

## Justice and Other Legislation Amendment Bill 2023

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<b>Submitted by:</b>	Women's Legal Service Qld
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<b>See attached:</b>	

22 June 2023

**Committee Secretary**

Legal Affairs and Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

By email: [lascl@parliament.qld.gov.au](mailto:lascl@parliament.qld.gov.au)

Dear Committee,

**Inquiry into the Justice and Other Legislation Amendment Bill 2023**

Women's Legal Service Queensland (WLSQ) is a community legal centre providing state-wide specialist, free legal information, advice, representation and integrated supports to women. We provide legal assistance with matters involving domestic and family violence, sexual violence, family law, child protection, and financial abuse.

Our work is informed by feminist values, and we advocate for law reform and changes to the justice system to improve access to justice, safety and equality for women and children.

The Justice and Other Legislation Amendment Bill 2023 includes a suite of reforms relating to the administration of justice. In our submission, we provide feedback on provisions in the Bill which aim to:

- remove restrictions in the Criminal Law (Sexual Offences) Act 1978 which prohibit identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceedings;
- to better recognise the deaths of foetuses as a result of criminal conduct;
- clarify the scope of the offence of assisting in the performance of a termination of pregnancy under section 319A of the Criminal Code 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; and
- address issues that have arisen in the implementation of amendments made to the Oaths Act 1867 (Oaths Act) by the Justice and Other Legislation Amendment Act 2021.

**Amendments to remove the prohibition on identifying an adult defendant**

WLSQ supports amendments to allow the identification of defendants charged with rape and other sexual offences to ensure they are treated the same as an individual charged with any other offence. This would make Queensland consistent with other jurisdictions across Australia.

We note that there are risks that this will increase the reluctance of some victim-survivors to report sexual assault, including due to fear of retaliation by the accused person. We recommend monitoring sexual assault reporting rates and other measures to determine whether this change has unintended consequences.

## **Amendments to better recognise the deaths of fetuses as a result of criminal conduct**

WLSQ strongly objects to the creation of any offence that gives legal status to a fetus. While we are extremely concerned about violence against women that includes harm to fetuses, particularly in the context of family and domestic violence, any attempt to change the legal status of fetuses risks undermining women's rights.

However, we are pleased that the Bill does not create a standalone offence or expand any existing offences to include the loss of a fetus or pregnancy. This would have significant and deleterious consequences and would undermine progressive steps towards improving abortion access and upholding women's rights.

### ***Terminology***

WLSQ has deep concerns in relation to the use of the term 'unborn children' and strongly objects to the terminology used in the Bill. The use of the term 'unborn child' encourages and reinforces anti-abortionist views and is unnecessarily emotive. The terminology that is used in relation to abortion can reinforce the stigma that abortion providers and people who have had abortions often experience. It is important to recognise that the use of particular terminology in policy-making and legislative reform can influence public perception of a particular issue and can encourage and reinforce stigma in relation to abortion.

We note that the Queensland Labor Government has been responsible for significant reforms to improve women's access to abortion, including the decriminalisation of abortion, strong regulations around safe zones, and clear provisions for access to abortion in the public health system. It is disappointing to see the government take a step backwards on this issue.

The correct terminology is to refer to a 'fetus' or 'pregnancy'. Pregnancy involves a zygote and then an embryo in the early stages, which develops into a fetus. Upon live birth, the fetus becomes a child. We do recognise that it is respectful to confer the status of 'child' on a stillborn fetus as a way of acknowledging significant loss.

### ***Information on indictments***

The Bill amends section 564 of the *Criminal Code* to allow an indictment to state the name of the fetus, or a description of the fetus. WLSQ supports this reform on the basis that it is not mandatory, recognising that some victim-survivors or family members may not wish to exercise this option.

Processes will need to be implemented to ensure that the indictment is prepared in accordance with the wishes of the victim-survivor or their family members, and this should be accompanied with trauma-informed, specialist training for the prosecution.

We also recommend that this reform is accompanied with trauma-informed, specialist training for victim support services to work with the victim-survivor or their family members to exercise this option, including through the provision of information and support, and to liaise with the prosecution.

### ***Enhancing victim support***

The Bill amends the *Victims of Crime Assistance Act 2009* to ensure persons who would have been family members of a fetus if it became a child, can give a victim impact statement, and have rights

under the Charter of victims' rights. The Act is also amended to allow financial assistance to be granted to cover funeral expenses for the foetus.

WLSQ supports these amendments.

We recommend that this reform is accompanied with trauma-informed, specialist training for victim support services to work with the victim-survivor or their family members to facilitate the provision of financial assistance.

### **Amendments to clarify the scope of the offence of assisting in the performance of a termination of pregnancy**

The Bill amends section 319A of the *Criminal Code* – this provision contains the offences for an unqualified person to perform, or assist in the performance of, a termination on a woman.

The amendment changes the definition of 'assisting' to clarify that it only includes procuring the supply of a termination drug from an unqualified person for use in the termination. This means that an unqualified person can procure the supply of a termination drug from a qualified person for use in a termination.

WLSQ strongly supports this change to make it easier for termination drugs to be procured from qualified persons. Improving access to medical abortion is vital to giving women greater choice and promotes stronger health and safety outcomes for women.

We also note that currently section 319A refers to 'woman' instead of 'pregnant person' and we recommend changing this terminology to be inclusive of trans and non-binary people. We also note that the proposed amendments to section 564 of the *Criminal Code*, section 9C of the *Penalties and Sentencing Act 1992* and section 150 of the *Youth Justice Act 1992* refer to 'pregnant person' and adopting the same terminology in this amendment of the *Criminal Code* would promote consistency.

### **Amendments to the Oaths Act 1867**

#### ***Place of employment requirement***

WLSQ supports the proposed amendments to change the information that a witness is required to include in an affidavit or statutory declaration.

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.

We also recommend 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.

#### ***Substitute signatories***

The Bill consolidates the substitute signatory provisions from the *Oaths Act* and the *Oaths Regulations*. WLSQ supports these changes to make a clear and consistent framework for the use of substitute signatories.

In WLSQ's view, it should be possible to dispense with witness requirements in circumstances, such as in urgent situations where a person's safety is at risk. Many women need to file applications urgently and in circumstances where they are in immediate danger. During the COVID-19 pandemic, the requirement to have documents signed and witnessed was dispensed with. This made the process more safe, efficient, and convenient for both legal professionals and our clients.

We also note that self-represented litigants and culturally and linguistically diverse people should have access to additional assistance to navigate the provisions.

Thank you for this opportunity to provide feedback, and please contact Lara Freidin, Director of Policy and Government Relations at [REDACTED] if you have any questions.

Yours sincerely,



**Nadia Bromley**  
CEO  
Women's Legal Service Queensland