

Justice and Other Legislation Amendment Bill 2023

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Justice and Other Legislation Amendment Bill 2023

Submission to the Legal Affairs and Safety Committee,
Queensland Parliament

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal people of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the Justice and Other Legislation Amendment Bill 2023 ('the Bill').
2. The ALA considers the amendments to be valuable and sensible.
3. There are many amendments contained within the Bill; however, the ALA will focus on the following in our submission:
 - a. Amendments to the *Justices of the Peace and Commissioners for Declarations Act 1991* (Qld) ('JPs Act');
 - b. Amendments to the *Oaths Act 1867* (Qld) ('Oaths Act');
 - c. Amendments to the *Legal Profession Act 2007* (Qld) ('LPA'), namely:
 - i. Consideration of clients' privacy and confidentiality arising from the prolonged retention of client documents by law practices;
 - ii. Changes to cost disclosure obligations under the LPA; and
 - iii. Amendments to admission guidelines regarding English proficiency.
 - d. Protocols to consider what is fair and reasonable when considering setting aside cost agreements.

Amendments to the Justices of the Peace and Commissioners for Declarations Act 1991 (Qld)

4. The JPs Act has been amended to enhance appointment, disqualification and complaints processes and conduct standards for Justices of the Peace (JPs) and Commissioners for Declarations (Cdecs). The amendments appear to give legislative effect to a code of conduct for JPs and Cdecs.
5. Notably this amendment allows for the investigation of JPs and Cdecs where the chief executive is satisfied on reasonable grounds that an investigation is warranted.
6. There will also be a means to continuously monitor the criminal history of JPs and Cdecs.

7. The ALA agrees that these amendments will assist in ensuring the integrity of JPs and Cdecs are maintained. Further, it ensures public confidence in the services that JPs and Cdecs provide.

Amendments to the *Oaths Act 1867 (Qld)*

8. The ALA notes that the amendments to the Oaths Act attempts to modernise this legislation and has provided new definitions for the terms 'document' and 'electronic document'.
9. Section 13AA would be added to the Oaths Act to provide that the application of the division applies to an affidavit or declaration, whether the signatory, substitute signatory or witness is present in person or by audio-visual link, and whether the affidavit or statutory declaration is physically signed or electronically signed.
10. Section 13D would also be added to the Oaths Act which addresses the general requirements for witnessing affidavits or declarations. This section would consolidate similar prior requirements contained in the Oaths Act and contains additional requirements for witnessing a document by audio-visual link.
11. Further, the new section 13E specifies the information that witness for an affidavit or declaration must include on the document.
12. The ALA submits that these amendments update the legislation and assists in the administration of justice.

Amendments to the *Legal Profession Act 2007 (Qld)*

Prolonged retention of client documents by law practices

13. The ALA considers our clients' privacy and confidentiality to be of utmost importance.
14. The proposal outlined in this Bill what would be the new section 713A is to permit a law practice to destroy or dispose of any client documents held by a law practice if a period of seven years has elapsed since the completion of the matter, and the law practice has been unable to obtain instructions from the client.

15. The ALA submits that this is a reasonable length of time and offers a good balance between regulatory burden and protecting our clients' privacy.

Changes to cost disclosure obligations

16. The ALA believes that the increase of the cost disclosure threshold in section 311 will reduce regulatory burden for law practices. The increase of the cost disclosure threshold also allows for the increase in professional fees amongst law practices due to inflation.
17. The ALA agrees that the increase of the cost disclosure threshold promotes costs transparency for consumers of legal services.

Amendments to admission guidelines regarding English proficiency

18. The ALA supports the amendment to confirm English proficiency is an eligibility requirement for all applicants seeking admission into the legal profession.
19. The ALA agrees that this amendment will achieve greater equality and protect our clients as it ensures our practitioners can understand their clients' instructions.
20. The amendment will also ensure that our practitioners are appropriately qualified and uphold a particular standard for the legal practice.

Protocols to consider what is fair and reasonable when considering setting aside cost agreements

21. Currently, section 328 of the LPA only allows the Supreme Court or Tribunal to set aside costs agreements.
22. The amendment to section 328 will now allow for a judicial member of Queensland Civil and Administrative Tribunal to hear and determine applications for the setting aside of costs agreements that are not fair or reasonable.
23. The ALA believes that any amendments which are fair and protects our clients are reasonable.
24. The ALA recommends that protocols be developed to ensure there is consistency in what is considered fair and reasonable when considering costs agreements.

Conclusion

25. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the Justice and Other Legislation Amendment Bill 2023.
26. In summary, the ALA considers the amendments to the Bill to be sensible and well-supported.
27. The ALA is available to provide further assistance to the Legal Affairs and Safety Committee on the issues raised in this submission.



Sarah Grace
Queensland Branch President,
Australian Lawyers Alliance