

# Justice and Other Legislation Amendment Bill 2026

**Submission No:** 003

**Submission By:** Legal Aid Queensland

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Submission by Legal Aid Queensland

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## Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make submissions on the *Justices and Other Legislation Amendment Bill 2026* (“the Bill”).

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day-to-day application of the law in courts and tribunals. LAQ believes that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

This submission calls upon the knowledge and experience of LAQ’s Criminal Law Services (CLS), which is the largest criminal law legal practice in Queensland and provides advice and representation across the full range of criminal law offences. It also draws on the knowledge and experience of the Public Defender and counsel in the Public Defenders Chambers. CLS lawyers and counsel in the Public Defenders Chambers possess valuable knowledge and insight into potential impacts of this policy on criminal law legal practice and the practical implications for defendants.

## Submission

### Part 10 – Clarifying amendments to the Evidence Act 1977 (Qld)

LAQ notes these amendments relate to the requirement in section 103ZI of the *Evidence Act 1977*. Section 103ZI provides that an application under section 103ZH for leave to cross-examine a complainant on sexual activities must be filed by a certain time, including, in the Supreme or District Court, at least 14 days prior to trial or special hearing.

LAQ respectfully requests that Parliament use the opportunity of reviewing this provision to instead reconsider, and delete, the requirement under section 103ZI that such application be made 7 days or 14 days before the relevant hearing (noting that most applications are made in the District Court, where the requirement is 14 days in advance of trial or special hearing).

These time requirements were introduced in September 2024 by the *Criminal Law (Coercive Control and Affirmative Consent) Amendment Act 2024*. Prior to September 2024, there was a requirement to obtain leave before asking such questions, but there was no requirement that such application be made a minimum number of days in advance of trial or special hearing. The requirement of 14 days’ notice is, in LAQ’s respectful submission, unnecessary, and places unnecessary burdens on parties and the courts. In accordance with the Explanatory Notes at page 21 to the *Criminal Law (Coercive Control and Affirmative Consent) Amendment*

*Bill 2023*, the goal of this section was to have the parties consider such issues at a time earlier than the trial. However, a requirement that such applications be filed before trial – as opposed to 14 days beforehand – would achieve this goal. In LAQ’s view, it would be preferable if, while retaining the requirement to apply for leave, it be left to the court to impose their own timing requirements for the making of such applications, such as by way of a Practice Direction.

The statutory requirements for an application for leave by a defendant can require a defendant to reveal a significant portion of their defence case in advance of trial, for which they otherwise have the right of silence. To respect this well-established right as much as possible, defendants should not be required to disclose their case so far in advance of trial or hearing without good reason. A requirement of 14 days’ notice does not, in LAQ’s respectful submission, reduce the potential negative impact on complainants of cross-examination, nor does it mean such applications are determined more fairly. The requirement of 14 days’ notice is often difficult to comply with when, as can occur, further evidence is disclosed by the prosecution in the days and weeks leading up to the trial or hearing, which then alters the need for cross-examination of a complainant. Moreover, it can be difficult for such an application to be ready by this time in regional and circuit courts, when defence barristers are often briefed closer to the trial date and courts only sit on limited days.

When applications are made after the date, applicants must then also prepare evidence and submissions to request an extension of time, which is a poor use of the limited resources available to publicly funded legal representatives. Consistent with these observations, LAQ is aware of judicial observations that applications pursuant to s 103ZH of the *Evidence Act* are routinely not made on time. LAQ submits this reflects the difficulties, in practice, of complying with such requirements. In LAQ’s submission, it would be beneficial for the individual courts, after consulting with relevant stakeholders, to impose a practice for when such applications are to be made, particularly when that can be more responsive to the practices of particular metropolitan and regional courts.

Accordingly, LAQ requests the Parliament to consider deleting section 103ZI of the *Evidence Act 1977* (Qld), and, if it considers it necessary, replacing it with a provision that provides that courts can set their own timelines for when such applications ought to be made. Alternatively, if such an amendment is not made by this Bill, LAQ suggests that the operation of section 103ZI be subject to further consideration or inquiry. LAQ would be grateful to be consulted in such further consideration or inquiry.

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