



Speech By  
**Hon. Yvette D'Ath**


**MEMBER FOR REDCLIFFE**

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Record of Proceedings, 25 May 2023

## JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

### Message from Governor

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (11.37 am): I present a message from Her Excellency the Governor.

**Mr ACTING SPEAKER:** The message from Her Excellency the Governor recommends the Justice and Other Legislation Amendment Bill. The contents of the message will be incorporated in the *Record of Proceedings*. I table the message for the information of members.

MESSAGE

JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2023

*Constitution of Queensland 2001, section 68*

I, DR JEANNETTE ROSITA YOUNG AC PSM, Governor, recommend to the Legislative Assembly a Bill intitled—


A Bill for an Act to amend the Acts Interpretation Act 1954, the Appeal Costs Fund Act 1973, the Attorney-General Act 1999, the Civil Liability Act 2003, the Civil Proceedings Act 2011, the Cremations Act 2003, the Criminal Code, the Criminal Law (Sexual Offences) Act 1978, the District Court of Queensland Act 1967, the Electoral Act 1992, the Funeral Benefit Business Act 1982, the Human Rights Act 2019, the Justices of the Peace and Commissioners for Declarations Act 1991, the Justices Regulation 2014, the Legal Profession Act 2007, the Legal Profession Regulation 2017, the Limitation of Actions Act 1974, the Magistrates Act 1991, the Magistrates Courts Act 1921, the Motor Accident Insurance Act 1994, the Oaths Act 1867, the Oaths Regulation 2022, the Ombudsman Act 2001, the Penalties and Sentences Act 1992, the Personal Injuries Proceedings Act 2002, the Public Guardian Act 2014, the Queensland Civil and Administrative Tribunal Act 2009, the Referendums Act 1997, the Statutory Instruments Act 1992, the Supreme Court of Queensland Act 1991, the Trust Accounts Act 1973, the Uniform Civil Procedure (Fees) Regulation 2019, the Victims of Crime Assistance Act 2009, the Youth Justice Act 1992 and the legislation mentioned in schedule 1 for particular purposes, and to repeal the Court Funds Act 1973

GOVERNOR

Date: 24 May 2023

*Tabled paper:* Message, dated 24 May 2023, from Her Excellency the Governor, recommending the Justice and Other Legislation Amendment Bill 2023 [712](#).

### Introduction

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (11.38 am): I present a bill for an act to amend the Acts Interpretation Act 1954, the Appeal Costs Fund Act 1973, the Attorney-General Act 1999, the Civil Liability Act 2003, the Civil Proceedings Act 2011, the Cremations Act 2003, the Criminal Code, the Criminal Law (Sexual Offences) Act 1978, the District Court of Queensland Act 1967, the Electoral Act 1992, the Funeral Benefit Business Act 1982, the Human Rights Act 2019, the Justices of the Peace and Commissioners for Declarations Act 1991, the Justices Regulation 2014, the Legal Profession Act

2007, the Legal Profession Regulation 2017, the Limitation of Actions Act 1974, the Magistrates Act 1991, the Magistrates Courts Act 1921, the Motor Accident Insurance Act 1994, the Oaths Act 1867, the Oaths Regulation 2022, the Ombudsman Act 2001, the Penalties and Sentences Act 1992, the Personal Injuries Proceedings Act 2002, the Public Guardian Act 2014, the Queensland Civil and Administrative Tribunal Act 2009, the Referendums Act 1997, the Statutory Instruments Act 1992, the Supreme Court of Queensland Act 1991, the Trust Accounts Act 1973, the Uniform Civil Procedure (Fees) Regulation 2019, the Victims of Crime Assistance Act 2009, the Youth Justice Act 1992 and the legislation mentioned in schedule 1 for particular purposes, and to repeal the Court Funds Act 1973. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Legal Affairs and Safety Committee to consider the bill.

*Tabled paper:* Justice and Other Legislation Amendment Bill 2023 [713](#).

*Tabled paper:* Justice and Other Legislation Amendment Bill 2023, explanatory notes [714](#).

*Tabled paper:* Justice and Other Legislation Amendment Bill 2023, statement of compatibility with human rights [715](#).

It gives me great pleasure today to introduce the Justice and Other Legislation Amendment Bill 2023 which contains a number of important reforms to improve Queensland's justice system. The bill proposes miscellaneous amendments to over 30 pieces of legislation across a diverse range of subject matter. The overarching focus of the bill is to clarify, strengthen and update legislation concerning the administration of justice, including legislation which relates to the operation of courts and tribunals, the regulation of the legal profession, the conduct of civil proceedings and electoral matters. The bill also implements several justice related initiatives. During this speech, I will highlight some of the more significant amendments included in the bill.

One of the key measures in this bill is delivering on the Palaszczuk government's commitment to consider reforms to better recognise the deaths of unborn children as a result of criminal conduct. The loss of an unborn child is devastating, and to lose an unborn child as a result of another person's criminal conduct is profoundly distressing for the parents, their families and the wider community. Tragically, several families in Queensland have suffered this horrendous loss. In some cases, the criminal conduct has also resulted in the death of an expectant mother and others. I would like to acknowledge all of the families and others who have advocated for reform to better recognise the death of an unborn child as a result of criminal conduct and particularly make special mention to Sarah and Peter Milosevic who are here in the gallery today. I recognise their courage and their advocacy for reforms.

Amendments in the bill will strengthen the recognition of the loss of an unborn child as a result of criminal conduct and improve the support available to families. The amendments do not displace recognition of the harm caused to the expectant mother as the primary victim of the criminal conduct, but they ensure independent recognition of the unique harm caused when the life of an unborn child is ended as a result of criminal conduct. Importantly, the amendments also do not affect a woman's ability to obtain a lawful termination of pregnancy and do not displace the born-alive rule which deems legal personhood to apply when a child is born in a living state independently of its mother. The born-alive rule has existed for centuries, not just in Australia but across other Commonwealth jurisdictions, including England, Canada and New Zealand. The rule ensures that an unborn child does not have a legal personhood that can compete with the rights of the mother. The amendments in the bill provide a way to maintain this fundamental aspect of the law while creating better recognition of the death of an unborn child as a result of criminal conduct.

The bill will allow recognition of the death of an unborn child as a result of criminal conduct in an indictment. An indictment is the formal written document stating the offence a person is charged with and relevant details relating to the charge. Currently, if an offence committed in relation to a pregnant woman allegedly results in the destruction of the life of an unborn child, it is unclear whether the name of the unborn child may be included in the indictment as doing so may lead to arguments the indictment is prejudicial, defective or duplicitous. Consequently, the name of the unborn child is not included and is therefore not read to the court. The bill amends the Criminal Code to provide that the name or a description of an unborn child may be stated in an indictment for an offence committed in relation to a pregnant woman that allegedly resulted in destroying the unborn child's life. The amendments allow for independent recognition of an unborn child in the indictment, however it will not be mandatory as it may not be appropriate in all the circumstances for the name or a description of an unborn child to be included on the indictment, especially if the family does not want this information included.

The bill will also recognise, through specific legislative provision, the death of an unborn child as an aggravating factor in sentencing for relevant serious offences. Under the sentencing principles, the court considers the individual circumstances of each case to determine the appropriate sentence, including weighing aggravating and mitigating factors. While the court may currently consider the death

of an unborn child as a result of criminal conduct as an aggravating factor in sentencing, the bill makes amendments to increase the consistency and transparency of this consideration for relevant serious offences.

The bill amends the Penalties and Sentences Act and the Youth Justice Act to provide that in determining the sentence for a relevant serious offence committed in relation to a pregnant woman that resulted in destroying the life of an unborn child, the court must treat the destruction of the unborn child's life as an aggravating factor unless it considers it is not reasonable because of the exceptional circumstances of the case.

The relevant serious offences are manslaughter, grievous bodily harm, wounding, assault occasioning bodily harm, dangerous operation of a vehicle causing death or grievous bodily harm, and careless driving. The amendments also provide independent recognition of the unique harm caused by the death of an unborn child for the pregnant woman and immediate family, separate from the harm caused to the pregnant woman by the criminal conduct. Currently, under the Penalties and Sentences Act, following conviction for an offence and prior to sentencing, a court may receive and consider a victim impact statement from the pregnant woman against whom a relevant crime was committed as well as family members of a pregnant woman who has died or suffered harm because of the crime.

Victim impact statements play an important role in sentencing hearings, providing a voice to the victim of a crime and their family and offering a personal perspective for courts that may assist in determination of the sentence. Victim impact statements may include details of physical injuries suffered as a direct result of the offence, as well as emotional impacts, harm to relationships and economic loss.

The bill amends the Victims of Crime Assistance Act to expand the definition of a victim for the purpose of who may make a victim impact statement and who has rights under the Charter of Victims' Rights. It will allow for those who would have been a family member of the unborn child had they been born alive, including parents and siblings, to give a victim impact statement to explain to the court the impact the destruction of the life of the unborn child has had on them. This is in addition to any entitlement they may have to give a victim impact statement about the harm caused by the death or injury of the pregnant woman. It also ensures those who would have been a family member of the unborn child, had they been born alive, have rights under the victims' charter of rights. Furthermore, the support available to families will also be improved under the bill by enabling financial assistance for expenses for the funeral of an unborn child. Under the Victims of Crime Assistance Act, the person responsible for the funeral for a person who has died as a direct result of an act of violence can apply for up to \$8,000 for funeral costs.

The bill amends the Victims of Crime Assistance Act to extend eligibility for funeral expense assistance to the person responsible for the cost of a funeral of an unborn child that dies as a direct result of an act of violence committed against a pregnant woman. This amendment provides an important acknowledgement of the grief families experience in these tragic situations and ensures that if families wish to hold a funeral for the unborn child, they can do so without being financially burdened.

The amendments in the bill strike the right balance by recognising and implementing changes that better acknowledge the death of an unborn child as a result of criminal conduct without abrogating the born-alive rule or conflicting with the rights of the pregnant woman. The Palaszczuk government is committed to improving the way the justice system supports victims, and these amendments progress an important aspect of this work.

The bill also includes amendments to the Criminal Law (Sexual Offences) Act 1978 which remove the prohibition on identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceedings. These amendments are made in response to the government's commitment to implement recommendation 83 of the second report of the Women's Safety and Justice Taskforce. The task force, led by the Hon. Margaret McMurdo AO, concluded that there was no justification for the law to treat defendants who are charged with a prescribed sexual offence differently to those who are charged with any other criminal offence. Under the current law, only defendants charged with rape, attempted rape, assault with intent to rape or sexual assault have their identity protected before committal. Other accused, even alleged murderers, defendants accused of indecently assaulting a child and accused drug traffickers, do not have this protection.

The amendments in the bill mean that there will no longer be a distinction between those prescribed sexual offences and other offences. The amendments will mean that a defendant charged with rape, attempted rape, assault with intent to rape or sexual assault will be able to be identified before committal. This distinction in the current law between these prescribed sexual offences and all other offences is based, in part, on a rape myth. It is based on the idea that the complainant for one of these sexual offences is somehow less reliable than a complainant for any other offence and that a magistrate

must scrutinise the complaint before a defendant can be identified. These amendments ensure that the criminal justice system does not continue to perpetuate this outdated rape myth and will ensure that complainants for prescribed sexual offences are treated with the same dignity as complainants for all other offences.

The amendments also align Queensland with almost all other jurisdictions in Australia which permit identification of a defendant during committal proceedings. The amendments also promote open justice, which is fundamental to the administration of justice. The task force heard that victims are reluctant to report sexual offences to police and that conviction rates for these offences are alarmingly low. The task force said that increased media reporting of sexual offences in a trauma informed way can result in more victims coming forward to report sexual offences. The task force said that, if handled sensitively, accurate public reporting may also contribute to positive community discussions about gender-based violence, challenge stereotypes and reduce the level of secrecy and stigma involved. Removing barriers to reporting is essential if we are to hold perpetrators to account. We must lift the veil of secrecy and shame for victims of sexual offences.

The amendments also provide that where there are grounds to do so, the court can make a non-publication order. The court can only make a non-publication order where it is necessary on three grounds: to prevent prejudice to the proper administration of justice; to prevent undue hardship or distress to a witness or complainant; or to protect the safety of any person. The possibility of reputational damage to a defendant will not be a ground upon which a non-publication order can be made.

An application for a non-publication order can be brought by the defendant, the victim or the prosecution. The court has to take into account a broad range of circumstances in considering whether to make the non-publication order. Regardless of who makes the application, the court will be required to consider the view of the victim about identifying the defendant. This is in keeping with the recommendation made by the task force and ensures victims are given a voice when these applications are heard.

To ensure open justice is promoted, the amendments also provide a right of appearance to accredited media entities or any other person who the court considers has sufficient interest in the question of whether the non-publication order should be made. The media has an important role to play in open justice. They serve the public and ensure people know what is happening in the courts. These amendments help them to play that role.

Defendants charged with a prescribed sexual offence will be able to be identified, when the amendments commence, irrespective of when they were charged. That approach provides for the greatest clarity and is most consistent with the underlying policy intent of the amendments to promote open justice and consistency with other offences.

Finally, the amendments also provide for a right of review before a Magistrates Court and make it an offence if a person or a corporation contravenes a non-publication order. Importantly, these amendments do not vary existing laws which prohibit identification of a victim of a sexual offence without their consent, or identification of a child. Where identifying a defendant is likely to lead to the complainant being identified, this would still be prohibited. Victim-survivors and those who support them have spoken, and this government has heard their voices.

The bill also delivers the Palaszczuk government commitments to allow a law practice to destroy or dispose of routine client documents in certain circumstances, and to increase the costs disclosure threshold for section 311 of the Legal Profession Act 2007 to \$3,000. The bill amends the Legal Profession Act to allow a law practice, including a community legal centre, to destroy any client documents held by a law practice if: 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, having regard to the nature and content of the document, to destroy the document. The amendments also extend to receivership files held by the Queensland Law Society as if it were a law practice.

Safeguards provided for in the amendments mitigate the risk that the amendments could be interpreted as authorising the destruction of such documents to the detriment of the client or others by providing for disciplinary consequences for a breach of the provision. The amendments address the increasing risk to client privacy and confidentiality arising from the prolonged retention of client documents, both physical and electronic, that are no longer of legal utility and recognise the substantial storage costs for law practices and the Queensland Law Society in relation to such documents.

The bill amends the costs disclosure obligations of a law practice under the Legal Profession Act, including an increase to the current costs disclosure threshold under section 311 from \$1,500 to \$3,000. Further amendments provide that an abbreviated costs disclosure obligation will apply if the total legal costs in a matter, excluding disbursements, are not likely to exceed \$3,000; and no cost disclosure is

required if the total legal costs in a matter, excluding disbursements, are not likely to exceed \$750. The amendments will reduce the regulatory burden for law practices, while requiring an abbreviated costs disclosure promotes costs transparency for consumers of legal services.

Furthermore, the bill includes amendments to the Electoral Act 1992 which were requested by the Electoral Commission of Queensland and aim to improve voter enfranchisement and administrative efficiency ahead of the 2024 state general election. Firstly, the bill provides that a ballot paper secured in a reply paid envelope supplied by the ECQ that also contains a completed declaration on a declaration envelope may be counted regardless of whether the postal vote is inside the declaration envelope. A corresponding amendment is also made to the Referendums Act 1997. This reform is consistent with the Commonwealth Electoral Act 1918 and is aimed at saving votes without compromising electoral integrity.

To align with the position for federal elections and to reduce the potential for voter confusion, the bill also amends the definition of 'special postal voter' to include electors who are patients in a hospital that is not a polling place, and electors who are ill or infirm and unable to travel to a polling place or those caring for the ill or infirm. As a result of this change, these electors will be sent ballot papers in the mail. However, this change will not prevent these electors casting their ballot in another way should they wish to do so.

The Electoral Act will also be amended to provide that an audit of the electronically assisted voting—telephone voting—system will only be required for a by-election where the commissioner considers that there has been a significant change in the information technology since the last audit. Further, consistent with arrangements at the Commonwealth level and in New South Wales and to reflect increasing public and stakeholder participation in the redistribution process, the 60-day time frame associated with the Queensland Redistribution Commission's finalising of an electoral redistribution will be replaced with a requirement that the redistribution is finalised 'as soon as practicable'.

Finally, a cut-off time for the close of electoral rolls on the relevant day provided in the writ for a state election or referendum will be specified as 6 pm in both the Electoral Act and the Referendums Act. The nomination of a set time for the closing of the electoral rolls is intended to provide certainty about timing for final enrolments for both voters and the ECQ and would provide the ECQ with additional time to finalise the electoral roll. The bill also includes amendments to the Justices of the Peace and Commissioners for Declarations Act 1991 to enhance appointment, disqualification and complaints processes for Justices of the Peace and Commissioners for Declarations. The amendments will create greater flexibility in relation to appointment and disqualification, while improving accountability and standards of conduct for appointed JPs and Cdecs.

Firstly, the bill makes a number of changes relating to the qualification for office as a JP or Cdec. Key changes include that to be qualified as a JP or Cdec, a person must reside or require appointment for work in Queensland. The chief executive must also be satisfied that a person is suitable for appointment having regard to a range of matters including the person's character and standing in the community; whether the person has ever been convicted of an offence and if so, the circumstances of the offence; and anything else that is relevant to the person's suitability to hold office.

The bill also makes changes to the current disqualification provisions in the act which prevent suitable members of the community from being appointed due to minor offences that were committed many years ago. The bill provides that a person is not qualified for appointment as a JP or Cdec if the person: is an insolvent under administration; has a disqualifying conviction; or has had their appointment as a JP or Cdec revoked within the last five years. The bill provides that a disqualifying conviction is: a conviction, including a spent conviction for an indictable offence; an offence involving dishonesty or a breach of confidentiality; an offence against the act; or an offence for which a sentence of imprisonment was imposed even if the sentence was suspended. However, the chief executive may grant an exemption in relation to a disqualifying conviction if satisfied that it would be appropriate, having regard to the offences committed by the person and the circumstances of the offending and because of special circumstances, it would be in the public interest to appoint the person as a JP or a Cdec—for example where there is a particular need in the community for the appointment.

The bill gives legislative effect to a code of conduct for JPs and Cdecs. The amendments provide that the chief executive may make a code of conduct for JPs and Cdecs, which must be approved by regulation, tabled in the Legislative Assembly and published on the whole-of-government website. A contravention of the code of conduct may result in the suspension of a JP or Cdec appointment, and serious or repeated contraventions may result in the JP or Cdecs appointment being revoked. The bill provides for at the chief executive to suspend the appointment of a JP or Cdec and to appoint an

investigator to investigate the conduct of a JP or Cdec with the investigation report to be provided to the minister for the purpose of deciding whether to recommend to the Governor in Council that the JP and Cdec be removed from office.

Currently criminal history checks are conducted on all persons who are seeking appointment as a JP or Cdec at the initial application stage only. To maintain the integrity of the office of JP or Cdec, the bill also provides for the continuous criminal history monitoring of JPs or Cdec's post appointment by the Queensland Police Service. The bill also provides a reasonable excuse defence for persons who assume to act in the office of JP or Cdec without holding such office. The amendments provide that it is a defence for a person to prove that at the time they assume to act in the office, they did not know, and could not reasonably be expected to have known that they did not hold the office, for example, because they were unaware that the appointment had been suspended or revoked.

Finally, the bill provides protection for members of the community who utilise the services of a JP or Cdec who is no longer authorised to provide those services because their appointment has lapsed, or been suspended or revoked. The amendments provide that anything done by a person in their purported capacity as a JP or Cdec is not invalid only because at the time the thing was done, the person was not validly appointed, or the person's appointment had lapsed, was suspended or had otherwise ended.

The bill also includes a number of amendments to the Oaths Act to address implementation issues from the Justice and Other Legislation Amendment Act 2021, which modernised the way that oaths, affidavits and statutory declarations can be made using technology and allowed persons making an affidavit or statutory declaration to direct another person called a 'substitute signatory' to sign for them in certain circumstances. Currently, a witness for an affidavit or statutory declaration must include their place of employment on the document. This can inadvertently disclose the location of a domestic and family violence victim. The bill removes the requirement for JPs and Cdec's to include their place of employment, except for certain JPs and Cdec's whose eligibility to be a special witness is tied to their employment. The bill allows other witnesses options to provide their place of employment, employment address, home address, telephone number or email. The bill also provides a clear and consistent framework for the use of substitute signatories for affidavits and statutory declarations—however made—by clarifying that a substitute signatory can be used even when an affidavit or statutory declaration is witnessed in person or signed on paper.

The bill also makes a number of other amendments to the Oaths Act to provide legislative clarity and to address a number of minor technical and drafting issues. The bill also contains a number of amendments to improve the efficiency of Queensland's court and tribunal processes. This includes replacing the Court Funds Act 1973 with a new modernised court funds legislative framework under the Civil Proceedings Act 2011. The new framework will update and improve processes relating to money paid and securities deposited into court under a law or court order. Amendments to the Appeal Cost Fund Act 1973 modernise the act generally and improve the efficiency of the current fee and administrative arrangements.

The bill amends the Queensland Civil and Administrative Tribunal Act 2009 to provide greater consistency and flexibility in the operations of QCAT. The amendments will allow Land Court members to be appointed as supplementary members of QCAT and will streamline and improve various other appointment processes under the act. In addition, the bill otherwise amends a range of justice portfolio statutes to streamline administrative and appointment processes, clarify various provisions and make amendments of a technical or drafting nature.

The Justice and Other Legislation Amendment Bill 2023 makes important amendments to justice portfolio legislation across a diverse range of subject matter which includes protecting women, mothers, victims and survivors. It will assist with the administration of justice in Queensland. I commend the bill to the House.

### **First Reading**

**Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (12.06 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

## **Referral to Legal Affairs and Safety Committee**

**Mr DEPUTY SPEAKER** (Mr Lister): In accordance with standing order 131, the bill is now referred to the Legal Affairs and Safety Committee.