensure they will operate without issue.

Recommendation 4

The Committee recommends that prior to the development of the Domestic and Family Violence Protection Rules further consultation takes place with stakeholders, such as the Queensland Law Society, to ensure the new rules operate as intended, without inconsistency.

2.25 *Peaceful Assembly Act 1992*

The Bill amends section 17 of the *Peaceful Assembly Act 1992* to permit the Commissioner of Police to delegate his powers under the Act to a police officer of the rank of sergeant or above. An identical amendment was also proposed in the lapsed Bill.

Currently, the Commissioner may only delegate to a 'Superintendent of Traffic' as defined by the *Transport Operations (Road Use Management) Act 1995*. The Department explained that '*the effect of amendments to transport legislation has been that the 'Superintendent of Traffic' is now the Commissioner or chief executive of the Department of Transport and Main Roads*.'[110] Previously, this delegation could be made to '*a police officer or an appropriately qualified officer of the public service appointed by the Commissioner to be a Superintendent of Traffic*.'[111]

The QLS was concerned about this delegation, suggesting that given the scope of powers in the *Peaceful Assembly Act 1992* the Committee ought to consider whether it '*should be to a police officer who is of the rank of Inspector or higher*.'[112]

In response to this concern, the Department responded[113]:

> *The QPS was consulted about the inclusion of this amendment into the Bill.*
>
> *The QLS submission does not specify which of the Commissioner's functions it believes may be inappropriate to delegate … Therefore, DJAG can only respond to this suggestion generally.*
>
> *The QPS is satisfied that a police officer of the rank of Sergeant would have the necessary experience and expertise to perform their delegated functions under the Peaceful Assembly Act 1992.*
>
> *Further, the amendment reflects QPS policy which allows a police officer of the rank of Sergeant who is an Officer in Charge of Station or any police officers … to act as a Superintendent of Traffic to be delegated the powers, functions or duties of a Superintendent of Traffic. DJAG notes that the Act currently provides for delegation of the Commissioner's functions to a Superintendent of Traffic.*

110 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 8.

111 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 8.

112 Queensland Law Society, Submission No. 9, page 5.

113 Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, page 10.

A review of the Commissioner's powers pursuant to the *Peaceful Assembly Act 1992* indicates that they largely relate to the issuance of notices for permission for public assemblies. This amendment appears to be directed at simplifying current administrative arrangements and the Committee is satisfied that, for the reasons outlined in the Department's response, the proposed delegation is appropriate in the circumstances.

2.26 *Personal Injuries Proceedings Act 2002*

The Bill amends section 67A of the *Personal Injuries Proceedings Act 2002* to insert a new definition of 'community legal service'. Community legal services are exempted from the prohibition in section 67 of the Act from touting at the scene of an accident.

The current definition of 'community legal service' states that it means '*an entity, prescribed under a regulation that provides free legal services to the community or a section of the community*'. Schedule 1 of the Personal Injuries Proceedings Regulation 2002 contains a list of 35 entities currently prescribed as 'community legal services' for the purposes of section 67A.

The amended definition is intended to circumvent the need for this list.

The proposed wording of the amendment to section 67A may be problematic. It is noted that amended section 67A(2)(b) simply requires that a community legal service '*is established and operated on a not-for-profit basis*'. There are two other limbs in the section.

One of the most informative submissions on this issue was provided by QAILS. QAILS regards the proposed definition as '*fundamentally flawed*'[114], and strongly advocated for '*an alternative definition that more accurately reflects the work of community legal services, maintains Queenslanders' ability to access legal assistance in personal injury matters, and offers consumer protection to clients*.'[115] Specifically, QAILS' concerns were threefold:

1. The proposed definition suggests an organisation is a community legal service if it says it is a community legal service. Without providing any further details, it is not clear which organisations can 'hold themselves out' as community legal services, and if there is any requirement to ensure that the organisation meets minimum standards of quality.
2. The proposed definition excludes a number of important agencies.
3. The proposed definition of legal services ('work done, or business transacted, in the ordinary course of legal practice') is not an appropriate way to describe the work of community legal services.[116]

QAILS proposed that an alternative definition should be considered,[117] covering a number of the unique functions of community legal services, including:

- *provide free legal and support services to the community or a section of the community;*
- *develop effective ways of informing the community of its legal rights and responsibilities;*
- *provide disadvantaged sections of the community with access to legal and related information and/or services;*

114 Queensland Association of Independent Legal Services Inc., Submission No. 5, page 2.
115 Queensland Association of Independent Legal Services Inc., Submission No. 5, page 1.
116 Queensland Association of Independent Legal Services Inc., Submission No. 5, pages 4-5.
117 Queensland Association of Independent Legal Services Inc., Submission No. 5, page 5.

- *advocate for the development of laws, administrative practices and a legal justice system which are fair, just and accessible; and*
- *develop and maintain close links with the community it serves to ensure that areas of unmet needs are detected and appropriate services developed.*

In lieu of the above, QAILS recommended that at a minimum, 'legal services' in clause 144 of the Bill be amended to read:

> *Legal services means:*
>
> *a) providing free legal and support services to the community or a section of the community; and*
>
> *b) developing effective ways of informing the community of its legal rights and responsibilities; and*
>
> *c) providing disadvantaged sections of the community with access to legal and related information and/or services; and*
>
> *d) advocating for the development of laws, administrative practices and a legal justice system which are fair, just and accessible; and*
>
> *e) developing and maintaining close links with the community it serves to ensure that areas of unmet needs are detected and appropriate services developed.* [118]

The Women's Legal Service was similarly concerned the proposed definition is narrow and may exclude legitimate community legal services. The Women's Legal Services supported the definition proposed by QAILS in its submission:

> *The definition of 'community legal service' in the PIPA is important in ensuring that people who obtain legal advice from community legal services on potential claims are protected. People who attend community legal services are generally disadvantaged or marginalised people, often with little understanding of their legal rights.*
>
> *…*
>
> *These people will only be protected if the definition of 'community legal service' is accurate and encompasses all organisations which may provide such assistance.*
>
> *The definition of 'community legal service' is also relevant in relation to whether a person may have recourse to the 'fidelity fund', held and administered by the Queensland Law Society under the Legal Profession Act 2007 (Qld). People who obtain advice through community legal services will only be protected and have recourse to the fidelity fund if the 'associate' who caused the financial loss was from a 'community legal service' as legislatively defined. Therefore, to ensure that clients of community legal services are adequately protected, the definition of 'community legal service' in PIPA must be broad enough to cover all community legal services.* [119]

The Roma Community Legal Service Inc. also suggested the proposed amendment '*is quite narrow*' and made almost identical submissions to those made above by Women's Legal Service.[120] Similarly, the Roma Community Legal Service Inc. also supported the definition proposed by QAILS. The QAILS submission was also fully supported by the Moreton Bay Regional Community Legal Service Inc.[121]

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118 Queensland Association of Independent Legal Services Inc., Submission No. 5, page 5.

119 Women's Legal Service Inc., Submission No. 3, pages 5-6.

120 Roma Community Legal Service Inc., Submission No. 4, pages 1-2.

121 Moreton Bay Regional Community Legal Service Inc., Submission No. 6, page 1.

In their submission, the Queensland Indigenous Family Violence Legal Service expressed concern that the proposed definition would operate to specifically exclude their service, and indeed any family violence prevention legal service. They expressed further concern that conversely, the definition would include services not strictly seen as community legal services/centres.[122]

The QLS outlined the following concerns with respect to the proposed definition in their submission:

- *The requirement that an organisation 'holds itself out' as a community legal centre appears to lack minimum standards for service provision. We understand that there is a national accreditation scheme "developed to provide an industry based certification process for Community Legal Centres (CLCs) that will support and give recognition to good practice in the delivery of community legal services." We suggest that the Legal Affairs and Community Safety Committee should consult with the Queensland Association of Independent Legal Services Inc (QAILS) to develop a definition which takes into account accreditation specifications.*
- *The Queensland Indigenous Family Violence Legal Service appears to have been excluded from the definition and we recommend consideration of its inclusion.*
- *The definition of 'legal services' is the same as provided in the Legal Profession Act 2007. However, there may need to be specific consideration of the types of legal service provision undertaken by community legal services. We suggest the Legal Affairs and Community Safety Committee consult with QAILS on this issue.*[123]

The Committee queried the Department on what prompted the removal of the existing list of entities currently prescribed as "community legal services" for the purposes of section 67A in Schedule 1, and what it was intended to achieve. In response, the Department stated:

> *It is proposed to amend section 67A to insert a definition of 'community legal service' and avoid the need for individual entities to be listed in the regulation under the Act. The amendment is proposed to overcome complications of the existing arrangements, based on a prescriptive list of entities.*
>
> *The existing prescription of entities relies on notification of changes being made to the Department of Justice and Attorney-General (DJAG), and requires amending subordinate legislation to be progressed for any variation to the listing of the entities in question. DJAG has recently been unable to verify the status of a number of the entities listed in Schedule 1. It is also possible that there are entities which should be listed in Schedule 1 but which are not.* [124]

In response to the recommendation made by the QLS that accreditation and/or minimum standards should be incorporated into the definition of "community legal service", the Department responded as follows:

> *DJAG queries whether mandatory accreditation requirements could result in some smaller services being excluded. DJAG notes that not all community legal services are currently members of QAILS. Mandatory accreditation requirements would need to be subject to a cost/benefit analysis.*

122 Queensland Indigenous Family Violence Legal Service, Submission No. 8, page 2.

123 Queensland Law Society, Submission No. 9, page 6.

124 Letter from the Department of Justice and Attorney-General, 5 July 2013, page 3

> *DJAG notes the concerns raised about Family Violence Prevention Legal Services not falling within the proposed definition and is giving further consideration to this matter.*[125]

In response to the concerns raised by QAILS and its suggestion that an alternative definition be considered, the Department stated:

> *The proposed definition of 'community legal service' was adopted from proposed national legislation for regulation of the legal profession developed under the auspices of the Council of Australian Governments.*
>
> *DJAG considered the alternative definition proposed by QAILS prior to introduction of the Bill. In DJAG's view, the additional elements proposed by QAILS, which would, for example, require a service to be independent, community owned and undertake an educative/law reform role, may unnecessarily restrict the definition and could result in some services being excluded. Independence, community ownership and educative/law reform role, while characteristics of community legal services, are not directly relevant to the protection provided under Personal Injuries Proceedings Act 2002 and the Legal Profession Act 2007.*
>
> *The requirement that a community legal service must hold itself out as a community legal service is intended to ensure that a community legal service is readily identifiable.*
>
> *DJAG notes the concerns raised about Family Violence Prevention Legal Services not falling within the proposed definition and is giving further consideration to this matter.*
>
> *DJAG notes the concerns raised about the application of the community legal service definition under the Legal Profession Regulation 2007. The proposed definition was adopted from national legislation for regulation of the legal profession developed under COAG and DJAG is not aware of any issues with the definition or the proposed definition not being sufficiently broad to cover current community legal service, other than Family Violence Prevention Legal Services.*[126]

In response to the suggestions made by Moreton Bay Regional Community Legal Service Inc., the Department advised:

> *DJAG will give further consideration to the request to retrospectively recognise certain community legal services not listed in the Schedule to the Personal Injuries Proceedings Regulation 2002.*
>
> *With regard to the concerns raised about a community legal services auspiced by a larger organisation, DJAG considers the proposed definition in the Bill to be sufficiently clear in so far as it would only apply to an organisation that holds itself out as a community legal service.*[127]

The definition of "community legal service" in section 67A of the *Personal Injuries Proceedings Act 2002* is of critical importance in ensuring that the sectors of the community which rely upon community legal services are protected and able to access justice. With this in mind, the Committee is concerned that many submissions received raised doubts as to the workability and scope of the proposed amendments.

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125 Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, page 11

126 Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, pages 2-3.

127 Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, page 4.

It is acknowledged that the proposed definition was adopted from draft national legislation arising from a COAG agreement, however appears to be outweighed by the concerns raised in the submissions received and the practical consequences which might flow from the amendments. Chiefly, the exclusion of legitimate community legal services; the lack of clarity regarding which organisations can 'hold themselves out' as community legal services; confusion regarding whether there is any requirement to ensure that organisations meets minimum standards of quality; and the appropriateness or otherwise of the proposed definition of legal services ('work done, or business transacted, in the ordinary course of legal practice') in the context of community legal services.

There is value in the amendments to the definition suggested by QAILS to address the problems identified, and the Committee's view is that dialogue with this group should be entered into to refine the proposed definition in Clause 144. The Committee acknowledges the need to avoid ambiguity in order to realise the objectives of the Bill and as such, recommends that Clause 144, proposed section 67A, be amended in consultation with QAILS.

The Committee believes that this would provide clarity for those groups who may potentially be affected by the provision.

Recommendation 5

The Committee recommends the Attorney-General and Minister for Justice consult further with Queensland Association of Independent Legal Services Inc. and other community legal service organisations, prior to the second reading debate of the Bill, to ensure that the proposed definition of 'community legal service' in the *Personal Injuries Proceedings Act 2002* is workable and includes all organisations that it is intended to include.

2.27 *Queensland Civil and Administrative Tribunal Act 2009*

The Bill will amend the *Queensland Civil and Administrative Tribunal Act 2009* to '*clarify provisions, provide for more efficient use of tribunal resources and management of matters and to afford certain protections to conciliators and costs assessors*.'[128]

These amendments are contained in clauses 146-158 of the Bill and include:

- allowing a party to withdraw an application or referral without needing to obtain the leave of the tribunal (with the exception of specified proceedings);
- clarifying the tribunal's powers to make a default decision in matters involving an unliquidated claim or a mix of liquidated and unliquidated damages;
- providing the tribunal with discretion as to whether or not to issue written reasons for decision for interlocutory or procedural decisions;
- providing that parties cannot appeal a decision by default to the appeal tribunal. In these circumstances, the tribunal will hear the matter on its merits;
- providing the appeal tribunal with the discretion to refer a matter back to the tribunal on limited grounds;
- extending protection and immunity to conciliators that are already afforded to members of the tribunal, adjudicators, assessors and staff of the tribunal and extending the protection to costs assessors.[129]

[128] *Record of Proceedings (Hansard)*, 5 June 2013, page 1944.

The majority of these amendments were contained in the lapsed Bill.

The Committee received two submissions from stakeholders on this aspect of the Bill.

QAILS commented on clause 153 of the Bill which amends section 143 of the Act (appealing or applying for leave to appeal). In supporting this amendment, QAILS noted that the amendment addresses an ambiguity it previously identified regarding the time limit for lodging an application to appeal or leave to appeal where a person has not received a written decision.[130] Existing section 143 provides time limits where written reasons only have been given to a person.

The QLS commented on four clauses in the Bill; suggesting amendments to two clauses and not supporting another two.

In relation to clause 146 which amends section 46 of the Act (withdrawal of application or referral), the QLS was concerned that this amendment would allow applications in the child protection jurisdiction to be withdrawn and that this may not reflect the best interests of the child. The QLS therefore recommended that *'applications or referrals made under the* Child Protection Act 1999 *should be included in the list of exceptions to the general rule for withdrawal of an application or referral.'*[131]

In response, the Department stated:

> *DJAG considers that there may be cases where an application has been made under the Child Protection Act 1999 and it is appropriate for the tribunal to refuse to grant to leave to withdraw an application. For instance, there may be situations where an applicant, such as a parent, may wish to withdraw the application for a number of reasons, even though it is in the best interests of the child that the application continue to be dealt with by the tribunal. Leave of the tribunal would continue to be required before an application under this Act could be withdrawn.*[132]

The Department advised that further consideration would be given to the amendment to section 46 proposed by the QLS. The Committee considers the suggestion made by the QLS is appropriate for inclusion in the list of exceptions as this will assist in ensuring that child safety matters continue to have adequate oversight.

The Committee therefore makes the following recommendation.

Recommendation 6

The Committee recommends Clause 146 of the Bill be amended to include applications or referrals made under the *Child Protection Act 1999* in the list of exceptions contained in section 46(2) of the *Queensland Civil and Administrative Tribunal Act 2009.*

The QLS objected to the proposed amendments in clauses 150 and 152 of the Bill which deal with QCAT not being required to provide written reasons for certain decisions (clause 150) and removing certain appeal rights (clause 152).[133]

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129 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, pages 8-9.

130 Queensland Association of Independent Legal Services Inc., Submission No. 5, page 6.

131 Queensland Law Society, Submission No. 9, page 6.

132 Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, page 11.

133 Queensland Law Society, Submission No. 9, pages 6-7.

The QLS objected to the amendments on the basis that they were not consistent with the Fundamental Legislative Principles contained in the *Legislative Standards Act 1992*.

In relation to the right to reasons, the QLS submitted:

> *In our view, not only does it reduce the Tribunal's transparency, it also negatively impacts on the rights of individuals and will likely weaken the public's confidence in the justice system. The right of review and right to reasons are fundamental components of natural justice. Whilst the Society notes that there may be some procedural burdens placed on the tribunal as a result, in our view, ensuring participants are afforded with natural justice is paramount.*[134]

In response to this submission, the Department advised:

> *The amendment will not prevent parties from making a request for written reasons for the particular decisions specified in the new section 122(4).*
>
> *However, the amendment will provide the tribunal with a discretion as to whether or not to provide written reasons in relation to these particular decisions, which are primarily procedural in nature. Such an amendment is necessary to ensure that the tribunal's limited resources are not expended on providing written reasons for decisions which do not determine the merits of the parties' claims.*
>
> *The tribunal will still be able to provide reasons for these decisions where in the interests of transparency, or having regard to the rights of the parties, it is preferable to do so.* [135]

The proposed amendment to section 122 will give (QCAT) decision makers a discretion not to comply with a request for written reasons following delivery of an ex tempore decision pursuant to sections 51, 54(1), 55(1), 56(1), 57, 61(1), 62(1), 62(3), 63(1), 63(4) and 64(1) of the *Queensland Civil and Administrative Tribunal Act 2009.*

The entitlement to written reasons for a decision is an integral component of natural justice. A decision maker should be required to give reasons for a decision, together with information on review or appeal rights, as a matter of course. Accordingly, the Committee is concerned that the wide discretion provided by new section 122 may in some instances adversely affect the rights, interests or expectations of parties with a matter before QCAT.

Whilst the scope of decisions made under sections 54(1), 55(1), 56(1), 61(1), 63(1) and 63(4) of the *Queensland Civil and Administrative Tribunal Act 2009* largely concern non-contentious procedural decisions (for example, directions as to how a particular matter should be heard), the same cannot be said for the remainder of the decisions falling under the new discretion. Of particular note:

- Section 51 of the Act relates to tribunal decisions by default under section 50 (recovery of debt or liquidated demand of money, including interest claimed at the rate the tribunal considers appropriate and/or costs);
- Section 57 of the Act gives the tribunal a general power to act in the absence of a party who has had "reasonable notice of a proceeding"; and
- Section 62(1) of the Act gives the tribunal the discretion to give a direction "at any time in a proceeding to do whatever is necessary for the speedy and fair conduct of the proceeding."

134 Queensland Law Society, Submission No. 9, page 7.

135 Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, pages 11-12.

Decisions made under the sections outlined above could have significant ramifications for the parties. These decisions do not appear to be straightforward procedural decisions and arguably should be omitted from the discretion under the proposed section new 122 as they are decisions which, upon request, should be accompanied by written reasons as a matter of course, consistent with basic natural justice principles.

Recommendation 7

The Committee recommends clause 150 of the Bill, which inserts a new section 122(4) into the *Queensland Civil and Administrative Tribunal Act 2009* - be amended to omit sections 51, 57 and 62(1) from the list of sections with which a request for written reasons is not required to be complied.

The Committee has commented on the application of the fundamental legislative principles to this aspect of the Bill in Part 3 of this report.

Regarding the QLS's objection to clause 152 of the Bill, which removes the appeal rights of a party, for decisions to set aside a decision by default under section 51 of the Act, the Department responded:

> *Section 51 provides the tribunal with a discretion to set aside a decision by default made under section 50. Where the tribunal has lawfully made a decision to set aside a decision by default, the appeal tribunal will not normally interfere with this exercise of this discretion. The matter will then proceed to be heard by the tribunal on its merits. Consequently, removing the appeal right in relation to this particular decision will ensure that the tribunal's limited resources are applied efficiently, and that the matter can be heard on its merits without delay. The final decision of the tribunal will still be subject to an appeal.* [136]

The Committee notes that a potential breach of fundamental legislative principles is identified in relation to clause 152, but that its impact is expected to be minimal. This potential breach of fundamental legislative principles was also identified adequately addressed in the Explanatory Notes.

The Committee is satisfied with the explanation provided by the Department regarding the removal of appeal rights in this instance and, for the reasons outlined in the response, regards the amendment to section 142 as appropriate in the circumstances.

Finally, the QLS suggested that clause 157 of the Bill which amends section 237 of the Act (immunity of participants), be amended. The QLS submitted:

> *We note clause 157: "Amendment of s 237(11) (Immunity of participants etc.)," which provides the assessor with immunity from suit, defines assessor as: " ... a person appointed by the tribunal to assess costs under the rules."*
>
> *Our members are concerned that an assessor who is not appointed by the Tribunal "under the rules" will not be afforded with immunity, as section 107(2) of the Queensland Civil and Administrative Tribunal Act 2009 provides the member with a discretion whether to make an order in accordance with the rules.*

136 Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, page 11-12.

> *We therefore recommend that section 107 of the QCAT Act be amended so that any order for a cost assessment is deemed to be an order pursuant to the rules. Such an amendment would not only provide costs assessors immunity from suit when undertaking a cost assessment (which is consistent with the procedure in the Courts), but would also provide costs assessors and Registry Tribunal staff with certainty as to the procedures involved for cost assessments.*[137]

In response, the Department outlined:

> *DJAG considers that the existing section 107(2) does not provide the tribunal with the discretion to require the costs to be assessed other than under the rules. That is, where an order is made under that section to require costs to be assessed, that these costs must be assessed under the rules. Rather, the section provides a discretion for the tribunal as to whether to appoint a costs assessor in general as opposed to the alternative of fixing the costs under section 107(1). Therefore, it appears that costs assessors ordered to assess costs under section 107(2) will necessarily be 'a person appointed by the tribunal to assess costs under the rules' for the purposes of the amended section 237(11). Consequently, the amendment sought by the QLS is not necessary.* [138]

The Committee is satisfied with the explanation provided by the Department and does not consider that clause 157 requires further amendment.

2.28 *Recording of Evidence Act 1962*

Clause 160 of the Bill amends the definition of 'legal proceeding' to include an 'arbitration heard by the industrial commission'. Earlier this year, tribunal proceedings were removed from the coverage of the *Recording of Evidence Act 1962*, and for the reasons explained by the Department below, this amendment will reinstate such proceedings to ensure that they will be recorded under the Act.[139]

> *The Classification of Computer Games and Images and Other Legislation Amendment Act 2013, which amended the Act to facilitate the outsourcing of recording and transcribing of legal proceedings, commenced on 5 April 2013. In making the amendments to facilitate outsourcing, as a result of a submission to the Legal Affairs and Community Safety Committee by the Bar Association of Queensland, arbitration was removed from the remit of the Act. This was done because, as the Bar Association asserted, arbitration is a private arrangement which is not always recorded and for which the parties arrange their own recorders. The amendment was appropriate for private commercial arbitration but also had the effect of removing arbitration proceedings before the QIRC from the Act's remit.*
>
> *This has had no impact in practice as the QIRC has continued its practice of recording these proceedings. Despite the lack of practical side effects, the position is proposed to be corrected. Being subject to the Act brings the benefit of: the requirement in statutory law that proceedings be recorded; the ability to tender transcriptions and recordings in later proceedings without the need to prove who recorded or transcribed the matter; and provisions governing retention and destruction of records.*

The Committee notes that this is a relatively minor change, necessitated by an unforeseen implication arising from previous amendments, and not otherwise consequential as regards the operation of the existing Act. The Committee therefore supports the amendments.

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137 Queensland Law Society, Submission No. 9, page 8.

138 Letter from the Department of Justice and Attorney-General, Report of the Department of Justice and Attorney-General – 12 July 2013, 15 July 2013, page 12.

139 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 25.

2.29 *Succession Act 1981*

The Bill amends the *Succession Act 1981* to adopt model provisions consistent with the International Institute for the Unification of Private Law's (UNIDROIT) *Convention Providing a Uniform Law on the Form of an International Will 1973* (the Convention).[140]

The Attorney-General stated in his introductory speech that these amendments will:

> *… provide Queenslanders with an additional form of will, known as an international will. An international will may be recognised as a valid will by a court in Australia, or in another country that is a party to the conventions, irrespective of where the will was made, where assets are located or where the testator lives. Therefore a court will not have to examine the laws of a foreign country to decide if the will has been properly executed.*[141]

Further background information about the implementation of the Convention was provided by the Department:

> *In July 2010, the former SCAG [Standing Committee of Attorneys-General] agreed that each State and Territory would take action to implement the Convention's Uniform Law in their legislation. The Commonwealth Parliament House of Representatives Joint Standing Committee on Treaties (Report 125 tabled 21 June 2012) supports the Convention and has recommended that binding treaty action be taken. The model provisions must be passed by all States and Territories without amendment for Australia to accede to the Convention. The legislation has been passed or is before the Parliament of all other States and the Australian Capital Territory. The legislation is still to be introduced in the Northern Territory.*
>
> *The Convention seeks to address complications in relation to the administration of wills with international characteristics. A will's international characteristics can complicate and affect the validity of the will even in uncontested matters. The Convention proposes a new form of will - an 'international will' - for use in circumstances where the will has international characteristics due to variables such as the locations of testators, beneficiaries, assets and the will's execution.*
>
> *An 'international will' deals only with the form of the will, including witnessing, writing and certification requirements. Upon accession to the Convention, parties agree that the form of the will is acceptable to them in accordance with their domestic laws and undertake to recognise and enforce 'international wills' established in other jurisdictions which are parties to the Convention.*[142]

In its submission, the QLS, whilst providing in principle support for the amendments adopting the UNIDROIT Convention, raised some issues with the drafting of the sections which will give effect to the Convention. [143]

The Department confirmed it had brought the concerns of the QLS to the attention of the Office of the Queensland Parliamentary Counsel whose subsequently confirmed that no further action was required. [144]

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140 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 9.

141 *Record of Proceedings (Hansard)*, 5 June 2013, pages 1944-1945.

142 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 10.

143 Queensland Law Society, Submission No. 9, page 8.

144 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 13.

The Committee is satisfied with the Department's response to the issues raised and does not consider that any amendment is required to the provisions in the Bill amending the *Succession Act 1981*. The Committee is supportive of the adoption of model provisions consistent with the UNIDROIT Convention, in order for Queensland to accede to the Convention and meet its obligations under the 2010 SCAG agreement.

2.30 *Supreme Court of Queensland Act 1991*

The Bill proposes to amend the *Supreme Court of Queensland Act 1991* to facilitate the appointment of retired judges who have reached the age of 70 years but are less than 78 years as acting judges.[145] As mentioned earlier in the report, similar amendments are proposed for judges of the District Court.

Under the current law, an acting judge may be appointed in the following circumstances:

a. If a judge of the Supreme Court is on leave, otherwise absent or unable to perform the functions of the office, the Governor in Council, in consultation between the Minister and the Chief Justice, may, by commission, appoint a person who is qualified to be appointed as a judge to act as a judge for a period, not longer than 6 months;[146] or

b. If the Chief Justice certifies that it is desirable to appoint a person to act as a judge to assist in the expeditious exercise of the jurisdiction and powers of the Trial Division of the Supreme Court, the Governor in Council may, by commission, appoint an acting judge for a period not longer than 6 months.[147]

Additionally, the Governor in Council may, by commission, appoint a person who has been a judge of the Supreme Court of another State or Territory or a judge of the Federal Court of Australia to act as judge of the Supreme Court of Queensland for a period of up to 1 year.[148]

Clause 169[149] of the Bill proposes to amend Section 6 of the *Supreme Court of Queensland Act 1991* to include additional provisions which will allow:

- the Governor in Council to appoint a retired Supreme Court judge to act as a judge for a period of not more than 2 years and on a full-time or sessional basis, although such an appointment may not extend beyond the day that the retired Supreme Court judge reaches 78 years of age unless that judge has started a hearing of a proceeding in which case the judge may finish the proceedings provided the acting judge's commission has not yet ended;[150]
- the Minister may recommend a retired Supreme Court judge for appointment only after consultation with the Chief Justice;[151]
- a person appointed to act as a judge may be appointed more than once;[152]
- the remuneration of a retired Supreme Court judge who acts as a judge is to be governed by section 5A of the *Judicial Remuneration Act 2007* (whereas the remuneration for all other

145 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 3.
146 Section 6(1) of the *Supreme Court of Queensland Act 1991*.
147 Section 6(2) of the *Supreme Court of Queensland Act 1991*.
148 Section 6(3) of the *Supreme Court of Queensland Act 1991*.
149 Clause 62 of the Bill proposes similar amendments to the *District Court of Queensland Act 1967*.
150 Proposed new clauses 6(4), (6) and (8) of the *Supreme Court of Queensland Act 1991.* See also Clause 170 of the Bill which proposes to insert new clause 21(2)(b) of the *Supreme Court of Queensland Act 1991.*
151 Proposed new clause 6(5) of the *Supreme Court of Queensland Act 1991*.
152 Proposed new clause 6(7) of the *Supreme Court of Queensland Act 1991*.

persons who act as a judge will be decided by the Governor in Council provided that the amount will not be less than the remuneration paid and provided to a judge).[153]

Clause 91 of the Bill proposes to introduce new 5A of the *Judicial Remuneration Act 2007* which provides for how the remuneration of a retired acting Supreme Court judge is to be calculated when the judge is acting on a (a) full-time basis, or (b) sessional basis.

The Department confirmed with the Committee that a 'sessional basis' was not defined as it was intended to provide for the situation where retired judges are not appointed to serve on a full time basis but are available to serve as required.[154]

Strong objections to the amendments were raised in the submission from the International Commission of Jurists Queensland Inc. That organisation set out compelling arguments as to why the provision should be removed from the Bill or at a minimum amended to ensure judicial independence is maintained. In its concluding statements, the International Commission of Jurists Queensland Inc. stated:

> *The Explanatory Notes state that one of the broad objectives of the Bill is to "improve provisions concerning the operation of various commission, court, tribunal and registry processes". Though this objective is somewhat vague, it is assumed, in the absence of explanation, that the proposed judicial re-appointments may be designed to meet the growing caseload demands of the District and Supreme Court of Queensland.*
>
> *The proposed process of re-appointment gives rise, at the very least, to a perception of possible bias in our legal system. It allows for suggestion that external pressure or influence upon judges to decide matters a certain way, lest they fall out of favour with the government of the day or with judicial colleagues who might be consulted about their re-appointment.*
>
> *It may well be argued that such a scenario is presently inconceivable in this State. But a robust legal system must be proactive in guarding against not just actual, but perceived bias.*
>
> *Even if it was to be allowed that in limited or special circumstances the re-appointment of a retired judge could be justified, it is of real concern that the Bill does not limit the reappointment to cases where special reasons or circumstances exist. And the relevant concerns are only compounded by the fact that the re-appointment can occur up to 4 times.*
>
> *It is accordingly recommended that:*
>
> *1) Parts 14 and 36 of the Bill be removed; and*
>
> *2) Provisions associated with the implementation of Parts 14 and 36 be removed.*
>
> *3) If Recommendations 1 and 2 are not adopted, Parts 14 and 36 of the Bill ought to be strengthened by:*
>
> *a) limiting re-appointments to where "special circumstances" exist;*
>
> *b) requiring re-appointment to only be made by the Chief Justice or Chief Judge (and not the Minister or any member of the Executive Government); and*
>
> *c) limiting re-appointment to one term only.*[155]

153 Proposed new clause 6(9) of the *Supreme Court of Queensland Act 1991* and existing section 6(4) of *Supreme Court of Queensland Act 1991* to be renumbered as section 6(9) under the Bill.

154 Letter from the Department of Justice and Attorney-General, 5 July 2013, pages 3-4.

155 International Commission of Jurists Queensland Inc., Submission No. 7, pages 9-10.

In response to the matters raised by the International Commission of Jurists Queensland Inc., the Department stated:

> *Amendments to provide for acting retired judges are similar to schemes currently provided for in New South Wales and Victoria.*
>
> *The amendments have been developed in conjunction with the relevant heads of jurisdiction and provide access to a pool of experienced judicial officers to overcome issues such as court backlogs, or to accommodate court calendars when a greater number of trials are scheduled.*
>
> *The proposed appointment by the Governor in Council is consistent with the usual approach to judicial appointments in Queensland. Additionally, the proposed Queensland provisions require consultation with the relevant head of jurisdiction.*
>
> *The limiting of an appointment of an acting retired judge to one term is not desirable, as this would limit the available pool of available judicial officers.*[156]

The Committee notes the concerns raised in the submission, however does not consider that the relevant parts of the Bill should be removed. The Committee notes similar schemes operate in other States, however all schemes differ in relation to the appointment process, the term of any re-appointment and the maximum age of a retired judge.

The Committee carefully considered the suggested protections set out in the submission to strengthen the provisions relating to appointment of acting judges, however does not consider they are necessary. The appointment or re-appointment by the Governor in Council on the recommendation of the Minister after consultation with the Chief Justice is satisfactory. Similarly, the reason for re-appointment should not be limited to special circumstances, but should be left open to fulfil the needs of the relevant court.

The Committee is satisfied the amendments will aid in the efficient operations of the Supreme and District Courts and supports the amendments.

2.31 *Trusts Act 1973*

The Bill will update the definition of 'public accountant' in the *Trusts Act 1973* to more accurately reflect the relevant provision under the *Corporations Act 2001* (Cth).[157]

In its written briefing to the Committee, the Department advised that another technical change has been proposed to this definition by the Treasury and Trade and Other Legislation Amendment Bill 2013 also introduced on 5 June 2013, to recognise the change of name from the National Institute of Accountants to the Institute of Public Accountants.[158]

These are minor amendments of a technical nature and merely intended to correct references to provisions of the *Corporations Act 2001* (Cth). The amendments are supported by the Committee.

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156 Letter from the Department of Justice and Attorney-General, 5 July 2013, pages 4-5.

157 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 27.

158 Letter from the Department of Justice and Attorney-General, Parliamentary Committee Briefing Note, 14 June 2013, page 10.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. In addition to the matters highlighted earlier in this Report, the Committee brings the following to the attention of the Legislative Assembly.

3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

Information Privacy Act 2009* and *Right to Information Act 2009

As outlined in part 2 of this report, Clause 85 of the Bill amends section 127 of the *Information Privacy Act 2009* to permit the Information Commissioner to publish the name of a person who is the subject of a vexatious applicant declaration (127(7)) when publishing that declaration and the reasons for it under section 127(6).

Similarly, clause 162 of the Bill amends section 114 of the *Right to Information Act 2009* to permit the Information Commissioner to publish the name of a person who is the subject of a vexatious applicant declaration (114(7)) when publishing that declaration and the reasons for it under section 114(6).

The application of both clauses 85 and 162 has obvious negative implications for the information privacy and reputation of a declared vexatious applicant by notifying to the world at large both the fact that the (declared vexatious) application was made by the applicant and that the applicant's conduct has been declared by an independent senior statutory official to be vexatious in nature.

In furtherance of fundamental legislative principles, provisions designed to give effect to policy should be reasonable, appropriate and proportional. The Committee is satisfied, that while necessarily impacting upon some rights and liberties as outlined above, in view of the policy objective, which was recommended by the Committee in the first instance, the proposals contained in the Bill are justified.

3.2 Issues of Natural Justice

Section 4(3)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to principles of natural justice.

Queensland Civil and Administrative Tribunal Act 2009

Clause 150 of the Bill amends section 122 of the *Queensland Civil and Administrative Tribunal Act 2009* to provide that the Tribunal is not required to comply with a request for written reasons for a decision made under various listed sections.

With respect to the potential breach of fundamental principles outlined above, the Explanatory Notes stated:

> *Clause 150 amends section 122 (Request for written reasons) to provide the tribunal with a discretion as to whether or not to issue written reasons for particular procedural decisions under the Act. This will assist the tribunal to apply its resources appropriately. For instance,*

> *parties have requested reasons where the tribunal has decided to adjourn a matter for a small number of days. The requirement to provide written reasons in such situations places an unnecessary burden on the tribunal, and a discretion to provide written reasons is appropriate.*[159]

The impact of clause 150 is discussed at length in part 2.27 of the report where the Committee outlined its views that in some instances, the decisions did not appear to be minor issues that could be justified without being required to provide written reasons. Fairness arguably dictates that an aggrieved party should be given reasons as to why the Tribunal has taken various actions/steps when the effect on the party could be significant.

The Committee recommends the Legislative Assembly examine closely, the types of decisions that are included in the proposed new section 122(4) of the *Queensland Civil and Administrative Tribunal Act 2009* and the potential for an unreasonable denial of natural justice in certain circumstances.

3.3 Delegation of administrative power

Section 4(3)(c) of the *Legislative Standards Act 1992* states that whether legislation has sufficient regard to rights and liberties of individuals depends on whether it allows the delegation of administrative power only in appropriate cases and to appropriate persons.

Justices Act 1886

Clause 97 of the Bill amends section 154 of the *Justices Act 1886* to allow the Minister to delegate his or her power under section 154(2) to the Chief Executive (new 154(5A)).

As set out in part 2.18 of the report, the power in section 154(2) allows the Minister (and his or her delegate the Chief Executive) to permit access to a copy of a (generally restricted) type of record of proceeding (eg. from the Children's Court) to a person who would otherwise not be entitled to a copy of it.

The proposed new section 154(5B) goes even further by permitting the Chief Executive to sub-delegate the Minister's delegated power further to an appropriately qualified officer or employee of the department.

Whilst 'appropriately qualified' is defined in 154(6) to mean an officer or employee having the qualifications, experience or standing appropriate for the power, given the delicate nature of the subject matter that the sub-delegate is deciding whether to release to an applicant, it is arguable that only the most senior staff (eg, the Chief Executive) should be permitted to make such an access decision. It is questionable whether sub-delegation below the level of Chief Executive of decisions of this sort (which previously were made at Ministerial level) is appropriate.

The Committee recommends the Legislative Assembly examine closely, the appropriateness of the sub-delegation of the Minister's powers under clause 97 of the Bill.

3.4 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

Acts Interpretation Act 1954

As outlined in part 2.2 of this report, clause 6 of the Bill amends Schedule 1 of the *Acts Interpretation Act 1954*. At present, that Act has no Schedule 1.

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159 *Explanatory Notes*, Justice and Other Legislation Amendment Bill 2013, page 6.

The proposed Schedule 1 that is being pre-emptively amended by clause 6 is proposed to be inserted into the Act by clause 56 of the Treasury and Trade and Other Legislation Amendment Bill 2013, which has not yet been passed into law.

For clause 6 to operate as drafted, the Treasury and Trade and Other Legislation Amendment Bill 2013 must be passed before this Bill to enable there to be a Schedule 1 inserted into the Act which can then be amended by clause 6 of this Bill.

The inclusion of clause 6 in this Bill presupposes both that the Treasury and Trade and Other Legislation Amendment Bill 2013 *will* be passed and that it will be passed without amendment to clause 56, and in this sense the presumptive nature of clause 6 can be seen as having ill regard to the Institution of Parliament.

The Committee draws this irregularity to the attention of the Parliament.

Appendix A – List of Submissions

Sub #	Submitter
1	Office of the Information Commissioner
2	Office of the Adult Guardian
3	Women's Legal Service Inc.
4	Roma Community Legal Service Inc.
5	Queensland Association of Independent Legal Services Inc.
6	Moreton Bay Regional Community Legal Service
7	International Commission of Jurists Queensland Inc.
8	Queensland Indigenous Family Violence Legal Service
9	Queensland Law Society
10	Immigrant Women's Support Service
11	McCarthy Durie Lawyers

BILL BYRNE MP

SHADOW MINISTER FOR POLICE, EMERGENCY AND CORRECTIVE SERVICES, PUBLIC WORKS AND NATIONAL PARKS

MEMBER FOR ROCKHAMPTON

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9 August 2013

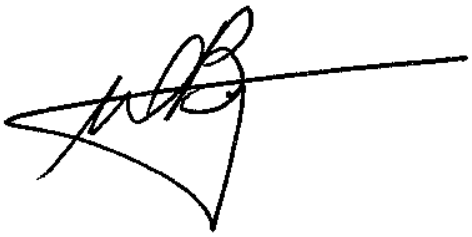
Mr Brook Hastie
Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Hastie

Re: Justice and Other Legislation Amendment Bill 2013- Statement of reservation

The Opposition wishes to notify the committee of its reservations about aspects of Report No. 39 of the Legal Affairs and Community Safety Committee into the *Justice and Other Legislation Amendment Bill 2013*. We will detail the reasons for our concern during the parliamentary debate on the Bill.

Yours sincerely



Bill Byrne MP
Member for Rockhampton