

Defamation and Other Legislation Amendment Bill 2025

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity

Title of the Bill

Defamation and Other Legislation Amendment Bill 2025

Objectives of the Amendments

Amendments relating to the double jeopardy exception framework

The Queensland Government is committed to restoring public confidence in the forensic science framework and criminal justice system, following findings by the Commission of Inquiry into Forensic DNA Testing in Queensland and the Commission of Inquiry to examine DNA Project 13 concerns that deficient DNA testing practices were used by the former Queensland Health Forensic and Scientific Services (QH-FSS).

Cases affected by the historical deficient DNA testing practices are being reviewed to determine whether further DNA information is available that may be probative to the case, and retesting samples utilising contemporary and appropriate testing practices may identify further DNA information for some of these cases. In cases where DNA information indicates there may have been an unjust acquittal for a serious offence, there is a strong public interest in pursuing a conviction.

The objective of the amendments is to clarify the intended operation of the double jeopardy exception framework to ensure offenders are not prevented from being retried as a consequence of the deficient DNA testing practices.

The rule against double jeopardy prevents a person being retried for an offence for which they have already been convicted or acquitted. However, an exception framework in the Criminal Code allows an acquitted person to be retried for serious offences in certain circumstances. A fresh and compelling evidence double jeopardy exception allows a person acquitted of murder and prescribed serious offences, such as manslaughter and rape, to be retried if there is fresh and compelling evidence and it is in the interests of justice. For the purpose of the exception, evidence is 'fresh' if it was not adduced in the proceeding in which the person was acquitted

and it could not have been adduced with the exercise of reasonable diligence by a police officer in relation to the investigation or a prosecutor in relation to the proceeding.

The police officer and prosecutor should be permitted to rely on advice and forensic services (testing and analysis or scientific interpretation) provided by QH-FSS or Forensic Science Queensland (FSQ) without being expected to interrogate the particular tests, methodology, or practices used by the entity to establish the exercise of reasonable diligence.

Amendments relating to the tendency and coincidence evidence framework

A range of reforms were introduced by the *Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024* which gave effect to recommendations from the Women's Safety and Justice Taskforce (Taskforce). Amongst other things, this included a new framework for the admission of tendency evidence and coincidence evidence in criminal proceedings.

This framework within Part 7A of *Evidence Act 1977* (Evidence Act), which commenced on 20 September 2025, provides that this type of evidence cannot be admitted unless two requirements are satisfied. Firstly, the party seeking to adduce the evidence must give 'reasonable notice' of this intention to other parties in the proceedings. Secondly, the court must determine that the evidence has significant probative value. There are also other special rules for the admissibility of tendency and coincidence evidence in Part 7A.

These procedural requirements apply to all criminal proceedings, except bail and sentencing proceedings which are explicitly excluded. This means that if parties seek to admit written statements or documents containing tendency or coincidence evidence at a committal proceeding, they must comply with these requirements under Part 7A of the Evidence Act.

It was not intended that a magistrate be required to make a determination on the admissibility of tendency or coincidence evidence as a precondition to that evidence being admitted during a committal proceeding. Rather, questions relating to the admissibility of evidence are to be determined by a judge in the trial jurisdiction.

The objectives of the amendments are to amend the Evidence Act to provide that tendency evidence and coincidence evidence may be adduced in a committal proceeding, while exempting such evidence adduced in committal proceedings from the rules for the admission of tendency and coincidence evidence.

Achievement of the objectives

Amendments relating to the double jeopardy exception framework

The objective of the amendments is achieved by amending section 678D of the Criminal Code to provide that a police officer or prosecutor is taken not to have failed to exercise reasonable diligence in relation to evidence because they relied on advice or the results of forensic services (any type of testing and analysis or scientific interpretation) provided by QH-FSS or Forensic Science Queensland.

Amendments relating to the tendency and coincidence evidence framework

The objective of the amendments is achieved by amending the Evidence Act to provide that tendency evidence or coincidence evidence may be adduced in committal proceedings and, where that evidence is adduced in committal proceedings, the rules for its admissibility in sections 129AC to 129AK of the Evidence Act (including the requirements for notice and for the court to make determinations about the admissibility of evidence) do not apply.

This will ensure that magistrates can consider all relevant evidence tendered in the committal proceeding, including tendency evidence or coincidence evidence, when determining whether there is sufficient evidence to put the defendant on trial for an indictable offence before a higher court. Determinations of the admissibility of that evidence at trial will be made by a judge in the trial jurisdiction in accordance with the requirements under Part 7A of the Evidence Act.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

There are no anticipated costs for government in implementing the amendments.

Consistency with fundamental legislative principles

The amendments have been drafted having regard to the fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992* (LS Act).

Amendments relating to the double jeopardy exception

Section 4(3)(g) of the LSA provides that whether legislation has sufficient regard to the rights and liberties of individuals may depend on whether the legislation adversely affects rights and liberties, or imposes obligations, retrospectively.

The amendments to the definition of fresh evidence will operate retrospectively to the extent they clarify the scope of the exercise of reasonable diligence by police officers and prosecutors, irrespective of whether the investigation or prosecution of the offence occurred before, on, or after commencement of the amendment. However, the amendments do not retrospectively change criminal liability as no changes are made to the offences to which the exception applies and the conduct must have been an offence at the relevant time.

Any departure from FLPs is considered justified to ensure the double jeopardy exception framework can be effectively utilised in relation to possible unjust acquittals associated with previous deficient DNA testing practices. Without retrospectivity there is a risk an application for a retrial would be unsuccessful if the police officer or prosecutor is considered to have not exercised reasonable diligence by relying on advice, testing and analysis, or interpretations from QH-FSS or FSQ associated with the deficient DNA testing practices.

If fresh and compelling evidence is obtained as a result of retesting samples for DNA, an order for retrial should not be precluded because the police officer or prosecutor relied on advice, testing and analysis, or interpretations associated with the previous deficient DNA testing practices.

Consultation

The Director of Public Prosecutions was consulted in relation to the amendments to the double jeopardy exception framework. No further consultation was undertaken due to the clarifying nature of the amendments.

The Director of Public Prosecutions was also consulted during the development of the amendments to the tendency and coincidence evidence framework.

Notes on provisions

Criminal Code amendments

Amendment 1 inserts new clause 20A into the Bill.

Clause 20A amends section 678D (Fresh and compelling evidence—meaning) of the Criminal Code by inserting new subsections (2A) and (5).

New subsection (2A) provides that, for subsection (2)(b), a police officer or prosecutor is taken not to have failed to exercise reasonable diligence merely because the police officer or prosecutor relied on advice or forensic services provided by:

- Forensic Science Queensland under the *Forensic Science Queensland Act 2024*; or
- the part of Queensland Health that was known as Forensic and Scientific Services before the commencement of the *Forensic Science Queensland Act 2024*.

New subsection (5) inserts definitions for forensic services and Queensland Health. Forensic services is defined to mean any type of testing and analysis or scientific interpretation. Queensland Health is defined to mean the department administering the *Hospital and Health Boards Act 2011*.

Amendment 2 amends clause 21 of the Bill by changing the heading for new part 9, chapter 113 of the Criminal Code (Transitional provision for *Defamation and Other Legislation Amendment Act 2025*) to refer to ‘provisions’ instead of ‘provision’.

Amendment 3 amends clause 21 of the Bill to insert a new transitional provision, section 769 (Application of new section 678D), in part 9, chapter 113 of the Criminal Code.

New section 769 provides that new section 678D applies, and is taken always to have applied, to evidence against a person whom chapter 68 applies under section 678A. New section 678D is defined to mean section 678D as in force from the commencement.

Evidence Act amendments

Amendment 4 inserts new part 4 (Amendment of *Evidence Act 1977*) into the Bill.

Part 4 is comprised of clauses 22, 23, 24 and 25.

Clause 22 states that this part amends the *Evidence Act 1977* (Evidence Act).

Clause 23 amends the heading for part 7A to ‘Coincidence evidence and tendency evidence’.

Clause 24 inserts new section 129ABA (Committal proceedings) into the Evidence Act. Subsection (1) provides that coincidence evidence and tendency evidence may be adduced in a committal proceeding. Subsection (2) provides that sections 129AC to 129AK do not apply in relation to coincidence evidence or tendency evidence adduced or to be adduced in a committal proceeding.

Clause 25 inserts a new division 19 (Transitional provision for *Defamation and Other Legislation Amendment Act 2025*) into part 9 of the Evidence Act.

New division 19 contains new section 183 (Committal proceedings) which outlines the transitional approach for the amendment to section 129ABA of the Evidence Act by the Bill.

Subsection (1) provides that new section 129ABA applies to a committal proceeding on or after commencement of the Bill only if an originating step in the proceeding was taken on or after 20 September 2025.

A note referring to section 177 of the Evidence Act is included.

Subsection (2) defines an originating step for a committal proceeding as:

- the arrest of the defendant in the proceeding; or
- the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or
- the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.

This transitional approach is intended to ensure that any committal proceeding which occurs between 20 September 2025 and commencement of this amendment, where the defendant was arrested or served a Notice to Appear or complaint and summons on or after 20 September 2025, is not retrospectively affected.

Long title of the Bill

Amendment 5 makes a consequential amendment to the long title of the Bill to include the Evidence Act.