

Justice and Other Legislation Amendment Bill 2023

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, make this statement of compatibility with respect to the amendments to be moved during consideration in detail (ACiDs) of the Justice and Other Legislation Amendment Bill 2023 (Bill).

In my opinion, the ACiDs for the Bill are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the amendments

Part 1 of the Bill sets out the commencement of the amendments in the Bill.

Clause 2 provides that part 9 (amendments to the *Criminal Law (Sexual Offences) Act 1978* (CLSO Act)) of the Bill is to commence on day to be fixed by proclamation. The Bill will be amended to provide that part 9 will commence on 3 October 2023. The objective of the amendment is to ensure that amendments to the CLSO Act commence in a timely way, to provide maximum clarity, transparency and notice to relevant stakeholders.

Part 16 of the Bill amends the *Legal Profession Act 2007* (LP Act).

Clause 109 increases the threshold for detailed disclosure of legal costs by a law practice from \$1,500 to \$3,000 and introduces an abbreviated form of costs disclosure where legal costs are likely to exceed \$750 but not the detailed disclosure threshold of \$3,000. The Bill will be amended to increase the threshold for abbreviated disclosure from \$750 to \$1,500 (the current non-disclosure threshold) on the basis that non-disclosure below this level has not been identified as an issue in practice.

Clause 118 inserts new section 713A of the LP Act which allows for the destruction of client documents without the client's consent if: a period of seven years has elapsed 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; and it is reasonable in the circumstances, having regard to the nature and content of the document, to destroy the document. It applies to client documents held by the Queensland Law Society (QLS) for practices that have gone into receivership.

The objective of this amendment is to address the increasing risk to clients' privacy and confidentiality arising from the prolonged retention of client documents and the mounting substantial costs associated with securely storing large volumes of client documents that are no longer of utility.

Further to submissions on the Bill to the Legal Affairs and Safety Committee, technical amendments are proposed to clause 118 of the Bill to clarify that, for the application of the provision, it does not matter whether the person entitled to the client document is or was a client of the law practice holding the document or of another law practice; and apply the section to the QLS where it holds client documents for a reason other than an appointment of a receiver for the law practice.

Human Rights Issues

Human rights relevant to the amendments (part 2, divisions 2 and 3, HR Act)

In my opinion, the only human right relevant to the ACiDs is the right to property (section 24 of the HR Act).

The amendment to set a fixed commencement date for part 9 of the Bill does not engage or limit a human right.

The amendment to increase the disclosure threshold amount for abbreviated costs disclosure does not engage or limit a human right.

The Statement of Compatibility for the Bill identified that new section 713A (clause 118 of the Bill), which concerns the destruction of client documents, engaged the right to property and was compatible with human rights on the basis that the protection of the interests of consumers of legal services against the increasing risk of unauthorised access to client privacy and confidentially and freeing law practices from the storage costs of documents which are not of ongoing legal utility, outweigh the negative impact on the client's right to property. The amendment to new section 713A will clarify rather than materially affect the intended operation of the proposed provision and as such, the previous assessment of compatibility with human rights applies.

Conclusion

In my opinion, the ACiDs for the Justice and Other Legislation Amendment Bill 2023 are compatible with the human rights protected by the HR Act because they limit human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

YVETTE D'ATH MP
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE
MINISTER FOR THE PREVENTION OF DOMESTIC AND FAMILY VIOLENCE

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