



Justice and Other Legislation Amendment Bill 2023

Report No. 50, 57th Parliament
Legal Affairs and Safety Committee
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Legal Affairs and Safety Committee

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All web address references are current at the time of publishing.

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Abbreviations and acronyms

Abbreviation	Definition
AIA	<i>Acts Interpretation Act 1954</i>
ALA	Australian Lawyers Alliance
Attorney-General	Hon Yvette D’Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence
Bill	Justice and Other Legislation Amendment Bill 2023
CL Act	<i>Civil Liability Act 2003</i>
CLSO Act	<i>Criminal Law (Sexual Offences) Act 1978</i>
CDec	Commissioner of Declaration
committee	Legal Affairs and Safety Committee
Criminal Code	<i>Criminal Code Act 1899</i>
DJAG	Department of Justice and Attorney-General
ECQ	Electoral Commissioner of Queensland
Hear her voice Report 2	<i>Hear her voice, Report two: Women and girls’ experiences of the criminal justice system</i>
HRA	<i>Human Rights Act 2019</i>
JP	Justice of the Peace
LAQ	Legal Aid Queensland
LP Act	<i>Legal Profession Act 2007</i>
LSA	<i>Legislative Standards Act 1992</i>
OIC	Office of the Information Commissioner
PS Act	<i>Penalties and Sentences Act 1992</i>
QBCC	Queensland Building and Construction Commission
QCAT	Queensland Civil and Administrative Tribunal
QLS	Queensland Law Society
SCQ Act	<i>Supreme Court of Queensland Act 1991</i>
Sterling	Sterling Law (Qld) Pty Ltd
Uniform Law Review	Review of the Costs Disclosure Thresholds in the Uniform Law
VCA Act	<i>Victims of Crime Assistance Act 2009</i>
Xuveo	Xuveo Legal
WLSQ	Women’s Legal Service Queensland
WSJT	Women’s Safety and Justice Taskforce
YJ Act	<i>Youth Justice Act 1992</i>

Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Justice and Other Legislation Amendment Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The policy objective of the Bill is to clarify, strengthen and update multiple pieces of legislation that affect the administration of justice in Queensland.

The committee called for and received written submissions from stakeholders, was briefed by the Department of Justice and Attorney-General and heard evidence from organisations and individuals at a public hearing. On the basis of all evidence submitted, the committee is satisfied the Bill will achieve its policy objectives. The committee recommends the Bill be passed.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the department.

I commend this report to the House.



Peter Russo MP

Chair

Recommendations

- Recommendation 1** **4**
The committee recommends the Justice and Other Legislation Amendment Bill 2023 be passed.
- Recommendation 2** **9**
The committee recommends that the Queensland Government prioritise the development of a guide for the media to support responsible reporting of sexual violence in accordance with Recommendation 84 of the Hear her voice Report 2.
- Recommendation 3** **9**
The committee recommends that the Queensland Government monitor whether the naming of offenders unintentionally creates barriers for women to report sexual offences.
- Recommendation 4** **14**
The committee recommends that proposed reforms introduced by the Bill relating to victims, are accompanied with trauma-informed training for those interacting with victims in the criminal justice system, including legal services, victims' services and investigating and prosecution bodies.
- Recommendation 5** **14**
The committee recommends that the Queensland Government consider the service and resourcing impacts that these reforms will have on the victim support and community legal service sectors.
- Recommendation 6** **15**
The committee recommends that the Queensland Government consider changing 'woman' to 'pregnant person' in proposed s 319A of the Bill to better reflect the diversity and modern community expectations of Queensland.
- Recommendation 7** **20**
The committee recommends that the Queensland Government continues to undertake work in relation to improving safety for victims of domestic and family violence, noting the prevalence of systems abuse.

Executive Summary

On 25 May 2023, the Hon Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence introduced the Justice and Other Legislation Amendment Bill 2023 (Bill) into the Queensland Parliament. The Bill was referred to the Legal Affairs and Safety Committee (committee) for detailed consideration.

The purpose of the Bill is to clarify, strengthen and update legislation concerning the administration of justice, including:

- legislation relating to the operation of courts and tribunals
- the regulation of the legal profession
- the conduct of civil proceedings
- electoral matters.¹

Overall, the Bill amends 30 Acts and 4 regulations, as well as repealing the *Court Funds Act 1973*. The Bill also enables better recognition of the deaths of unborn children as a result of criminal conduct.

The committee invited stakeholders and subscribers to make written submissions on the Bill and received 12 submissions. The committee received a written briefing on the Bill from the Department of Justice and Attorney-General (DJAG) on 13 June 2023 and a public briefing on the Bill from DJAG on 13 July 2023. The committee also received advice from DJAG responding to the submissions on 4 July 2023.

The committee held a public hearing on 10 July 2023 in Brisbane to speak with submitters.

The key issues raised during the committee's examination of the Bill included:

- removing the restrictions in the *Criminal Law (Sexual Offences) Act 1978* prohibiting the identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceedings
- better recognition of the deaths of unborn children due to criminal conduct
- clarification of the offence of assisting in the performance of a termination of pregnancy
- amendments to the *Legal Profession Act 2007* including destruction of client documents and cost disclosure thresholds
- changes to witnesses' information required in affidavits and statutory declarations
- amendments to the *Oaths Act 1867*
- amendments to the *Electoral Act 1992*
- compliance with the *Legislative Standards Act 1992*
- compliance with the *Human Rights Act 2019*.

The committee recommends the Bill be passed.

¹ Explanatory notes, p 1.

1 Introduction

1.1 Policy objectives of the Bill

On 25 May 2023, the Hon Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence (Attorney-General) introduced the Justice and Other Legislation Amendment Bill 2023 (Bill) into the Queensland Parliament. The Bill was referred to the Legal Affairs and Safety Committee (committee) for detailed consideration.



The purpose of the Bill is to clarify, strengthen, and update legislation concerning the administration of justice, including:

- legislation relating to the operation of courts and tribunals
- the regulation of the legal profession
- the conduct of civil proceedings
- electoral matters.

Overall, the Bill amends 30 Acts and 4 regulations, as well as repealing the *Court Funds Act 1973*. The Bill also enables better recognition of the deaths of unborn children as a result of criminal conduct.

Specific amendments contained in the Bill aim to:²

Legislation	Proposed amendments
<i>Appeal Costs Fund Act 1973</i>	Modernise the <i>Appeal Costs Fund Act 1973</i> and improve its current fee and administrative arrangements
<i>Civil Proceedings Act 2011</i>	Clarify the operation of a provision of the <i>Civil Proceedings Act 2011</i> with respect to payment of interest on a money order debt
<i>Court Funds Act 1973</i>	Replace the <i>Court Funds Act 1973</i> with a new, modernised court funds legislative framework under the <i>Civil Proceedings Act 2011</i>
<i>Cremations Act 2003</i>	Recognise interstate cremation permits issued by coroners in other jurisdictions under the <i>Cremations Act 2003</i>
<i>Criminal Law (Sexual Offences) Act 1978</i>	Remove restrictions in the <i>Criminal Law (Sexual Offences) Act 1978</i> which prohibit identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceedings
<i>Criminal Code Act 1899</i>	Clarify the scope of the offence of assisting in the performance of a termination of pregnancy under s 319A of the with respect to 'supplying or procuring the supply of a termination drug' to address concerns that the offence might apply more widely than originally intended and extend to a person providing financial support to a pregnant person to access a lawful termination
<i>District Court of Queensland Act 1967</i> <i>Magistrates Courts Act 1921</i>	Amend the <i>District Court of Queensland Act 1967</i> and the <i>Magistrates Courts Act 1921</i> to allow the courts to make preliminary disclosure orders
<i>Electoral Act 1992</i>	Make improvements to the <i>Electoral Act 1992</i> to enfranchise voters and optimise administrative efficiency ahead of the 2024 state general election
<i>Human Rights Act 2019</i>	Amend s 52 of the <i>Human Rights Act 2019</i> to provide that, in a proceeding in the Land Court or Land Appeal Court, a party to the proceeding must give notice in the approved form to the Attorney-General and the Queensland Human Rights Commission in certain circumstances

² Explanatory notes, pp 1-2.

<i>Justices of the Peace and Commissioners for Declarations Act 1991</i>	Amend the <i>Justices of the Peace and Commissioners for Declarations Act 1991</i> to enhance appointment, disqualification and complaints processes and conduct standards for Justices of the Peace and Commissioners for Declarations
<i>Oaths Act 1867</i>	Address issues that have arisen in the implementation of amendments made to the <i>Oaths Act 1867</i> by the <i>Justice and Other Legislation Amendment Act 2021</i>
<i>Legal Profession Act 2007</i>	Address the increasing risk to clients' privacy and confidentiality arising from the prolonged retention of client documents by law practices, the Queensland Law Society and community legal centres, and the mounting substantial costs associated with securely storing large volumes of client files that are no longer of utility in the <i>Legal Profession Act 2007</i> Reduce the regulatory burden for law practices while promoting costs transparency for consumers of legal services through changes to cost disclosure obligations under the <i>Legal Profession Act 2007</i>
<i>Queensland Civil and Administrative Tribunal Act 2009</i>	Streamline processes around the advertising and appointment of various positions within the Queensland Civil and Administrative Tribunal under the <i>Queensland Civil and Administrative Tribunal Act 2009</i>
<i>Supreme Court of Queensland Act 1991</i>	Streamline the notification requirement for admission guidelines issued under the <i>Supreme Court of Queensland Act 1991</i>
<i>Trust Accounts Act 1973</i>	Remove public accountants from the scope of the <i>Trust Accounts Act 1973</i>

1.2 Consultation

The explanatory notes state the amendments, in the Bill, to better recognise the deaths of unborn children as a result of criminal conduct, were informed by targeted consultation with a range of stakeholders including legal stakeholders, the judiciary, human rights organisations and families impacted by the death of an unborn child as a result of criminal conduct.³ In the Bill's introductory speech, the Attorney-General acknowledged:

Queensland Parliament, Record of Proceedings, 25 May 2023, p 1666



[A]ll of the families and the broader community who have advocated for reform to better recognise the death of an unborn child as a result of criminal conduct, particularly Sarah and Peter Milosevic, who I acknowledge are joining us in the gallery today.

The explanatory notes state that the amendments to remove restrictions which prohibit identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceedings, were informed by targeted consultation with media, legal and sexual violence support sector stakeholders.⁴

The explanatory notes list the stakeholders consulted on other amendments, including:

- heads of jurisdiction
- Rules Committee
- relevant statutory bodies and office holders
- legal stakeholders

³ Explanatory notes, p 13.

⁴ Explanatory notes, p 13.

- Admissions Board
- Appeals Costs Board
- Parole Board
- Justice of the Peace Associations
- Australasian Cemeteries and Crematoria Association
- Queensland Branch of the Australian Medical Association
- Rural Doctors Association of Queensland
- Victim Assist Queensland
- Youth Advocacy Centre
- PeakCare Queensland.⁵

Consultation was also undertaken with domestic and family violence stakeholders in relation to the amendments to the *Oaths Act 1867* in the Bill.

1.3 Legislative compliance

Our deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.3.1 Legislative Standards Act 1992

Our assessment of the Bill's compliance with the LSA identified issues which are discussed below.



Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.⁶

The Bill raises issues in relation to the fundamental legislative principles including:

- reasonable and fair treatment of individuals
- principles of natural justice
- making rights and liberties, or obligations, dependent on administrative power
- ensuring penalties are proportionate to the offence and consistent within legislation
- delegation of legislative power.


The committee is of the view that the Bill gives sufficient regard to the rights and liberties of individuals and the institution of Parliament.

⁵ Explanatory notes, p 13.

⁶ LSA, s 4(2).

1.3.2 Human Rights Act 2019

The committee's assessments of the Bill's compatibility with the HRA are included below.

 <p>HUMAN RIGHTS</p>	<p>The Bill may directly or indirectly impact on the following human rights, among others:</p> <ul style="list-style-type: none">• Recognition and equality before the law: s 15 of the HRA• Freedom of expression: s 21 of the HRA• Taking part in public life: s 23 of the HRA• Right to property: s 24 of the HRA• Privacy and reputation: s 25 of the HRA• Best interests of the child: s 26(2) of the HRA• Right to liberty and security of person: s 29 of the HRA• Right to a fair hearing: s 31 of the HRA• Rights in criminal proceedings, including the presumption of innocence: s 32 of the HRA.
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The committee finds the Bill compatible with human rights.

The committee notes that any potential limitations on human rights proposed by the Bill regarding the publication of the identity of a defendant accused of a prescribed sexual offence are for the purpose of open justice and aligning Queensland with other states and territories. The committee notes that domestic and international jurisprudence regularly agrees that open justice is necessary for public confidence in the justice system.

The committee notes that any potential limitations on human rights proposed by the Bill regarding the death of an unborn child being an aggravating factor for relevant adult and youth offences (such as murder, manslaughter and unlawful wounding but also dangerous operation of a motor vehicle) is to ensure sentences appropriately reflect the seriousness of the offence and meet community expectations. The committee notes that there is precedent where the courts may have regard to the harm done to the victim as an aggravating factor in a crime.⁷

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.4 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Justice and Other Legislation Amendment Bill 2023 be passed.

⁷ *Siganto v The Queen* (1998) 194 CLR 656.

2 Examination of the Bill

The committee invited stakeholders and subscribers to make written submissions on the Bill. Twelve submissions were received (see **Appendix A** for a list of submitters).

The committee received a written briefing on the Bill from the Department of Justice and Attorney-General (DJAG) on 13 June 2023 and received a public briefing on the Bill from DJAG on 13 July 2023 (see **Appendix B** for a list of officials at the public briefing). The committee also received advice from DJAG responding to the submissions on 4 July 2023.

The committee held a public hearing on 10 July 2023 in Brisbane to speak with submitters (see **Appendix C** for a list of witnesses). The submissions, correspondence from DJAG and transcripts of the hearing and briefing are available on the committee's webpage.


 <p>Written briefing from DJAG 13 June 2023</p>	 <p>Public hearing 10 July 2023</p>	 <p>Public briefing with DJAG 13 July 2023</p>
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In its examination of the Bill, the committee considered all the material before it. This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Publishing the identity of defendants in sexual offence proceedings

The Bill proposes to remove restrictions in the *Criminal Law (Sexual Offences) Act 1978* (CLSO Act) prohibiting the identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceedings.⁸ Other than the Northern Territory, Queensland is the only state or territory that currently maintains a defendant's anonymity in these cases.⁹

Prescribed sexual offences under the CLSO Act are defined as rape, attempt to commit rape, assault with intent to commit rape and sexual assault.¹⁰

	<p>The explanatory notes state that the purposes of the amendments are to:</p> <ul style="list-style-type: none"> • promote open justice in relation to prescribed sexual offences • bring the class of offences in line with all other criminal offences in Queensland regarding publishing information about a person accused of an offence • promote freedom of speech • improve media reporting on sexual offences to encourage other victim-survivors of sexual assault to come forward.¹¹
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Under the proposed amendments, applicants are required to give 3 business days' notice for a non-publication order.¹² The court must consider several factors when hearing the application, including:

- primacy of the principle of open justice
- public interest
- special vulnerabilities of the complainant or defendant

⁸ Explanatory notes, p 1.

⁹ Explanatory notes, p 8; DJAG, correspondence, 13 June 2023, p 2.

¹⁰ CLSO Act, s 3.

¹¹ Explanatory notes, p 9.

¹² Explanatory notes, pp 22-23; Bill, cl 53.

- cultural considerations
- the effect of publication in a rural or remote community.¹³

The amendments are made in response to the government's commitment to implement recommendation 83 of the Women's Safety and Justice Taskforce (WSJT) Report, *Hear her voice 2: Women and girls' experience across the criminal justice system* (Hear her voice Report 2) which concluded that there was no justification for the law to treat defendants who are charged with a prescribed sexual offence differently to those who are charged with any other criminal offence.¹⁴

2.1.1 Stakeholder views

DVConnect supports the removal of restrictions in the CLSO Act that prohibit the identification of an adult defendant charged with a prescribed sexual offence.¹⁵ DVConnect stated:

DVConnect, submission 4, p 4



These protections are in part due to historical mistrust of sexual violence reporting. Not only is it evident that this was implemented into our legal system based on false assumptions, but the ongoing application of such protections perpetuate rape myths and general community mistrust that victims of sexual violence make up complaints to damage reputations of defendants or to preserve their own reputation or regret...

Removing this protection adds supports the concept that victims must be believed.

DVConnect added that:

- identifying defendants supports other victim-survivors in coming forward to report sexual violence¹⁶
- referring to the WSJT, the amendment can only be effective if the identity of the victim-survivor remains protected unless that person chooses to identify
- the use of the sexual violence media guide from recommendation 84 in the WSJT's Hear her voice Report 2 remain critical in this process of ensuring safe and effective reporting about sexual violence matters.¹⁷

Women's Legal Service Queensland (WLSQ) supports removing the CLSO Act protections for defendants charged with prescribed sexual offences. WLSQ noted this may increase the reluctance of some victim-survivors to report sexual assault due to fear of retaliation by the defendant. WLSQ recommended monitoring sexual assault reporting rates to determine whether the amendment has unintended consequences.¹⁸

Legal Aid Queensland (LAQ) noted that the amendment is linked to recommendation 83 of the WSJT's Hear her voice Report 2, which recommended the CLSO Act restrictions on the publication of a defendant's identity before a committal hearing be removed, but that this should only occur once the 'Queensland Government has developed a guide for the media to support responsible reporting of sexual violence'.

¹³ Explanatory notes, p 23; Bill, cl 53.

¹⁴ Women's Safety and Justice Taskforce Report, *Hear her voice 2: Women and girls' experience across the criminal justice system*, p 369.

¹⁵ DVConnect, submission 4, p 4.

¹⁶ DVConnect, submission 4, p 5.

¹⁷ DVConnect, submission 4, p 6.

¹⁸ WLSQ, submission 5, p 1.

LAQ recommended:

[T]he development of such guidance before these amendments occur to protect against inadvertent identification of victims, decrease the risk of 'trial by media' and retribution in some communities, and reporting that perpetuates harmful stereotypes about sexual violence.¹⁹

The Office of the Information Commissioner (OIC), referring to the Bill's explanatory notes, noted the amendments to the CLSO Act 'will promote open justice', with the hope that it leads to improved media reporting on sexual offences and encourages other victim-survivors of sexual assault to come forward and report. The OIC observed that there were a range of public considerations and that this 'is a balancing exercise appropriately left to Government and, ultimately, the Parliament'.²⁰

QLS raised concerns about the time period of 3 days for an applicant seeking a non-publication order stating it 'creates a number of hurdles for the dependant and complainants'.²¹ QLS also provided information on the time frames required for other jurisdictions:²²

Jurisdiction	Provision
Australian Capital Territory	The court may, at any time during or after the hearing of the proceeding, make an order forbidding the publication of the name of the party or witness. ²³
New South Wales	A suppression order or non-publication order may be made by the court, on its own initiative or on the application of a party to the proceedings, at any time during proceedings or after proceedings have concluded. ²⁴
Victoria	An applicant for a suppression order must give 3 business days' notice of the making of the application to the court or tribunal in which the application is to be made and the parties on the record in the proceedings to which the application relates. ²⁵
Western Australia	A court may make an order that prohibits the publication outside the courtroom of the whole of the proceedings, or a part or particular of them specified by the court at any time after an accused is charged with an offence and before or after the accused first appears in the court on the charge. ²⁶

2.1.2 Department response

DJAG noted DVConnect's support of the CLSO Act amendments and that the amendments do not interfere with other protections around the identification of a complainant of a sexual offence. DJAG stated that the CSLO Act amendments, if passed, will commence on a date fixed by proclamation to allow for the development of an interim sexual violence media guide.²⁷ In the public briefing, DJAG stated they anticipated the development of the interim guide to be completed by January 2024 with the 'current intention' for the amendments to commence after.²⁸ DJAG stated that this is in keeping with the government's response to recommendations 83 and 84 of the Hear her voice Report 2, and that the interim guide will be incorporated into the final sexual violence media guide. The final guide

¹⁹ LAQ, submission 9, pp 4-5.

²⁰ OIC, submission 2, p 2.

²¹ Queensland Parliament, Record of Proceedings, 10 July 2023, p 1.

²² QLS, correspondence, 18 July 2023

²³ *Evidence (Miscellaneous Provisions) Act 1991 (ACT)* ss 110, 111(2)(c).

²⁴ *Court Suppression and Non-publication Orders Act 2010 (NSW)* s 9(1), (3).

²⁵ *Open Courts Act 2013 (Vic)* s 10(1).

²⁶ *Criminal Procedure Act 2004 (WA)* s 171(4), (5).

²⁷ DJAG, correspondence, 4 July 2023, p 5.

²⁸ Queensland Parliament, Record of Proceedings, 13 July 2023, p 4.

will include 'information on trauma-informed reporting on sexual violence and relevant amendments arising the [WSJT] reports'.²⁹

DJAG noted WLSQ's feedback and general support for the CSLO Act amendments, including the increased media reporting possibly leading to more victims coming forward to report sexual offences, as well as greater positive community discussions about gender-based violence. DJAG noted the potential risk identified by WSLQ and stated that, consistent with recommendation 186 of the WSJT's Hear her voice Report 2, the legislation will be reviewed:

... as soon as practicable 5 years after the last of the relevant legislative amendments from both Taskforce reports has commenced. This will ensure the review can adequately evaluate the operation and impact of the amendments.³⁰

Regarding the 3-day time frame for a non-publication order, DJAG stated in the public briefing that the amendments 'adopt a number of procedural requirements from that Victorian regime, such as who can make the application, who has a right to be heard on it, the requirement that the court notify the media and also that 3-day notice requirement'.³¹

DJAG further stated that there was a need for applications for non-publication orders 'to be done speedily' as 'in the absence of the court considering and making a non-publication order, the default is that the defendant can be identified'. DJAG further explained that the application can be 'any eligible person under the Bill which includes defendants, complainants and the prosecution'.³²

DJAG also stated the 3-day time frame is 'not out of step with the procedural requirements for other urgent types of applications in Queensland. For example, with a higher court bail application, the notice requirement is 2 days because those are also applications where time is very important'.³³

Committee comment

The committee notes the purpose of the amendments is to promote open justice and freedom of speech, and to bring the class of offences in line with all other criminal offences in Queensland regarding publishing of information about a person accused of an offence.

The committee notes the general support from submitters for removing the restrictions in the CLSO Act prohibiting the identification of an adult defender charged with a prescribed sexual offence. The committee also recognises this was a common theme in the WSJT inquiries. The committee concedes there may be potential negative consequences of publicly identifying defendants, however is satisfied that defendants charged with sexual offences in Queensland should be treated as all other defendants and not provided greater protection via anonymity.

The committee acknowledges there may be difficulties for applicants to meet the 3-day time frame for the application for a non-disclosure order, however also notes DJAG's comments that timing is an important factor for these orders and that the time frame is comparable for other urgent applications.

The committee is pleased to note an interim sexual violence media guide will be developed and released if the amendments are passed, and this interim guide will be incorporated into the final sexual violence media guide proposed by Recommendation 84 of the Hear her voice Report 2. The committee recognises the importance of this guide being developed and distributed prior to the introduction of the amendments to provide a framework for media organisations to incorporate a

²⁹ DJAG, correspondence, 4 July 2023, p 5.

³⁰ DJAG, correspondence, 4 July 2023, p 9.

³¹ Queensland Parliament, Record of Proceedings, 13 July 2023, p 9.

³² Queensland Parliament, Record of Proceedings, 13 July 2023, p 9.

³³ Queensland Parliament, Record of Proceedings, 13 July 2023, p 9.

trauma-informed approach to reporting and interviewing, and therefore recommends the Queensland Government prioritise the development of the media guide.

The committee also notes the concerns raised that the identification of the defendant may cause reluctance in some victim-survivors to report due to fear of retaliation. The committee is of the view that the Queensland Government should therefore monitor the effect of the amendments on reporting of sexual offences and, in particular, whether the naming of offenders is unintentionally creating a barrier for women making a complaint.

Recommendation 2

The committee recommends that the Queensland Government prioritise the development of a guide for the media to support responsible reporting of sexual violence in accordance with Recommendation 84 of the Hear her voice Report 2.

Recommendation 3

The committee recommends that the Queensland Government monitor whether the naming of offenders unintentionally creates barriers for women to report sexual offences.

2.2 Death of an unborn child as an aggravating factor

The Bill proposes to better recognise the deaths of unborn children that have occurred due to criminal conduct. Queensland law does not give an unborn child legal status as a person. This only occurs when it has completely proceeded in a living state from its mother, a legal position known as the ‘born alive’ rule. This means offences such as murder and manslaughter do not apply in relation to an unborn child.³⁴



The Bill proposes amendments to the *Criminal Code Act 1899*, the *Penalties and Sentences Act 1992*, the *Youth Justice Act 1992* and the *Victims of Crime Assistance Act 2009* to better recognise the destruction of the life of an unborn child as a result of offences committed in relation to a pregnant person.

The amendments include:

- changes to the sentencing principles in the *Penalties and Sentences Act 1992* (PS Act) and the *Youth Justice Act 1992* (YJ Act) that require the court to treat the destruction of an unborn child as an aggravating factor (unless the court considers it not reasonable because of exceptional circumstances) for relevant serious offences
- defining relevant serious offences for the purpose of the aggravating factor as:
 - murder: s 302 and 305 of the *Criminal Code Act 1899* (Criminal Code)
 - manslaughter: s 303 and 310 of the Criminal Code
 - grievous bodily harm: s 320 of the Criminal Code
 - wounding: s 323 of the Criminal Code
 - dangerous operation of a vehicle: s 328A of the Criminal Code

³⁴ Explanatory notes, p 2.

- assaults occasioning bodily harm: s 339 of the Criminal Code
- careless driving: s 83 of the *Transport Operations (Road Use Management) Act 1995*
- expanding the definition of victim for the purpose of the Charter of victims' rights under the *Victims of Crime Assistance Act 2009* (VCA Act) to include a person that would, if an unborn child had been born alive, have been a family member of the child, in circumstances where a crime is committed against a pregnant person and as a result of the crime the pregnant person dies or sustains a bodily injury resulting in the destruction of the life of the unborn child³⁵
- providing that a person is eligible for funeral expense assistance of up to \$8,000 for the cost of a funeral of an unborn child who dies as a result of an act of violence³⁶
- changes to the Criminal Code to clarify and enable the name of an unborn child or a description of an unborn child (such as 'the unborn child of Jane Smith') to be stated in an indictment for an offence committed in relation to a pregnant person that allegedly results in the destruction of the life of the unborn child.³⁷

2.2.1 Stakeholder views

Sarah and Peter Milosevic support the recognition of an unborn child who has been killed due to criminal conduct, stating in their submission:

Sarah and Peter Milosevic, submission 12, p 2



[T]he court at the time acknowledged that he [the driver] caused the death of Sophie Ella. But there was no law that he could be charged under. ...

The impact on a family that loses a child because of someone else's actions adds another layer of grief, there was no justice for us. He lost his licence for 5 months and a \$950.00 fine for the cost of a life, this law reform while it doesn't bring your child back at least you know that your baby counted. She received a birth certificate, death certificate and was counted as a death on the road toll, the only place she wasn't counted was in a court.

DVConnect also supports the recognition of unborn children who have died in violent incidents as victims, both when the pregnant mother and the unborn child are killed; or when the unborn child is killed but the pregnant mother survives. DVConnect also supports foetal personhood being aligned across other relevant legislation if an unborn child is able to be named in an indictment as the Bill proposes. However, DVConnect expressed 'extreme caution' in how this would apply in situations where the pregnant mother's own actions were to cause the death of the unborn child.³⁸

LAQ stated in its submission that it raised concerns during the development of these amendments, and that Queensland's criminal law currently can appropriately respond to situations where the death of an unborn child has occurred due to a criminal act.³⁹ LAQ stated that naming or describing an unborn child in an indictment 'represents a move closer to the recognition of foetal personhood, a move LAQ does not support'.

LAQ submitted that it has potential implications for the rights of pregnant persons and those providing them with medical care, stating 'by extending culpability beyond the harm to the pregnant person, it

³⁵ Explanatory notes, p 7.

³⁶ Explanatory notes, p 7.

³⁷ Explanatory notes, pp 7, 21; DJAG, correspondence, 13 June 2023, p 5.

³⁸ DVConnect, submission 4, pp 4-5.

³⁹ LAQ, submission 9, p 3.

risks placing criminal responsibility on a pregnant person for any criminal actions of theirs that result in such harm to their unborn child'.⁴⁰

LAQ stated that the sentencing principles currently drafted under the PS Act and the YJ Act are broad enough to allow the court to take into consideration the loss of an unborn child.⁴¹ LAQ further stated that, if the sentencing amendments in the PS Act pass, they would support the court having the discretion to not treat the loss of an unborn child as an aggravating factor in exceptional circumstances.⁴²

LAQ did not support amending the sentencing principles of the YJ Act, stating 'the inclusion of a specific aggravating factor could unfairly impact these most vulnerable of offenders' and result in sentences which may be inconsistent with the principles of the YJ Act.⁴³

WLSQ 'strongly objects' to the creation of an offence that gives legal status to a fetus, stating that 'any attempt to change the legal status of a fetus risks undermining women's rights'. WLSQ further 'strongly objects' to the Bill's use of the term 'unborn child', stating it 'encourages and reinforces anti-abortionist views and is unnecessarily emotive'. WLSQ submitted that particular terms used in policy and legislation can influence public perception of an issue and can encourage and reinforce stigma. WLSQ submitted that the correct term is 'fetus' or 'pregnancy', and that it is upon birth that a fetus becomes a child. WLSQ recognised that it is respectful to confer the status of 'child' on a stillborn fetus as a way of acknowledging great loss.⁴⁴

WLSQ supports the amendments that broaden the definition of victim under the VCA Act to include 'family members of a fetus if it became a child'. WLSQ recommended that this particular reform is accompanied by specialist training for victim support services to facilitate the provision of financial assistance.⁴⁵

The Queensland Law Society (QLS) acknowledged that the 'the death of an unborn child is a naturally shocking and distressing event' but that amendments which only take community views into account in the sentencing process are 'misguided and have the potential to cause individual injustice'. QLS stated that the proposed amendments to the PS Act and YJ Act 'are not necessary, and are not modelled on evidence or data that supports their introduction or likely to achieve their policy objective'. However, QLS 'supports the Bill's amendment' to the VCA Act 'to expand the definition of a victim for the purpose of who may make a victim impact statement and who has rights under the Charter of victims' rights'.⁴⁶

QLS submitted that the amendments will lead to 'arbitrary and unjust outcomes', with particular regard to s 328A of the Criminal Code (Dangerous operation of a vehicle) including:

⁴⁰ LAQ, submission 9, p 4.

⁴¹ LAQ, submission 9, pp 5-6.

⁴² LAQ, submission 9, p 5.

⁴³ LAQ, submission 9, p 6.

⁴⁴ WLSQ, submission 5, p 2.

⁴⁵ WLSQ, submission 5, p 3.

⁴⁶ QLS, submission 10, p 7.

QLS, submission 10, pp 7-8



- The lack of **fault element** for the circumstance of aggravation, meaning that an offender who knowingly caused the death of a fetus would be exposed to the same penalty as an offender who unknowingly caused the death of a fetus.
- The **sentencing discretion will focus on the outcome of the actions**, rather than their level of culpability leading to disproportionate outcomes and should be resisted.
- There will be **difficulties proving causation**, for example that the dangerous operation of the motor vehicle caused the death of the fetus, particularly where the loss occurs earlier in a pregnancy. This is a distressing prospect for the pregnant person and their families and may create uncertainty around prosecutions.
- **Complications arise if the pregnant person is responsible** for the conduct causing the death of the fetus. In these circumstances, the pregnant person could be captured by the proposed circumstances of aggravation.

QLS noted that s 313(2) of the Criminal Code makes it unlawful to assault a pregnant woman and destroy the life of, or do grievous bodily harm to, or transmit a serious disease to, the child before its birth. QLS submitted that this is ‘materially different from a mere act of dangerous driving, causing a motor vehicle incident, resulting in harm to a pregnant female and the death of her fetus’ and that ‘to treat the culpability of such an offender the same way as a person who knowingly assaults a woman who is pregnant, is manifestly unwarranted’.⁴⁷

QLS also noted that the aggravating factor ‘may be used oppressively against pregnant mothers’, with the example of pregnant mothers fearing punishment for ‘self-regarding behaviours (particularly drug use) that result in foetal harm’.⁴⁸ QLS stated it has reservations for the amendments which:

[C]onceptually acknowledge separate personhood for a fetus, might be used oppressively against pregnant persons in the future. For example, to justify the imposition of a duty of care upon pregnant persons and/or to limit access to abortion. This would result in repercussions in other areas including in creating uncertainty for medical practitioners.⁴⁹

Regarding naming the unborn child on the indictment, QLS stated during the public hearing that they ‘are opposed to the naming of an unborn child on an indictment’ as the indictment should only contain the ‘elements of the offence that the accused person must meet’.⁵⁰

Sarah Milosevic supports the naming of an unborn child on an indictment stating:

Sarah Milosevic, Record of Proceedings, 10 July 2023, p 23



[H]aving your child acknowledged as an unborn child and not a fetus, which is not a very nice term when you are going through what we have been through, gives a sense of healing. I talk to a lot of women who have lost children. ... [H]aving that acknowledgement of your child helps in the healing process. It helps you to heal and grieve and to know that your child mattered, just as much as they mattered to you

2.2.2 Department response

DJAG noted WLSQ’s objection to the creation of an offence that gives legal status to a fetus, and confirms the Bill does not do this.⁵¹

⁴⁷ QLS, submission 10, p 8.

⁴⁸ QLS, submission 10, p 8.

⁴⁹ QLS, submission 10, p 9.

⁵⁰ Queensland Parliament, Record of Proceedings, 10 July 2023, pp 1-2.

⁵¹ DJAG, correspondence, 4 July 2023, p 10.

DJAG noted DVConnect’s comments and support of the amendments, as well as their concerns regarding a pregnant person’s actions leading them to being charged with an offence, and stated that:

[T]he Bill does not introduce any new offences in relation to criminal conduct that results in the death of an unborn child, and that the nature of the aggravating factor and relevant serious offences to which it applies ensures the aggravating factor does not apply to acts or omissions of the pregnant person that cause the destruction of the life of their unborn child.⁵²

DJAG further reiterated during the public briefing:

The reforms in the bill to better recognise the deaths of unborn children do not create criminal culpability for the actions of the pregnant person. The bill preserves the ‘born alive’ rule, which means that an unborn child does not have legal personhood to conflict with the rights of the pregnant person. It also means that the pregnant person cannot commit offences such as grievous bodily harm or manslaughter in relation to their unborn child.⁵³

DJAG noted WLSQ’s and DVConnect’s support of the amendments to the VCA Act and the comments regarding the implementation of the reforms.⁵⁴

DJAG also noted the term ‘unborn child’ is currently used elsewhere in the Criminal Code, and inserting the term in the amendments promotes consistent interpretation of the legislation.⁵⁵

DJAG confirmed that ‘the naming of the unborn child on an indictment does not alter criminal culpability and does not change the offence’.⁵⁶ DJAG further confirmed that the Bill does not require the inclusion of the name or description of the unborn child in the indictment and noted the Bill permits a flexible approach based on the circumstances of the case.⁵⁷

Regarding the circumstance of aggravation, DJAG clarified that:

DJAG, Record of Proceedings, 13 July 2023, p 7



The bill does not introduce a new offence and it does not introduce a circumstance of aggravation. The bill introduces an aggravating factor. An aggravating factor only comes into play after the person has been convicted of the offence. After conviction, then the bill will require the court to consider the fact that the offence for which the person has been convicted in relation to the pregnant person also resulted in the death of an unborn child. That will be an aggravating factor that the court will balance and weigh against other aggravating mitigating factors considering the entirety of circumstances to determine what sentence is appropriate—up to the maximum penalty that can be applied for that offence—by considering the death of the unborn child. It does not create a new offence. It does not increase the maximum penalty for which a person can be liable.

Committee comment

The committee notes the views of the stakeholders and in particular the concerns around the creation of an offence that gives legal status to a fetus, and is pleased to note DJAG’s confirmation that the Bill does not provide this legal status.

The committee is also pleased to note the amendments will allow the unborn child to be recognised on an indictment at the discretion of the parent/s, which will aid in the healing process for many parent/s and their families.

⁵² DJAG, correspondence, 4 July 2023, p 8.

⁵³ Queensland Parliament, Record of Proceedings, 13 July 2023, p 5.

⁵⁴ DJAG, correspondence, 4 July 2023, pp 9-10.

⁵⁵ DJAG, correspondence, 4 July 2023, p 10.

⁵⁶ Queensland Parliament, Record of Proceedings, 13 July 2023, p 6.

⁵⁷ DJAG, correspondence, 4 July 2023, p 10.

The committee notes submitters' concerns about the potential for a pregnant person's actions to result in them being charged with an offence. The committee is satisfied with DJAG's comments that the nature of the aggravating factor and relevant serious offences to which it applies ensures the aggravating factor does not apply to acts or omissions of the pregnant person that cause the destruction of the life of their unborn child. The committee is also satisfied that the amendments to recognise the death of unborn children as an aggravating factor in sentencing preserves the court's discretion to weigh all relevant factors in sentencing and does not increase the maximum penalty for which a person can be liable.

However, following the committee's previous Inquiry into assistance provided to victims of crime, the committee still has concerns about the treatment of victims traversing the criminal justice system and recognises the importance of trauma-informed approaches for all agencies interacting with victims and their families. Communication with these victims, both written and verbal, needs to be trauma-informed, in plain English and available in various languages where required.

The committee also notes the expansion of the victims of crime category to include family members of an unborn child who dies as a result of an act of violence. The committee is aware there are currently considerable delays in the work undertaken by Victims Assist Queensland in providing assistance to victims of crime and has concerns for the added burden these amendments may have on victim support and community legal services. The committee notes comments from DJAG that fortunately the occurrences of the death of unborn children due to acts of violence are very rare and the applications to Victims Assist Queensland may be less complicated than others. However, the committee recommends that the Queensland Government gives consideration to the impacts these reforms will have on victim support services and the community legal service sector.

Recommendation 4

The committee recommends that proposed reforms introduced by the Bill relating to victims, are accompanied with trauma-informed training for those interacting with victims in the criminal justice system, including legal services, victims' services and investigating and prosecution bodies.

Recommendation 5

The committee recommends that the Queensland Government consider the service and resourcing impacts that these reforms will have on the victim support and community legal service sectors.

2.3 Assisting Termination of Pregnancy

Queensland laws relating to termination of pregnancy were enacted by the *Termination of Pregnancy Act 2018* which came into effect on 3 December 2018. The Act provides for the termination of pregnancies by registered health practitioners in certain circumstances and protects a pregnant person who consents to or assists in or performs a termination on themselves from criminal responsibility.⁵⁸

To coincide with the commencement of the *Termination of Pregnancy Act 2018*, amendments were also made to the Criminal Code.⁵⁹ In particular, under s 319A(2) of the Criminal Code it is an offence for an unqualified person to assist in the performance of a termination on a woman. The definition of

⁵⁸ DJAG, correspondence, 13 June 2023, p 7; *Termination of Pregnancy Act 2018*, Parts 2 and 3.

⁵⁹ DJAG, correspondence, 13 June 2023, p 7.

assist/assisting includes ‘supplying, or procuring the supply of, a termination drug for use in the termination’.⁶⁰

There are concerns that the offence might apply more widely than originally intended and extend to a person providing financial support to a pregnant person to access a lawful termination. This may be a family member or friend of a pregnant person or a non-profit social welfare group providing financial aid to enable a disadvantaged pregnant person to access a lawful termination, or a family member or friend of a pregnant person paying for a lawful termination.⁶¹

The Bill proposes amendments to clarify that an unqualified person only commits an offence under s 319A(2) of the Criminal Code if they procure the supply of the termination drug from another unqualified person.⁶²



The Bill proposes to amend the definition of ‘assisting’ under s 319A of the Criminal Code to include:

- supplying a termination drug for use in the termination
- procuring the supply of a termination drug from an unqualified person for use in the termination
- administering a termination drug.

2.3.1 Stakeholder views

Submitters were generally supportive of these amendments.

WLSQ recommended changing the terminology of the word ‘women’ to ‘pregnant person’ in s 319A to be ‘inclusive of trans and non-binary people’.⁶³

2.3.2 Department response

In response to WLSQ, DJAG advised the proposal to change terminology was outside the scope of the Bill advising that ‘amending terminology used in the provision would need to be considered separately, including the interaction of the provision with the *Termination of Pregnancy Act 2018*, to avoid potential unintended consequences’.

Committee comment

The committee was pleased to note the support of submitters for these amendments. However following the committee’s previous Inquiry into the Births, Deaths and Marriages Bill 2022 where part of the objectives of the Bill were to strengthen the legal recognition of trans and gender diverse people, the committee is of the view that further consideration should be given to the terminology used in the Bill in keeping with modern community expectations.

Recommendation 6

The committee recommends that the Queensland Government consider changing ‘woman’ to ‘pregnant person’ in proposed s 319A of the Bill to better reflect the diversity and modern community expectations of Queensland.

⁶⁰ Criminal Code, s 319A(3)(a)(ii).

⁶¹ DJAG, correspondence, 13 June 2023, pp 7-8.

⁶² Explanatory notes, pp 3, 21; DJAG, correspondence, 13 June 2023, p 8; Bill, cl 49.

⁶³ WLSQ, submission 5, p 3.

2.4 Amendments to the Legal Profession Act

The Bill makes several amendments to the *Legal Profession Act 2007* (LP Act), which are expanded on below.

2.4.1 Retention of client documents by law practices

The Bill proposes changes to the requirements of law practices to retain client documents.⁶⁴



The Bill proposes to:

- allow a law practice, QLS and community legal centres to destroy or dispose of any client documents if:
 - 7 years have passed since the completion of the matter
 - the law practice has been unable to obtain instructions from the client, despite making reasonable efforts to do so.

2.4.1.1 Stakeholder views

DVConnect supported the changes to the obligations on community legal centres for document retention. DVConnect noted in its submission:

[T]he positive impact of reducing the impost on [community legal centres] for storage and security. We also, more importantly, note the increased safety of client information that will occur by the destruction of aged documents.⁶⁵

Xuveo Legal (Xuveo) broadly supported the measures that allow law practices to destroy client documents in prescribed circumstances, stating:

The author's own personal experience over a number of years in practice is that file maintenance and destruction – particularly legacy paper files and archives – can be a time consuming, painstaking and expensive process.⁶⁶

Xuveo noted that the amendments do not give clear permission for a law practice to destroy client documents when the client has given consent or instruction to do so. Xuveo recommended new s 713A(1)(b) of the LP Act be amended to allow the destruction of legal documents if the client has given instruction.⁶⁷

QLS 'welcomes' the amendments that provide 'enhanced legislative certainty' as to when a law practice may destroy client documents.⁶⁸ QLS recommended that the Bill be amended to expressly state that:

- clients have the right to instruct their solicitor to return or destroy their documents at 7 years or earlier, if the client so wishes
- the obligation for a law practice to retain client documents does not apply if the client's documents have already been returned to that client
- law practices may in some situations lawfully retain copies of client documents for their own purposes, such as managing future claims.⁶⁹

⁶⁴ Explanatory notes, p 5.

⁶⁵ DVConnect, submission 4, p 4.

⁶⁶ Xuveo Legal, submission 3, p 2.

⁶⁷ Xuveo Legal, submission 3, p 5.

⁶⁸ QLS, submission 10, p 4.

⁶⁹ QLS, submission 10, p 5.

QLS also commended the Xuveo submission to the committee.⁷⁰

The Australian Lawyers Alliance (ALA) submitted that the 7-year time frame proposed by the amendment is ‘a reasonable length of time and offers a good balance between regulatory burden and protecting our clients’ privacy’.⁷¹

2.4.1.2 *Department response*

DJAG stated that the government committed to permitting law practices to ‘dispose of routine client documents 7 years after the end of a client matter’ if the practice was ‘unable to obtain client instructions about disposal’. This commitment was in response to the QLS Call to Parties ahead of the 2020 state election.⁷²

DJAG stated it will consider Xuveo’s submission further ‘in relation to clarifying the drafting of these amendments’.⁷³

DJAG noted DVConnect’s comments in support of the changes, but stated that the provisions do not compel a law practice (or community legal centre) to destroy records. The provision is proposed to apply in the absence of client instructions and any decision must be reasonable in all the circumstances and having regard to the nature of the documents.⁷⁴

2.4.2 **New cost disclosure threshold**



The Bill proposes to:

- increase the prescribed amount under s 311 of the LP Act (which triggers cost disclosure obligations for a law practice) from \$1,500 to \$3,000
- provide that an abbreviated costs disclosure obligation will apply if the total legal costs in a matter, excluding disbursements, are not likely to exceed \$3,000
- provide that no costs disclosure obligations will apply if the total legal costs in a matter, excluding disbursements, are not likely to exceed \$750.

2.4.2.1 *Stakeholder views*

QLS broadly welcomed the proposal to amend the LP Act to increase the detailed disclosure threshold amount from \$1,500 to \$3,000.⁷⁵ The QLS also raised 3 issues for consideration.

The first issue was abbreviated costs disclosure for matters below \$1,500. QLS expressed concern that the amendments will result in practices needing to provide abbreviated costs disclosure for legal costs between \$750 and \$1500, something that is currently not required. QLS’ view is that this is ‘contrary to the legislative intention to reduce the regulatory burden for law practices’.⁷⁶ QLS recommended that \$1,500 should be maintained as the disclosure threshold amount, so that small fee matters can be accepted without abbreviated cost disclosure obligations. QLS stated ‘this more appropriately facilitates access to justice, particularly for low bono and smaller matters’.

QLS also recommended a regular review of the prescribed amount ‘to account for inflation and to ensure that the thresholds are set at an amount consistent with their intended purpose’.⁷⁷

⁷⁰ QLS, submission 10, p 6.

⁷¹ ALA, submission 7, p 7.

⁷² DJAG, correspondence, 4 July 2023, p 3.

⁷³ DJAG, correspondence, 4 July 2023, p 4.

⁷⁴ DJAG, correspondence, 4 July 2023, p 7.

⁷⁵ QLS, submission 10, p 3.

⁷⁶ QLS, submission 10, p 3.

⁷⁷ QLS, submission 10, p 3.

The second issue raised by the QLS is the current *Review of the Costs Disclosure Thresholds in the Uniform Law* (Uniform Law Review).⁷⁸ The Uniform Law is a single framework that seeks to create national rules for practicing law, and has been adopted in New South Wales, Victoria and Western Australia. QLS' submission stated that the Uniform Law Review 'may consider an increase to \$5,000 for their upper threshold' for cost disclosure. QLS recommended that Queensland 'implement a \$5,000 upper threshold for the use of abbreviated cost disclosure'.⁷⁹

The third issue raised by QLS is the proposal to require disclosure, in general terms, of the legal services that will be provided to the client.⁸⁰ QLS is of the view that 'this element should not form part of the mandated cost disclosure'.⁸¹ QLS submitted that this information is not required under detailed costs disclosure provisions and 'it is inappropriate for the validity of cost disclosure to a client to rest upon the clarity of this exercise'. QLS adds that 'communication of the scope of works is properly a matter for appropriate management systems'.⁸²

Sterling Law (Sterling) welcomed the lifting of the threshold for detailed disclosure but opposed the extent of the matters to be disclosed for detailed disclosure or proposed abbreviated disclosure, stating:

Sterling Law, submission 6, pp 1-2



- a) Many of the matters that are required to be disclosed are reasonably obvious and border on platitudes;
- b) The common law already provides legal consumers with protection if matters relating to costs are not disclosed to them beforehand;
- c) Some of the matters that are required to be disclosed are confusing or irrelevant;
- d) The number of matters that need to be disclosed mean that less attention is likely to be given by legal consumers when asked to read such long legal documents in compliance with law firm obligations, which means that information they may really want is going to be harder to find or may even be overlooked, thereby undermining the entire purpose of costs disclosure;
- e) Such excessive regulatory burden results in solicitors having to spend more of their time on attending to costs disclosure requirements, which ultimately is against the interests of clients; and
- f) Given the consequences of non-disclosure, the way the law operates and the proposed amendments, the other main effect of onerous costs disclosure obligations is that it makes it easier for clients who simply do not wish to pay their legal bills to use the provisions of the Legal Profession Act to evade paying their just debts by deterring lawyers from recovering them.

Xuveo supports the 'streamlining and simplification of costs disclosure to clients in matters that have low professional fees or are not complex in nature'.⁸³

⁷⁸ Legal Services Council, *Review of the Costs Disclosure Thresholds in the Uniform Law*, <https://www.legalservicescouncil.org.au/highlights/review-of-the-costs-disclosure-thresholds-in-the-uniform-law.html>.

⁷⁹ QLS, submission 10, p 4.

⁸⁰ Bill, cl 110.

⁸¹ QLS, submission 10, p 4.

⁸² QLS, submission 10, p 4.

⁸³ Xuveo Legal, submission 3, p 2.

The ALA ‘believes that the increase of the cost disclosure threshold in s 311 of the LPA Act will reduce regulatory burden for law practices’ and promote cost transparency for consumers of legal services.⁸⁴

2.4.2.2 *Department response*

DJAG noted stakeholders’ concerns and stated it would give further consideration to suggestions made by QLS and Xuveo regarding the cost disclosure thresholds.

DJAG acknowledged in lowering the threshold to \$750 ‘essentially there is a new obligation’, however noted the abbreviated costs disclosure was not ‘intended to be onerous’. DJAG further stated the abbreviated costs disclosure was intended ‘to be a simple form of disclosure that provides key information to a client regarding the cost of the matter’ and was to provide a ‘balancing act’ between ‘requirements of law practices’ and ‘benefits of cost transparency for consumers of legal service’.⁸⁵

Committee comment

The committee notes the support of submitters for the ability to destroy client documents after 7 years if unable to obtain instructions from the client despite making reasonable efforts to do so. The committee was pleased to note DJAG would give further consideration to the drafting of the amendment to ensure clarity for the issues raised by Xuveo Legal.

The committee notes submitters’ support for the increase of the costs disclosure threshold to \$3,000 and also notes submitters’ concerns as to the abbreviated costs disclosure obligation commencing at the \$750 threshold amount. However, the committee feels strongly that clients should have full and frank disclosure of legal costs. The committee notes the concerns of QLS that this amount should be regularly reviewed to account for inflation, and is pleased to note the suggestions will be further considered by DJAG.

2.5 Oaths Act



The Bill proposes to amend the *Oaths Act 1867* to:

- regardless of whether they are witnessed in person and by audio visual link or signed on paper or electronically
- change what information witnesses are required to provide in affidavits and statutory declarations including:
 - clarifying that a special witness is only required to include particular information when they witness an affidavit or statutory declaration that is electronically signed or signed over an AV link
 - removing the requirement for Justices of the Peace and Commissioners of Declaration to include their place of employment
- clarify that a document may be witnessed by audio visual link only if the audio visual link enables the witness to be satisfied, by the sounds and images made by the link, that the signatory or substitute signatory is signing the document; and the witness forms the satisfaction in real time
- to require witnesses to be satisfied that signatories are freely and voluntarily signing
- amend ss 13B(2)(e) and 13C(2)(e) to better reflect the relevant offences in the Criminal Code that apply to knowingly making a false affidavit or statutory declaration.

⁸⁴ ALA, submission 7, p 7.

⁸⁵ Queensland Parliament, Record of proceedings, 13 July 2023, p 6.

2.5.1 Stakeholder views

The ALA⁸⁶ and WLSQ were supportive of the changes to information a witness is required to include with WLSQ noting:

Disclosing a witness's place of employment could inadvertently disclose the location of a domestic and family violence victim and could pose a safety risk to the victim, children and other affected persons, as well as the witness and other employees at the witness's place of employment.⁸⁷

WLSQ further recommended that 'work is undertaken separately to address safety concerns for victims of domestic and family violence due to requirements for the signatory to include their address and the place where the document is made.'⁸⁸

2.5.2 Department response

DJAG noted WLSQ's concerns for the safety of victims of domestic and family violence and stated further consideration would be given to the issue separately.⁸⁹

Committee comment

The committee was pleased to note the general support for the amendments.

The committee noted WLSQ's concerns around the safety for victims of domestic and family violence and was pleased to note DJAG will give further consideration to requirements for the signatory to include their address and the place where the affidavit or statutory declaration is made.

The committee agrees with the recommendation of WLSQ that the Queensland Government must continue to undertake work to address the safety of victims of domestic and family violence.

Recommendation 7

The committee recommends that the Queensland Government continues to undertake work in relation to improving safety for victims of domestic and family violence, noting the prevalence of systems abuse.

2.6 Electoral Act



The amendments to the *Electoral Act 1992* include:

- to allow completed postal votes that are not inside the reply-paid envelopes supplied by the Electoral Commission of Queensland to be counted
- expanding the definition of special postal voter to include electors who are:
 - patients in a hospital that is not a polling place
 - ill or infirm (or those caring for them) and unable to travel to a polling place.

2.6.1 Stakeholder views and department response

The Electoral Commission of Queensland (ECQ) stated it is 'particularly supportive' of the amendments to save postal votes that are not enclosed in ECQ-supplied envelopes. ECQ estimates that, based on figures from the 2020 state election, up to 30 per cent of the 57,000 rejected postal votes could have

⁸⁶ ALA, submission 7, p 6.

⁸⁷ WLSQ, submission 5, p 3.

⁸⁸ WLSQ, submission 5, p 3.

⁸⁹ DJAG, correspondence, 4 July 2023, p 11.

been saved under this provision. ECQ submitted that the amendment would bring Queensland into align with other jurisdictions around postal votes.⁹⁰

ECQ also stated that the Bill's changes to the definition of 'special postal voter' will align it with the Commonwealth definition of 'general postal voter', 'providing those electors certainty about their status in both State and federal elections'.⁹¹

DJAG noted ECG's support for the amendments.⁹²

2.7 Acts Interpretation Act



The amendments to the *Acts Interpretation Act 1954* update several definitions and technical matters. They also update the definition of a document to include an electronic document and provide a definition for an electronic document.

2.7.1 Stakeholder views

The Queensland Building and Construction Commission (QBCC) finds the amendments that update definition of document to be 'helpful and modernising'.⁹³ However, the QBCC noted that the definition in s 39 of the *Acts Interpretation Act 1954* (AIA) for serving documents has not been updated to include electronic service of documents (such as email) and still refers to serving documents via post, telex or facsimile. The QBCC submitted:

The dependence on postal service (given that facsimile and telex is no longer commonly in use) is antiquated, administratively burdensome, costly, environmentally unfriendly and is open to greater challenge by those who allege not receiving the correspondence.⁹⁴

The QBCC recommended the committee consider aligning s 39 of the AIA to the new definition of document and electronic document to allow the service of documents through modern electronic means.⁹⁵

2.7.2 Department response

DJAG noted QBCC's suggestion to amend s 39 of the AIA but stated it fell outside the scope of the Bill. DJAG stated that the Bill's amendments aim to simplify the drafting and interpretation of legislation 'by avoiding the need to include a definition of 'electronic document' in each item of legislation where the term is used'.⁹⁶

DJAG stated that the Bill does not intend to alter the law regarding when an electronic document is required or situations where it is permitted and that the *Electronic Transactions (Queensland) Act 2001* facilitates the use of electronic communication regarding the service of a document.⁹⁷

⁹⁰ ECQ, submission 8, p 1.

⁹¹ ECQ, submission 8, pp 1-2.

⁹² DJAG, correspondence, 4 July 2023, p 14.

⁹³ QBCC, submission 1, p 2.

⁹⁴ QBCC, submission 1, p 2.

⁹⁵ QBCC, submission 1, p 2.

⁹⁶ DJAG, correspondence, 4 July 2023, p 2.

⁹⁷ DJAG, correspondence, 4 July 2023, p 2.

2.8 Justices of the Peace and Commissioners for Declarations Act 1991



The Bill proposes several amendments to the *Justices of the Peace and Commissioners for Declarations Act 1991* that apply to Justices of the Peace (JP) and Commissioners of Declaration (CDec), including:

- qualification and disqualification provisions
- give legislative effect to a code of conduct
- allowing an investigator to be appointed to investigate a JP or CDec for the purpose of deciding whether they should be removed from office
- provide for the continuous criminal history monitoring of JPs and CDecs after their appointment by the Queensland Police Service
- provide a reasonable excuse defence for persons who inadvertently breach the offence of acting as a JP or CDec without holding such office
- provide that anything done by a person in their purported capacity as a JP or CDec is not invalid only because, at the time the thing was done, the person was not validly appointed, or the person's appointment had lapsed, was suspended, or had otherwise ended
 - this is to protect members of the community who utilise the services of a JP or CDec and are unaware the JP or CDec is no longer authorised to provide those services.

2.8.1 Stakeholder views and department response

The ALA supports the amendments, stating they will assist in maintaining the integrity of Justices of the Peace (JP) and Commissioners of Declaration (CDec) and ensuring public confidence in the services provided by JPs and CDecs.⁹⁸

DJAG did not provide a response to ALA's comments.

2.8.2 Fundamental legislative principles and human rights consideration

As part of the proposed amendments, individuals will have to disclose all aspects of their criminal history, including spent convictions. This raises issues of the right to privacy and right to participation in public life.

The explanatory notes observe that the proposed amendments will provide for the investigation of JPs and CDecs where the chief executive is satisfied on reasonable grounds that an investigation is warranted as to whether there are grounds for removal of the JP or CDec from office.⁹⁹

Although the explanatory notes address matters of privacy and confidentiality in terms of their consistency with fundamental legislative principles,¹⁰⁰ they do not consider the administrative decision-making provisions in the Bill in the same fashion.

The amendments seek to empower the Minister to recommend to the Governor in Council that an appointment of a JP or CDec be revoked if the chief executive is satisfied of the specified matters. The amendments also seek to empower the chief executive to suspend the appointee's appointment in the specified circumstances and appoint an investigator to investigate the appointee's conduct. The Minister would be able to use the investigation report for the purpose of deciding whether or not to issue a show cause notice to the appointee and whether or not to recommend to the Governor in Council that the JP or CDec be removed from office.

⁹⁸ ALA, submission 7, p 6.

⁹⁹ Explanatory notes, p 9.

¹⁰⁰ Explanatory notes, p 9. See also the statement of compatibility (pp 14-17) for consideration of the consistency of the proposed amendments with the right to privacy.

These proposed provisions in the Bill include administrative decision-making powers which could result in significant ramifications for appointees, who may be investigated and have their appointment suspended and/or revoked.

The Bill includes a range of procedures that appear generally consistent with natural justice (such as notice requirements, reasons for decisions, and the opportunity for an appointee to make representations in order to present their case to the decision-maker) and provide criteria for making the decision.

The proposed amendments do not include a review process that may be accessed directly by a dissatisfied appointee.¹⁰¹ However, it would appear that an aggrieved appointee would be potentially able to access the statutory orders of review provisions in the *Judicial Review Act 1991*¹⁰² although such a review would not consider the merits of the decision, just whether it was properly made.

Committee comment

The committee is satisfied, on balance, the proposed amendments have sufficient regard to the rights and liberties of individuals. The committee is satisfied any limitation on human rights are justified as the requirement to disclose unspent convictions is necessary and reasonable given the integrity role of JPs and CDecs.

2.9 Supreme Court of Queensland Act



The Bill amends the *Supreme Court of Queensland Act 1991* to provide that an admission guideline takes effect on the day it is published on the court's website, or a later day fixed in the guideline, rather than on the Minister giving notice of the issuing of the guidelines.

In this regard, the Bill seeks to remove the existing provisions in the *Supreme Court of Queensland Act 1991* (SCQ Act) that provide that:

- a guideline is a statutory instrument, but not subordinate legislation, and has no effect unless the Minister gives notice of the issuing of the guideline
- the notice is subordinate legislation.¹⁰³

The Bill provides that the registrar must ensure each guideline, while it is in effect, is published on the court's website and available for public inspection, without charge, at the specified regional registries.¹⁰⁴

2.9.1 Fundamental legislative principles

The explanatory notes acknowledge that the proposed amendments raise an issue of fundamental legislative principle in relation to the institution of Parliament, because the existing notice (which the Bill seeks to remove) constitutes subordinate legislation and attracts the provisions of the *Statutory*

¹⁰¹ Although there is an internal review process of sorts in the Bill: where the chief executive makes a decision, the Minister can either agree or disagree with the decision. Further, even if the Minister and the chief executive agree, there is still a show cause process which enables an appointee to make a written submission to the Minister (Bill, cl 96 inserts *Justices of the Peace and Commissioners for Declarations Act 1991*, new ss 31E, 31F).

¹⁰² *Judicial Review Act 1991*, s 20.

¹⁰³ Bill, cl 209 removes SCQ Act, s 86(2)-(4).

¹⁰⁴ Being, Brisbane, Rockhampton, Townsville and Cairns; Bill, cl 209, inserts new SCQ Act, s 86(3).

Instruments Act 1992, including the requirement for it to be tabled and that it is able to be subject to a parliamentary disallowance motion.¹⁰⁵

The explanatory notes seek to justify this by noting the following:

- The notification of the making of new or updated admission guidelines is a process which is primarily machinery in nature, with responsibility for making the guidelines ultimately resting with the Chief Justice.¹⁰⁶
- When issuing the guidelines, the Chief Justice is required¹⁰⁷ to have regard to any relevant recommendations of the Law Admissions Consultative Committee (LACC).¹⁰⁸
- It is not anticipated that the proposed amendments will lower standards in relation to those applicants granted admission into the legal profession in Queensland, as both the Chief Justice and LACC are invested in ensuring that applicants for admission are suitably qualified for their roles.
- Transparency will be maintained by requiring that any new or updated guidelines come into effect on publication on the Queensland Courts website, or a later day fixed in the guideline.¹⁰⁹

No stakeholders commented on the changes to the SCQ Act.

Committee comment

The committee notes these amendments raise an issue of fundamental legislative principles in relation to the institution of Parliament as future admission guidelines (or amendments to admission guidelines) will no longer be accompanied by a notice bringing them to the attention of Parliament which is subject to disallowance. However the committee also notes that the intention of the provisions is to reduce administrative burden and delay and to streamline the process.

In light of the likely administrative benefits, the requirement that guidelines are subject to consultation with the LACC, and the assertion in the explanatory notes that the amendments are unlikely to result in a degradation of standards for admission to the legal profession, the committee is satisfied the Bill appropriately delegates legislative power to the Chief Justice.

The committee is satisfied the proposed amendments have sufficient regard to the institution of Parliament.

¹⁰⁵ Explanatory notes, p 11.

¹⁰⁶ Explanatory notes, p 11.

¹⁰⁷ Pursuant to rule 9AA(2) of the *Supreme Court (Admission) Rules 2004*; Explanatory notes, p 11.

¹⁰⁸ Explanatory notes, p 11. According to the explanatory notes, the guidelines currently approved in Queensland are those policies developed and approved by the LACC and applying in other jurisdictions.

¹⁰⁹ Explanatory notes, p 11.

Appendix A – Submitters

Sub #	Submitter
001	Queensland Building and Construction Commission
002	Office of the Information Commissioner
003	Xuveo Legal
004	DVConnect
005	Women’s Legal Service Queensland
006	Sterling Law (Qld) Pty Ltd
007	Australian Lawyers Alliance
008	Electoral Commission Queensland
009	Legal Aid Queensland
010	Queensland Law Society
011	Australia's Right to Know coalition of media organisations
012	Sarah and Peter Milosevic

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney-General

- Ms Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Ms Kate McMahon, Acting Director, Women’s Safety and Justice Team, Strategic Policy and Legal Services
- Mr Leighton Kraa, Acting Director, Strategic Policy and Legal Services
- Ms Melinda Tubolec, Acting Director, Strategic Policy and Legal Services
- Ms Trudy Struber, Principal Legal Officer, Strategic Policy and Legal Services
- Ms Courtney Arndell, Principal Legal Officer, Strategic Policy and Legal Services

Appendix C – Witnesses at public hearing

Queensland Law Society

- Ms Rebecca Fogerty, Vice President
- Mr Dominic Brunello, Chair, Queensland Law Society Criminal Law Committee
- Mr Matt Dunn, General Manager - Advocacy, Guidance and Governance

Women’s Legal Service Qld

- Ms Nadia Bromley, CEO

Sterling Law (Qld) Pty Ltd

- Mr Leon Bertrand, Legal Practitioner Director

DVConnect

- Ms Michelle Royes, Research Compliance Inclusion Manager
- Dr Kelly Dingli, Director Clinical Governance

Private individuals

- Mrs Sarah Milosevic
- Mr James McDonald MP, Member for Lockyer

Appendix D – Statements of Reservation

Statement of Reservation

Sophie's Law

The Liberal National Party welcomes the adoption of 'Sophie's law', with the passage of this bill, to recognise unborn children who die due to criminal offences. We acknowledge the tireless campaigning of Sarah and Peter Milosevic, who determined the tragic loss of Sophie 9 years ago should not be forgotten but should lead to changes in legislation to recognise her. Their work included a petition calling for Sophie's law that has been signed by over 135,000 people to date, meetings with Ministers and MPs, including the Member for Lockyer Jim McDonald who championed their call for change, and direct advocacy to this committee. While it has been a long journey for Sarah and Peter in getting the Government to introduce Sophie's law, it is one that we recognise as a tribute to Sophie and to see justice for other unborn babies who might meet a similar fate in the future.

Other matters

We note genuine concerns raised by stakeholders in the legal profession that changes regarding disclosure obligations in relation to costs agreements will, despite claims that it will reduce regulatory burden on legal practices, increase the burden of compliance for relatively low fee arrangements for legal practices (up to \$3,000). Increasing compliance costs for these types of legal practice transaction serves only to increase costs for the consumer – whether it is somebody buying a house, selling their business or seeking justice on small matters before the Magistrates Court. The Government should reconsider these changes.

With Queensland now having fixed parliamentary terms, in the interest of fairness and certainty for the political process the redistribution process under the *Electoral Act 1992* (Electoral Act) should be reformed to ensure that boundary redistributions are finalised by a set time prior to the next scheduled election (we acknowledge this is beyond the scope of this bill). Section 52(1) of the Electoral Act provides that 21 days after the Redistribution Commission publishes its redistribution, the boundaries become effective. There appears to be no provision in the Electoral Act that prevents this 21-day period ending – and new boundaries becoming effective – just weeks from the fixed election date. This bill brings amendments to the Electoral Act that will introduce more uncertainty in the redistribution process, by removing the requirements under section 51 of the Electoral Act for the Redistribution Commission to finalise a redistribution within a 60-day timeframe after all of the substantive consultation has taken place. Instead, the Redistribution Commission must finalise it 'as soon as practicable'. There are already numerous timeframes defined as 'as soon as practicable' within the redistribution process, meaning the overall timeframes in the process are uncertain for participants in the political process and completely in the discretion of the Redistribution Commission. This is unfair to Queenslanders, and those involved in the political process – especially when there is no set timeframe before an election when boundaries must be finalised. In our view, the mandate upon the Redistribution Commission to finalise boundaries in a set timeframe when all the prior work in the redistribution process has been completed should be maintained.

Finally, we are concerned that the Government has again chosen to include in an 'omnibus' bill many issues that are unrelated and should be dealt with by specific bills. This reduces the ability of all parties in the legislative process – stakeholders, committee members, and all members of the public – to have their say and contribute to the parliamentary process. It is a sign of the chaos and crisis with the tired, third term Palaszczuk Labor Government that clearly has run out of ideas and is struggling to put forward a legislative agenda. Queenslanders deserve better.



Laura Gerber MP
Member for Currumbin
Deputy Chair



Jon Krause MP
Member for Scenic Rim