Parliamentary Committees



Evidence and Other Legislation Amendment Bill 2021

Report No. 23, 57th Parliament
Legal Affairs and Safety Committee
February 2022

Legal Affairs and Safety Committee

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Acknowledgements

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Acts cited are Queensland Acts unless stated otherwise.

All web address references are current at the time of publishing.

Please note that all in-text references have been removed. Refer to original source for more information.

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Abbreviations

ARTK	Australia's Right to Know coalition of media organisations
BAQ	Bar Association of Queensland
committee	Legal Affairs and Safety Committee
DFV	domestic and family violence
DFVP Act	*Domestic and Family Violence Protection Act 2012*
DJAG	Department of Justice and Attorney-General
HRA	*Human Rights Act 2019*
LSA	*Legislative Standards Act 1992*
QCCL	Queensland Council for Civil Liberties
QLS	Queensland Law Society
QPS	Queensland Police Service
VRE	video recorded evidence
WLSQ	Women's Legal Service Queensland
WSJ Taskforce	Women's Safety and Justice Taskforce

Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Evidence and Other Legislation Amendment Bill 2021.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff, the Department of Justice and Attorney-General and the Queensland Police Service.

I commend this report to the House.

Peter Russo MP

Chair

Recommendations

1 Introduction

1.1 Role of the committee

The Legal Affairs and Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Women and the Prevention of Domestic and Family Violence
- Police and Corrective Services
- Fire and Emergency Services.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.[2]

The Evidence and Other Legislation Amendment Bill 2021 (Bill) was introduced into the Legislative Assembly and referred to the committee on 16 November 2021. The committee is to report to the Legislative Assembly by 11 February 2022.

1.2 Inquiry process

On 23 November 2021, the committee invited stakeholders and subscribers to make written submissions on the Bill. Five submissions were received. Appendix A contains a list of submissions.

The committee received a written briefing and a public briefing about the Bill from the Department of Justice and Attorney-General (DJAG) and the Queensland Police Service (QPS) on 29 November 2021. Appendix B contains a list of officials.

The committee received written advice from the department in response to matters raised in submissions.

The committee held a public hearing on 1 February 2022. Appendix C contains a list of witnesses. The committee received 3 written responses to questions taken on notice at the public hearing.

The submissions, correspondence from the department and stakeholders, transcripts of the briefing and hearing and answers to questions taken on notice are available on the committee's webpage.

1.3 Policy objectives of the Bill

The Bill amends the:

- *Bail Act 1980*
- *Criminal Code*

1 *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

- *Disability Services Act 2006*
- *Domestic and Family Violence Protection Act 2012*
- *Evidence Act 1977*
- *Justices Act 1886*
- *Magistrates Act 1991*
- *Working with Children (Risk Management and Screening) Act 2000*

The objectives of the Bill are to:

- establish a statutory framework that allows protection against the disclosure of the identity of journalists' confidential informants (known as 'shield laws')
- introduce a legislative framework to support a pilot enabling video recorded statements taken by trained police officers to be used as an adult victim's evidence-in-chief in domestic and family violence related criminal proceedings
- provide a specific process for the viewing and examination of the body of a deceased person in a criminal proceeding to implement the Queensland Government's response to Recommendation 2 in the findings of the Inquest into the disappearance and death of Daniel James Morcombe
- clarify the operation of computer warrants in relation to bail
- enable service as a magistrate in Toowoomba to constitute regional experience for the purpose of a transfer decision under the *Magistrates Act 1991*.[3]

1.4 Commencement

Clause 2 of the Bill provides that part 3, division 3, parts 4 to 7 and 9 and schedule 1, part 2 will commence on a day to be fixed by proclamation. The explanatory notes detail that these provisions relate to the introduction of shield laws and to support the video recorded evidence (VRE) pilot.[4]

DJAG advised that commencing the VRE provisions on a day to be fixed by proclamation will allow sufficient time for implementation activities to occur, including police training.[5]

1.5 Government consultation on the Bill

The explanatory notes advise the following in relation to consultation on shield law aspects of the Bill:

> The amendments in the Bill to establish a statutory framework to enable the protection of the identity of journalists' confidential informants were informed by public consultation, guided by the discussion paper entitled: Shielding confidential sources: balancing the public's right to know and the court's need to know. Feedback was received on the discussion paper from a range of stakeholders including media organisations, legal stakeholders, academics, and individual community members, through responses to an online survey and written submissions.[6]

3 Explanatory notes, p 1.

4 Explanatory notes, p 16.

5 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 21.

6 Explanatory notes, p 15.

In relation to the other amendments in the Bill the explanatory notes state:

> Consultation during drafting of the Bill was also undertaken with legal, DFV, media and other interested stakeholders. Feedback received during this process was taken into account in finalising the Bill. The Chief Justice, Chief Judge, Chief Magistrate, President of the Childrens Court, President of the Land Court, President of the Industrial Court, President of the Mental Health Court, and President of the Queensland Civil and Administrative Tribunal were also consulted during the drafting of the Bill and their comments taken into account in finalising the Bill. The amendment to the Magistrates Act was requested by the Chief Magistrate.[7]

When introducing the Bill, the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, the Hon Shannon Fentiman MP, (Attorney-General), stated:

> The framework in the bill has been informed by extensive consultation, and I thank all stakeholders and community members for their time and participation in the consultation process. The feedback has been invaluable to inform the development of the contemporary, balanced and effective laws for Queensland.[8]

The Attorney-General also noted that a consultation report containing a summary of feedback received on the discussion paper, entitled *Shielding confidential sources: balancing the public's right to know and the court's need to know* (Consultation Report), has been published on DJAG's website.[9]

The Consultation Report provides feedback on a discussion paper and on-line survey on a range of key issues including:

- the nature of the shield - what form of privilege should the shield law framework take;
- applying the shield - who may use the shield to protect a source;
- shielding a source in court hearings - how the shield should apply in hearings and when should the shield be removed;
- shielding a source in other contexts - what contexts, other than court hearings, should the shield apply to;
- the practical approach to introducing a shield - what transitional arrangements should apply to the introduction of shield laws; and
- other matters relevant to shield laws such as human rights considerations.[10]

The Consultation Report indicates that the majority of survey respondents and submitters supported the introduction of shield laws in Queensland and no submitter opposed the laws.[11]

Australia's Right to Know coalition of media organisations (ARTK) advised the committee that it participated in:

> … all consultations associated with the development of the Bill to date. To that end we commend the Queensland government for its work towards enacting a journalist's shield.[12]

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7 Explanatory notes, p 15.

8 Queensland Parliament, Record of Proceedings, 16 November 2021, p 3478.

9 Queensland Parliament, Record of Proceedings, 16 November 2021, p 3478.

10 Department of Justice and Attorney-General, *Results of consultation Shield laws discussion paper Shielding confidential sources: balancing the public's right to know and the court's need to know*, p 3. https://www.justice.qld.gov.au/__data/assets/pdf_file/0016/700423/discussion-paper-shield-laws-consultation-results.pdf

11 Department of Justice and Attorney-General, *Results of consultation Shield laws discussion paper Shielding confidential sources: balancing the public's right to know and the court's need to know*, p 4. https://www.justice.qld.gov.au/__data/assets/pdf_file/0016/700423/discussion-paper-shield-laws-consultation-results.pdf

12 Submission 4, p 1.

1.6 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views and information provided by the various departments, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Evidence and Other Legislation Amendment Bill 2021 be passed.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

The Bill aims to achieve its policy objectives by amending:

- the Evidence Act to establish a framework for shield laws;
- the Evidence Act and related legislation to implement a framework for the use of video recorded statements taken by trained police officers as an adult victim's evidence-in-chief in domestic and family violence (DFV) related criminal proceedings;
- the Criminal Code by inserting a new provision dealing with the process for viewing and examining the body of a deceased person which ensures consideration can be given to a coroner's obligations to release the body under the Coroners Act;
- the Bail Act to make it clear there is no requirement for a judicial officer to consider the signature of the person who issued a computer warrant in the context of dealing with a defendant under section 33 of the Bail Act; and
- the Magistrates Act to allow for service as a magistrate in Toowoomba to constitute regional experience for the purpose of a transfer decision.[13]

2.1 Shield laws

The Bill amends the Evidence Act to establish a statutory framework to enable the better protection of the identity of journalists' confidential informants.[14]

DJAG advised the committee that the shield law amendments:

> … create a qualified journalist privilege that applies when an informant has given information to a journalist with the expectation that it may be published in a medium for the dissemination of news and observations on news to the public and the journalist promises the informant not to disclose their identity as a source of the information. The amendments create a presumption that a journalist or relevant person is not compellable to answer a question or produce a document that would disclose the identity of the informant or enable their identity to be ascertained. However, the privilege itself is rebuttable and a court may order that the identity of the informant be disclosed after weighing competing public interests.[15]
>
> …
>
> The privilege only protects the identity of the informant and does not apply to all journalistic material that a journalist or relevant person may wish to keep confidential. The bill also does not mandate the protection of the identity of the informant or regulate journalist conduct. A journalist or relevant person is not obliged to claim journalist privilege, and how each person chooses to utilise the protection offered by the framework may vary depending on the particular circumstances.[16]

13 Explanatory notes, p 4.

14 Explanatory notes, p 4.

15 Public briefing transcript, Brisbane, 29 November 2021, p 2.

16 Public briefing transcript, Brisbane, 29 November 2021, p 2.

In response to the committee's questions regarding the reason and timing of the proposed shield laws, DJAG advised that Queensland was out of step with the rest of Australia in providing protection to the journalist-source relationship. DJAG advised:

> Queensland is currently the only jurisdiction that does not have any statutory protection to protect the journalist-source relationship. While the Commonwealth and all other states and territories do provide statutory protection, there is nothing in Queensland. There is no protection under the common law to enable that.[17]

In its submission to the committee, the Queensland Law Society (QLS) acknowledged that many of its recommendations that it put forward in response to the Consultation Report are reflected in the report. However, QLS advised:

> While we broadly support the introduction of journalists' privilege, as stated in our previous submission, there needs to be further consideration as to how this privilege will operate in defamation proceedings, whistleblower protections and where there is the potential for misuse.
>
> These issues have not been considered in the Explanatory Notes. Further, while harmonisation of 'shield laws' across Australian jurisdictions is desirable, the benefits from this harmonisation need to be balanced against the need for effective laws.[18]

In response to this issue, DJAG advised:

> … the provisions in the Bill will operate alongside the *Defamation Act 2005* and *Public Interest Disclosure Act 2010* and through the operation of a qualified privilege provides mechanisms for the court to flexibly and appropriately apply the shield law framework across the range of criminal and civil matters that may come before a court of record including defamation proceedings, and instances where a person may seek to misuse the laws.[19]

ARTK explained the need for shield laws for journalists for the following reasons:

> … when a journalist accepts a confidence they have a professional obligation under the professional code that applies to respect that confidence in all circumstances. They do not get to choose which circumstances they might respect it in and which circumstances they do not, and therefore it is our view that that privilege that is applied in one court or proceedings should apply in all, because journalists do not get to pick and choose.
>
> Once the confidence is accepted, undertaking an absolute obligation to respect that confidence in all circumstances is fundamental to the operation of public interest journalism which is recognised not only in this country but also around the world. It is a fundamental obligation to respect that source because to do otherwise risks important stories not coming to light as other sources may not feel confident in coming forward.[20]

Submitters supported the proposed amendments.[21] However, submitters identified a number of issues on which they were seeking further consideration. These issues are discussed below.

2.1.1 Application of proposed Division 2B Journalist privilege

Clause 33 of the Bill inserts proposed new part 2, division 2B (Journalist privilege). Under proposed new section 14Q, the division only applies if:

(a) a person (the informant) gives information (the provided information) to a journalist, in the normal course of the journalist's activities as a journalist, in the expectation the information may be published in a news medium; and

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17 Public briefing transcript, Brisbane, 29 November 2021, p 4.

18 Submission 5, pp 3-4.

19 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 4.

20 Public hearing transcript, Brisbane, 1 February 2022, p 2.

21 Refer submissions 1, 3, 4 and 5.

(b) the journalist promises the informant not to disclose the informant's identity as the source of the information.[22]

In relation to proposed section 14Q(1)(a), the Queensland Council for Civil Liberties (QCCL) advised:

> … this provision applies the division to a situation where the informant gives the journalist information "in the expectation that the information may be published in any news media". It is submitted that this is too narrow a requirement and that the preferred formulation would be that contained in the Northern Territory legislation which simply requires that the information was given to the journalist for the "use of" the journalist. It seems to us that requiring that the informant expects the information will be published is too narrow.[23]

In relation to proposed section 14Q(1)(b), QCCL advised:

> In our submission this exposes the fundamental flaw in this legislation. Firstly, it only protects the informant's identity and secondly only does so in circumstances where the journalist has promised confidentiality. To properly secure the public's right to know, the privilege must extend beyond the identity of the informant and beyond circumstances in which the journalist has promised confidentiality. It must extend to any information obtained by a journalist for their use as well as to their informant's identity.[24]

QCCL stated:

> The purpose of the privilege is to protect the public interest in the maintenance of an independent media as part of the public's right to access information. That interest is not uniquely jeopardised by the disclosure of confidential sources. In order to effectively perform its vital democratic role of disseminating information to the public, the media must be given the widest possible latitude to seek and publish truthful speech about matters of public interest.
>
> However, the fact information, whether an informant's identity or other information obtained by a journalist, is not obtained on a confidential basis should be a factor to be weighed by the Court in considering where the public interest lies on the issue of its disclosure.[25]

DJAG advised the committee that the Bill:

> … does not prevent a journalist, relevant person or other witness from giving evidence that discloses the identity of the informant despite a promise of confidentiality. As stated by the Attorney-General in their [sic] introductory speech for the Bill:
>
> > It is important to note that whilst shield laws provide a framework to better protect the journalist-informant relationship, they do not mandate the protection of the identity of the informant or regulate journalists' conduct. The laws are there to provide a protection in the form of an evidential privilege from compellability. How each journalist and relevant person chooses to utilise that protection may vary.[26]

Proposed new section 14Q(2) allows the source of the provided information to disclose their identity.[27]

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22 Evidence and Other Legislation Amendment Bill 2021, clause 33.

23 Submission 3, p 2.

24 Submission 3, p 2.

25 Submission 3, p 2.

26 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, pp 12-13.

27 Evidence and Other Legislation Amendment Bill 2021, clause 33.

In response to the issues raised by QCCL, DJAG noted that:

> … the statutory frameworks in all Australian jurisdictions with a specific journalist privilege apply the protections to the identity of the confidential informant rather than all information obtained by a journalist, and that all jurisdictions except South Australia require the journalist to have made a promise not to disclose the informant's identity (South Australia requires that the information [sic] must reasonably expect that their identity would be kept confidential).
>
> In relation to the submitter's comments regarding the statutory framework in the NT, DJAG notes that the *Evidence (National Uniform Legislation) Act 2011* (NT) requires the information to be given to a journalist for use in a news medium. Section 127A of the NT legislation defines informant as 'a person who provides new or noteworthy information to a journalist for use in a news medium' and defines news medium as 'any medium for the dissemination of information to the public or a section of the public'.[28]

2.1.2 Definitions

Proposed new sections 14R, 14S and 14T provide the key definitions that are central to the operation of the shield law provisions. These definitions are discussed below.

2.1.2.1 Definition – journalist

Proposed new section 14R sets out the definition of who is a journalist. DJAG advised:

> The bill defines 'journalist' as a person engaged and active in gathering and assessing information about matters of public interest and preparing the information or providing comment or opinion on or analysis of the information for publication in a news medium. This broad function based definition reflects the contemporary media environment and the shift away from traditional forms of news media such as newspapers.[29]

DJAG confirmed that:

> … the definition of a journalist in the bill is very broad. It is a function based definition considering their activities—that they are engaged and active in the gathering and assessment of material that is of a public interest and then preparing that information or providing comment, analysis or opinion on it for publication in a news medium. It is wide enough to capture people who do not necessarily perform a traditional journalist's role—such as academics who may publish things or student journalists. Again, whether a particular person is a journalist will depend on exactly what activities they are undertaking and it will be a matter for the court to determine on a case-by-case basis.[30]

DJAG also confirmed that:

> There are very broad definitions of 'journalist' and 'news medium' to ensure that nobody is unintentionally excluded. It gives the court the flexibility to consider exactly what that person is doing and how they are publishing material and determine whether the protection of the shield will apply.[31]

In relation to jurisdictional comparison relating to the definition of a journalist, DJAG advised:

> The majority of jurisdictions with a specific journalist privilege define a journalist as a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium. The Commonwealth and Australian Capital Territory (ACT) have a broader definition, similar to that in the Bill, that applies to any person engaged and active in the publication of news who may be given information by an informant. The Northern Territory (NT) also has a broader definition capturing any person who deals with noteworthy information by preparing, or providing comment, opinion, or analysis of, information for a news medium.

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28 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 6.

29 Public briefing transcript, Brisbane, 29 November 2021, p 2.

30 Public briefing transcript, Brisbane, 29 November 2021, p 5.

31 Public briefing transcript, Brisbane, 29 November 2021, p 5.

> Victoria is the only jurisdiction that prescribes matters for the court's consideration when determining whether or not a person is a journalist.[32]

QCCL supported the proposition that a journalist should have an obligation to establish they are a journalist within the meaning of the legislation.[33]

QLS suggested that proposed section 14R(2)(d) be amended to include a 'catch-all' provision to enable courts to consider unique factors which may be relevant to determining who is a journalist. QLS advised that this would ensure that 'the law is able to evolve in line with developments in technology and social norms'.[34]

2.1.2.2 Definition – relevant person

Proposed new section 14T (Definitions for division) provides for 'authorised officer', 'disclosure requirement', 'informant', 'journalist', 'news medium', 'provided information', 'relevant person', and 'relevant proceeding'.[35]

The definition of a relevant person is as follows[36]:

> ***relevant person***, for a journalist, means—
>
> (a) a current or previous employer of the journalist; or
>
> (b) a person who has engaged the journalist on a contract for services; or
>
> (c) a person who—
>
> (i) is or has been involved in the publication of a news medium; and
>
> (ii) works or has worked with the journalist in relation to publishing information in the news medium.

DJAG advised that:

> The extension of journalist privilege to relevant persons recognises that journalism and the resulting publication of information often involves a range of people, some of whom may become aware of the identity of the informant.
>
> However, a relevant person may only claim the privilege if they became aware of the identity of the informant in the normal course of their work with the journalist or in association with a relevant proceeding (for example, if the journalist's employer becomes aware of the identity of the informant in preparation for a defamation proceeding). The restrictions on the ways in which a relevant person becomes aware of the informant's identity ensures unnecessary or frivolous disclosures are not captured.[37]

Examples of relevant persons who may become aware of the identity of an informant provided by DJAG included editors, producers and camera operators.[38]

In relation to jurisdictional comparison relating to the definition of a relevant person, DJAG advised:

> The majority of other Australian jurisdictions extend the protection of journalist privilege to a journalist's employer. South Australia (SA) also extends the protections to a person who engaged the journalist under a contract for services. Western Australia (WA) extends the privilege to a person for whom the journalist was working at the time of the promise.[39]

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32 Department of Justice and Attorney-General, correspondence, 26 November 2021, Attachment, p 3.

33 Submission 3, p 3.

34 Submission 5, p 4.

35 Explanatory notes, p 20.

36 Evidence and Other Legislation Amendment Bill 2021, clause 33.

37 Department of Justice and Attorney-General, correspondence, 26 November 2021, Attachment, p 3.

38 Public briefing transcript, Brisbane, 29 November 2021, p 2.

39 Department of Justice and Attorney-General, correspondence, 26 November 2021, Attachment, p 3.

2.1.2.3 Definition – news medium

The definition of a news medium is as follows[40]:

> ***news medium*** means a medium for the dissemination of news and observations on news to the public or a section of the public.

DJAG advised:

> This definition reflects the diverse nature of journalism and the evolving nature of the modes and methods for communicating news and observations on the news.[41]

DJAG also noted that:

> While the definition of news medium is broad, the requirement that it be for the dissemination of news and observations on the news ensures it is focussed on the protection on journalistic news related activities rather than the sharing of any information.[42]

In relation to social media, DJAG confirmed that the definition of news medium:

> … is broad enough to capture social media platforms. However, whether or not a particular social media platform is a medium for the dissemination of news and observation on the news to the public will depend on the particular facts and circumstances of the case considering how that platform is used generally and how it is used in that particular context by that particular person.[43]

DJAG also confirmed that:

> The definition is very broad to recognise that it is an evolving environment and there are a lot of different modes and methods of communicating news. Ultimately, whether or not a particular person's use of a social media platform is protected by the shield laws will be determined on a case-by-case basis by the court.[44]

2.1.2.4 Definition – disclosure requirement

The definition of disclosure requirement is as follows[45]:

> ***disclosure requirement–***
>
> (a) means a process or order of a court of record for the disclosure of information or the delivery, inspection or production of a document or thing, including, for example—
>
> (i) a summons or subpoena; or
>
> (ii) a process or order for disclosure or discovery of documents by a party to a proceeding; or
>
> (iii) a process or order for non-party disclosure or discovery; or
>
> (iv) an interrogatory; or
>
> (v) a notice or request to a party to a proceeding to produce a document; but
>
> (b) does not include an obligation or requirement for disclosure by the prosecution in a criminal proceeding.

40 Evidence and Other Legislation Amendment Bill 2021, clause 33.

41 Public briefing transcript, Brisbane, 29 November 2021, p 2.

42 Department of Justice and Attorney-General, correspondence, 26 November 2021, Attachment, p 3.

43 Public briefing transcript, Brisbane, 29 November 2021, p 5.

44 Public briefing transcript, Brisbane, 29 November 2021, p 5.

45 Evidence and Other Legislation Amendment Bill 2021, clause 33.

The explanatory notes state:

> … journalist privilege applies in any proceeding before a court of record (a 'relevant proceeding'), except proceedings under the *Crime and Corruption Act 2001*, irrespective of whether the court is bound by the rules of evidence in the proceeding. Courts of record in Queensland are: the Supreme Court of Queensland; the District Court of Queensland; Magistrates Courts; the Coroners Court of Queensland; the Childrens Court of Queensland; the Industrial Magistrates Court; the Industrial Court; the Queensland Industrial Relations Commission; the Land Court; the Land Appeal Court; the Planning and Environment Court; the Mental Health Court; and the Queensland Civil and Administrative Tribunal.[46]

QCCL, whilst acknowledging the term 'Court of record' in Queensland is very broad, expressed the view that:

> … the law should apply broadly to any Court, tribunal or other body which has the power to compel the giving of testimony or production of documents. The obvious lacuna in the legislation is the *Commissions of Inquiry Act*. We see no reason why a Royal Commission should not be subject to these rules.[47]

2.1.3 Trials and hearings

Proposed sections 14U-Z, 14ZA and 14ZB set out the requirements in relation to relevant proceedings.

DJAG advised:

> A journalist or a relevant person may claim journalist privilege under the provisions of the bill when giving evidence at a trial or hearing. If the court decides the journalist or relevant person is entitled to claim the privilege, another party to the proceeding may then apply to the court for an order overriding the privilege and requiring the evidence to be given. The court may make such an order if satisfied that the public interest in requiring the disclosure of the informant's identity outweighs any likely adverse effect on the informant or another person and the public interest in the communication of facts and opinions to the public by the news media and the news media's ability to access sources of facts. The court may consider a range of matters that are listed in the bill when weighing the competing interests. The matters listed in the bill are examples to guide the court in making its decision, but the court may take into account any other matter that it considers relevant. The court is to state its reasons for making or refusing to make the order.[48]

And,

> The bill extends the application of the privilege to disclosure requirements associated with proceedings in the court of record. These are processes or orders for the disclosure of information, or the delivery, inspection or production of a document or thing, such as summonses, subpoenas, interrogatories and a notice to produce a document.[49]

DJAG also confirmed that the laws can be overridden by an order of the court, advising:

> Shield laws offer a qualified privilege. It is not an absolute privilege. Essentially it creates a rebuttable presumption. As a starting point, a journalist or a relevant person cannot be compelled to give evidence that would disclose the identity of their source. However, recognising that there may be certain circumstances in which it may be in the interests of justice or in the public interest to override that, it can be done, but only on the order of a court. A court would consider all of the relevant circumstances and consider whether ordering the disclosure of the identity outweighs the public interest in the media being able to access information and sources and any adverse potential effects on the informant.[50]

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46 Explanatory notes, p 5.

47 Submission 3, p 3.

48 Public briefing transcript, Brisbane, 29 November 2021, p 2.

49 Public briefing transcript, Brisbane, 29 November 2021, p 2.

50 Public briefing transcript, Brisbane, 29 November 2021, p 2.

Submitters generally supported the provisions that allow a court to override the shield.[51]

QCCL supported the provisions contained in proposed sections 14W(3), 14X and 14Y, however, suggested that proposed section 14Z should be amended to make clear as to where the onus lies in respect of the situation where a journalist objects to complying with the disclosure requirement, as is provided for in the previous provisions.[52]

In response DJAG advised:

> … while the Bill does not prescribe the onus of proof requirements in relation to disclosure requirements, the provisions in the Bill will operate alongside existing processes, including those under the *Uniform Civil Procedure Rules 1999* (UCPR) and *Criminal Practice Rules 1999* (CPR), for claiming a privilege in relation to, or objecting to, a disclosure requirement. Who bears the onus of proof in relation to the court deciding an objection to a disclosure requirement will be governed by these existing processes.[53]

QLS suggested:

> … consideration should also be given to expressly including a factor relating to the extent to which the journalist kept contemporaneous records about the source and the information. If required, this information could assist the judge, on a confidential basis, to assess the credibility of the journalist and other issues, such as the impacts on the other party from the nondisclosure of this information.[54]

DJAG advised the Bill:

> … provides flexibility for the court to consider any matter that it considers relevant, including whistleblower or other public interest arguments in relation to whether the journalist or informant was involved in an offence or misconduct, and the extent to which the journalist kept contemporaneous records about the source and the information. The issues raised by the submitter may be considered by the court as additional relevant matters or may form part of its consideration of other prescribed factors such as the way in which the provided information has been used or kept by the journalist (section 14Y(2)(h)).
>
> The court will balance all relevant matters, including whether the journalist or informant was involved in an offence or misconduct, whether the informant was [a] whistleblower, and any other public interest arguments.[55]

2.1.4 Proposed subdivision 3 search warrants

Proposed subdivision 3 includes sections 14ZC-G and sets out the provisions in relation to search warrants. DJAG advised:

> The bill applies journalist privilege to search warrants to ensure appropriate protections are also available at an early stage. A journalist or relevant person may object to an authorised officer, such as a police officer, inspecting, copying or seizing a document under the authority of a search warrant if the document contains information that would disclose the identity of the informant or enable the identity of the informant to be ascertained. If the journalist or relevant person objects, the officer may ask them to agree to the document being immediately sealed and held by the officer for safe keeping pending a determination of their rejection. An application may be made to the Supreme Court for a decision in relation to the objection and if an application is made the document must be delivered to the court registry for safe keeping until the question of the objection is decided.[56]

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51 Refer submissions 1, 3 and 5.

52 Submission 3, p 3.

53 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 10.

54 Submission 5, p 6.

55 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, pp 9-10.

56 Public briefing transcript, Brisbane, 29 November 2021, p 2.

QCCL considers that the proposed procedure is 'not a procedure designed to inspire confidence in the journalist'. QCCL advised:

> The more sensible thing would be for the document to be immediately sealed up and deposited with the registry of the Supreme Court as the Bill currently provides will happen should the journalist lodge an application with that Court to assert their privilege.[57]

QLS also expressed some concerns with the process outlined in proposed section 14ZD. QLS advised:

> … we are concerned with the subject documents being given to the authorised officer, albeit sealed, until an application is made, noting this may take several days. We do not consider it is appropriate for the likely respondent to an application for privilege to already possess the documents and are concerned about the possibility of unintended interaction with the documents. It would be more appropriate for the documents to be given to the court immediately upon seizure and for these documents to remain in the possession of the court until the application is determined. There also should be a mechanism for the documents to be released by the court in the event that an application is not made. Perhaps there could be a reasonable timeframe within which the journalist or relevant person needs to make the application.[58]

In response to stakeholder concerns, DJAG noted:

> … the process set out in the Bill, whereby the material is provided to the Supreme Court once an application is made to the court is consistent with the process for a claim of legal professional privilege.
>
> DJAG also notes that requiring the Supreme Court to safeguard all material that is sealed in a container, or stored in another secure way once a claim of journalist privilege is made, would place an administrative and resource burden on the courts because the court registries would be required to store all such material even where an application in relation to the privilege is not made.[59]

In relation to QLS's comments about a timeframe within which an application must be made, DJAG advised:

> … section 14ZE(3) provides that an application to the Supreme Court to decide whether a sealed or stored document or thing may be dealt with in a way authorised under a warrant must be made within 7 days after the day the request is made for the document or thing to be sealed or stored.[60]

In relation to proposed section 14ZF, which sets out what a Court is to decide on an application by a journalist asserting their claim of privilege, QCCL suggested:

> Whilst we anticipate that a Court will approach this on the basis that the onus lies on the authorised officer under the warrant, it is submitted that that should be put beyond doubt by the insertion into clause 14ZF of a provision specifically stating that the onus lies on the authorised officer.[61]

In response to this issue, DJAG advised that it will consider whether any clarification is required.[62]

2.1.5 Jursidictional comparisons

DJAG advised that the development of the proposed amendments has been informed by the outcomes of public consultation, the review of laws in other jurisdictions and an examination of recent case law.[63]

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57 Submission 3, p 4.

58 Submission 5, p 7.

59 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, pp 10-11.

60 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 11.

61 Submission 3, p 4.

62 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 12.

63 Department of Justice and Attorney-General, correspondence, 26 November 2021, Attachment, p 2.

DJAG advised:

> All other Australian states and territories, including the Commonwealth, have some kind of shield laws at the moment. Most of the jurisdictions have a particular journalist privilege that is specific to journalists. Tasmania has a slightly different model in that it applies more broadly to professional relationship confidentiality.
>
> In relation to the jurisdictions that have specific shield laws, they are very similar. The framework established by the bill and the provisions in other jurisdictions do have common foundational elements. They all establish a qualified privilege, creating a presumption that a journalist cannot be compelled to disclose the identity of their informant. They all provide that the privilege applies to court proceedings and disclosure requirements. They all provide that the court may override the privilege.
>
> There are a range of differences between the framework proposed in the bill and the frameworks in other jurisdictions. For example, the definition of a journalist varies between jurisdictions. In the majority of jurisdictions, the definition is narrower and it focuses on whether the journalist is engaged in the profession or occupation of journalism. Victoria has that definition within its shield law framework. The bill also sets out matters that the court may consider when determining whether or not someone is a journalist. Victoria is the only jurisdiction aside from Queensland that does prescribe those matters. The other jurisdictions do not include that.
>
> The extension of privilege to other people is broader in the bill than what occurs in other jurisdictions. Other jurisdictions apply the privilege to the employer of the journalist, but only South Australia also applies it to a person who is engaged in a contract for services. That is a key difference between the amendments proposed in the bill. Victoria is also the only other jurisdiction that expressly provides within its evidence law for journalist privilege to apply to search warrants. They are some key differences between the framework applied in the bill and that in other jurisdictions.[64]

And,

> The majority of jurisdictions do not expressly state a position in relation to journalist privilege and their integrity or corruption bodies. Victoria is the only jurisdiction that expressly addresses journalist privilege, and it does so by specifically excluding the privilege. Under the Independent Broad-based Anti-corruption Commission Act 2011, a person is not entitled to claim journalist privilege in investigations and hearings of the Victorian Independent Broad-based Anti-corruption Commission. The position in other jurisdictions is not as clear-cut. It depends on the particular frameworks. In some instances it will be a matter for the courts to determine as to whether the privilege applies in those contexts.[65]

DJAG provided the committee with a comparison of key elements in legislative frameworks in Australian jurisdictions, which is available on the committee's webpage.[66]

2.1.6 Application to Crime and Corruption Commission

DJAG confirmed that while the Bill provides that the privilege applies in any proceeding before a court of record, the privilege does not apply under the *Crime and Corruption Act 2001*.[67]

64 Public briefing transcript, Brisbane, 29 November 2021, p 6.

65 Public briefing transcript, Brisbane, 29 November 2021, pp 6-7.

66 Department of Justice and Attorney-General, correspondence, 26 November 2021, Attachment, pp 22-33.

67 Public briefing transcript, Brisbane, 29 November 2021, p 2.

In relation to this issue, when introducing the Bill, the Attorney-General stated:

> While this bill does not provide for the application of shield laws to investigations and hearings conducted by the Crime and Corruption Commission, the search warrant provisions are broad and will apply to the commission. I want to acknowledge the views of stakeholders that the consideration of journalist privilege in these matters is important to ensure the appropriate protection of journalist-informant relationships. The application of privileges in the context of Crime and Corruption Commission investigations, hearings and proceedings is again very complex. This is reflected by the fact that the position in other Australian states and territories for equivalent commissions varies and only a few expressly allow for the privilege.
>
> As noted by the Parliamentary Crime and Corruption Commission in its recent report on the activities of the Crime and Corruption Commission, under the *Crime and Corruption Act 2001* different provisions apply for a person who refuses to answer a question or produce a document or thing in crime investigations and intelligence and witness protection function hearings as well as corruption investigations and confiscation related investigations. The government is committed to examining shield laws as part of the ongoing work that is being undertaken regarding the operation of privileges under the Crime and Corruption Act which arise from the previous recommendation of the PCCC. I can assure stakeholders that further consultation will be undertaken in relation to this work and that we will be in a position to determine the most appropriate course of action in the first half of next year.[68]

The Consultation Report identifies that 94 percent of survey respondents and 56 percent of submitters supported the application of shield laws to the Crime and Corruption Commission (CCC).[69]

In the summary of the key feedback from the QLS was that:

> A court would act as a check and balance on this privilege and be able to hear reasons from the CCC as to why, in a particular case, the shield should be overridden.[70]

However, in their feedback, the CCC did not support the extension of shield laws to the CCC noting that:

> … CCC inquiries are inquisitorial proceedings established for particular purposes with limited statutorily defined jurisdiction and extraordinary powers that reflect the particular public purpose it performs. The body has power to compel persons to answer questions or produce document or things and may override the privilege against self-incrimination.
>
> Noted than most other jurisdictions do not provide an avenue for protection of journalists and their sources before their integrity/investigative agencies, a position that may be understood when regard is had to the nature, purpose and legislative scheme that underpins these entities.[71]

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68 Queensland Parliament, Record of Proceedings, 16 November 2021, pp 3479-3480.

69 Department of Justice and Attorney-General, *Results of consultation Shield laws discussion paper Shielding confidential sources: balancing the public's right to know and the court's need to know*, p 28. https://www.justice.qld.gov.au/__data/assets/pdf_file/0016/700423/discussion-paper-shield-laws-consultation-results.pdf

70 Department of Justice and Attorney-General, *Results of consultation Shield laws discussion paper Shielding confidential sources: balancing the public's right to know and the court's need to know*, p 29. https://www.justice.qld.gov.au/__data/assets/pdf_file/0016/700423/discussion-paper-shield-laws-consultation-results.pdf

71 Department of Justice and Attorney-General, *Results of consultation Shield laws discussion paper Shielding confidential sources: balancing the public's right to know and the court's need to know*, p 29. https://www.justice.qld.gov.au/__data/assets/pdf_file/0016/700423/discussion-paper-shield-laws-consultation-results.pdf

The CCC also submitted that:

> … shield laws could be applied to CCC proceedings but that the default position should be that a witness is required to answer questions and the onus would be on the journalist or media organisation seeking to withhold that information to reflect that the public interest would generally be presumed to favour the effective investigation of serious crime and corruption.[72]

In its submission to the committee, the Bar Association of Queensland (BAQ) stated:

> The Association is in favour of allowing protections for journalists unable to reveal their sources. The Association notes with interest that these laws are not applicable in a proceeding brought under the *Crime and Corruption Act 2001*; where, for instance, an investigation into alleged corruption may stem from a whistle-blower. Whilst the Association appreciates there are significant public interest considerations in respect of this, it considers the same shield laws should apply in matters before the Crime and Corruption Commission.[73]

BAQ also advised:

> It would require only relatively minor amendment to the provisions as they currently stand. If there is in fact to be a further consideration with respect to the privileges that apply at the CCC then, as I have indicated, the Bar Association would be very happy to give a fuller set of submissions with respect to how such legislation might be crafted.[74]

In its submission to the committee, QCCL also expressed the view that the CCC should be the subject of the legislation. QCCL acknowledged the Attorney-General's comments in relation to further consultation regarding the CCC.[75]

QCCL explained:

> … it is a classic illustration that people with extraordinary powers should not be exempt from supervision; they should have more supervision. The CCC, like any other body which has compulsive powers, should be required to demonstrate that the public interest outweighs the free speech interests of the journalist. I do not see the fact it is the CCC makes one jot of difference. The difference will come no doubt in the assessment. In the weighing of those interests the court will say, presumably, that whatever the CCC might be investigating might be more important than some ordinary court process. That is where that will be worked out and it should be worked out outside the CCC because, as I say, the CCC is basically a standing royal commission. It has enormous powers. Those powers should be subject to more supervision, not the other way around.[76]

And,

> It is a body with enormous power and a journalist should not be frightened of dealing with issues that it might be involved in and therefore threatened with the prospect of it being able to override an immunity which other bodies may not be able to.[77]

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72 Department of Justice and Attorney-General, *Results of consultation Shield laws discussion paper Shielding confidential sources: balancing the public's right to know and the court's need to know*, p 29. https://www.justice.qld.gov.au/__data/assets/pdf_file/0016/700423/discussion-paper-shield-laws-consultation-results.pdf

73 Submission 1, p 1.

74 Public hearing transcript, Brisbane, 1 February 2022, p 13.

75 Submission 3, pp 2-3.

76 Public hearing transcript, Brisbane, 1 February 2022, p 9.

77 Public hearing transcript, Brisbane, 1 February 2022, p 10.

QCCL suggested:

> Our position is that if it is not in this bill the CCC has to be subject to it and if you want to work out the details we are happy to talk about the details around that, but the starting point, as I say, is the CCC is a body with enormous powers and it needs to be subject to appropriate controls. Maybe the answer is that this issue could be sent off to the former justices and they can come up with a view. I do not know whether that is an option.[78]

ARTK advised that it is largely supportive of the Bill, however:

> … the key issue with the bill is that the shield does not protect a journalist from a demand by the Queensland Crime and Corruption Commission that the identity of a confidential source be disclosed. This is achieved by a provision in the bill that specifically exempts the CCC from the application of the shield. The exemption of the CCC from the application of the bill is nonsensical as the shield is not absolute. The decision of whether the shield should or should not apply is made by a judge considering all the evidence and the circumstances, and these decisions can and will be made to make that informed decision, including in the case of the Crime and Corruption Commission.[79]

ARTK further elaborated on this issue advising that the shield laws as proposed in the Bill would be a defence under the Crime and Corruption Act. ARTK stated:

> If it were to be dealt with under the Crime and Corruption Act, that is the level of uncertainty at this point in time in terms of what actually could or would be the case. As it would currently stand, if it were adapted into that legislation, it would be as a defence. A journalist and legal counsel would have to put on quite a significant and substantial amount of evidence and possibly even breach and identify the source in trying to attain the shield.[80]
>
> …
>
> If you look at sections 195B and 196 of the Crime and Corruption Act, it is for the person who is attempting to claim the privileges that are available under that act now to assert the privilege and prove that it should be maintained, whereas with the shield it is the other way around: it is the person who wants to breach the shield who has to bring the application and show that it is in the public interest that the shield should fall and that the disclosure should be made. It is the reversal of the onus of proof, essentially, that is going on there.[81]

In addition, ARTK advised:

> The recent proceedings concerning "F" demonstrate how badly needed the privilege is both generally and specifically in relation to the CCC. If the shield does not apply to that body, journalists continue to risk being fined or jailed simply for doing their jobs.
>
> With such an even division outside Queensland we would urge the Committee to reconsider this issue and let the privilege do its work in relation to the CCC. Specifically, we recommend section 14S(2) be deleted to give effect to this.[82]

ARTK acknowledged the Attorney-General's comments regarding the CCC. However, ARTK advised:

> We argue that the time is now to ensure the shield law applies in all circumstances without exception. As has been well ventilated in this thorough process, the shield is not absolute, and if it should – or should not – apply, then a judge with all evidence in the circumstances, can and will make that informed decision, including in the case of the Crime and Corruption Commission.[83]

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78 Public hearing transcript, Brisbane, 1 February 2022, p 9.

79 Public hearing transcript, Brisbane, 1 February 2022, pp 1-2.

80 Public hearing transcript, Brisbane, 1 February 2022, p 4.

81 Public hearing transcript, Brisbane, 1 February 2022, p 4.

82 Submission 4, p 3.

83 Submission 4, p 3.

ARTK also outlined its reasons for not waiting for a further review, advising:

> …if the shield does not apply to the CCC from the outset, journalists with confidential sources will remain at risk for the following reasons. Firstly, as the CCC work is ongoing, we have yet to see what, if anything, will be proposed by way of amendments to the act to address this issue, or if any such amendments will attempt to offer equivalent protection as the shield. By contrast, the parliament is consulting on this bill now and the bill is an appropriate vehicle to cover the field and apply the shield in all forums. Secondly, the fact that the Queensland government has carved the CCC out of the bill's operation is likely to leave any subsequent amendments to the act vulnerable to attack, no matter how careful the drafting may be. Once a form of compulsory disclosure is excluded from the shield, any complementary protection offered to journalists' confidential sources must be viewed as distinct from, and lesser than, that offered by the shield. Were it otherwise, there would be no reason to exclude that form of disclosure from the shield in the first place.[84]

QLS also expressed the view that the proposed provisions should extend to CCC proceedings where witnesses can be compelled to give evidence and where these proceedings can lead to criminal proceedings in a court. QLS advised that it believes:

> … a qualified privilege will allow the CCC to advocate why the shield should be overridden in a particular matter and will ensure that appropriate factors are taken into account pursuant to proposed section 14Y.[85]

In relation to this issue, BAQ commented:

> It seems to us that the proposed provisions in this bill would be fairly seamlessly applied to the CCC, potentially with some minor amendments to the considerations that at present a judge—and in the case of the CCC the presiding officer—might take into account in determining whether to override a journalist's claim with respect to the shield laws.[86]

In response to submitters' call for the provisions to apply to the CCC, DJAG noted the Attorney-General's comments when introducing the Bill that application to the CCC would be considered separately. DJAG also confirmed that stakeholders would be consulted as part of this process.[87]

In addition, DJAG noted the recommendations made by the Parliamentary Crime and Corruption Committee (PCCC) in its reports 97 and 106. DJAG advised that the PCCC recommended a review of Chapters 3 and 4 of the Crime and Corruption Act be conducted and this recommendation has been accepted by government.[88]

DJAG also advised the committee:

> … the exclusion in relation to a proceeding under the CC Act in new section 14S of the Evidence Act does not apply to the search warrant provisions in new subdivision 3.[89]

2.1.7 Committee comments – shield laws

Submitters supported the introduction of the proposed shield laws. However, submitters also supported the view that the laws should also apply to the CCC. Submitters acknowledged the Attorney-General's comments when the Bill was introduced that further consultation will be undertaken in relation to the CCC and that the government will be in a position to determine the most appropriate course of action in the first half of 2022. The committee supports the review proposed by the Attorney-General.

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84 Public hearing transcript, Brisbane, 1 February 2022, p 2.

85 Submission 5, p 7.

86 Public hearing transcript, Brisbane, 1 February 2022, p 13.

87 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, pp 1-3.

88 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, pp 1-3.

89 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 1.

In relation to the issues raised by stakeholders about proposed section 14ZF, the committee notes DJAG's response that it is considering whether any clarification is required. The committee seeks clarification in relation to the outcomes from these considerations.

Recommendation 2

The committee recommends that the Attorney-General, in the second reading speech, provide an update in relation to consideration of the issues raised by stakeholders about proposed section 14ZF.

The committee supports the proposed amendments to introduce shield laws in Queensland.

2.2 Video recorded evidence

The Bill amends the Evidence Act, the Criminal Code and the Justices Act and other related legislation, to establish a legislative framework for the giving of video recorded evidence-in-chief by adult DFV victims in criminal proceedings.[90] The underlying policy intent is to remove the hearsay rule of evidence, so that out of court statements can be used as evidence of the existence of a fact contained in them.[91]

The reasons cited in the explanatory notes for enacting the proposed amendments include reducing the trauma to DFV victims associated with re-telling their experiences in court, illustrating a victim's demeanour and experience close to the time of the event and reducing the capacity of the perpetrator to intimidate a victim.[92]

DJAG advised:

> The bill includes a range of safeguards designed to limit the trauma and protect the privacy of domestic and family violence victims. In addition to requiring the complainant's informed consent and for statements to be taken by trained police officers, other safeguards include: when determining whether or not to present the complainant's evidence-in-chief in the form of a recorded statement, the prosecution must take into account certain factors including the wishes of the complainant. There are limitations on the editing and altering of statements and there are strict provisions that limit the disclosure of copies of recorded statements similar to provisions applying in relation to statements of children and persons with an impairment of mind under section 93A of the Evidence Act. Offences are also included relating to unauthorised possession, use and publication of those statements.[93]

QPS advised that modelling shows that there should be significant time savings for frontline police and significant benefits for DFV victims, including that 'police officers will no longer, in most instances, need to take DV victims from their homes at all hours of the night and take them back to a police station to obtain a typed statement'.[94]

QLS, whilst supporting measures aimed at minimising trauma for victims and noting that video recorded statements and evidence from body-worn cameras are already admissible in certain circumstances, and supporting the proposed use of video recorded statements in domestic and family violence proceedings in principle, noted that 'there are complexities with the proposal which require further consideration'.[95]

90 Explanatory notes, p 7.

91 Explanatory notes, p 2.

92 Explanatory notes, p 2.

93 Public briefing transcript, Brisbane, 29 November 2021, p 3.

94 Public briefing transcript, Brisbane, 29 November 2021, pp 4-5.

95 Submission 5, p 2.

QLS elaborated on this issue advising that, whilst there is limited evidence, some American research has shown that:

> … videorecorded evidence can actually produce delays, particularly human resources delays, for police officers, who have to ensure that the integrity of the evidence is maintained and the chain of custody is maintained. It is also important that the IT infrastructure be sufficient to enable the evidence to be meaningful.[96]

QLS also observed:

> The reality with videorecorded evidence is that I do not think you can have a one-size-fits-all approach. Evidence is complex. People are complex. With the circumstances in which they will come to give a complaint and how they will give it, there is so much variation that there is something to be said for the fact that it is not so much the mode of evidence; it is the quality of the actual evidence that matters.[97]

BAQ also noted that it had some concerns that the benefits that are hoped for may not come to fruition and that there may be some unfairness caused to defendants.[98] BAQ further noted that in a contested hearing:

> Whilst the provisions would mean that in that setting the victim would not have to relay orally the account, the victim will nonetheless be reliving the experience they have already relayed on the video. One concern may be that that will be particularly difficult because—I keep using the word 'victim' here, but I mean 'alleged victim' in the context of a contested hearing, of course—not only is the victim having to relive that experience but also doing so by watching himself or herself in the moment shortly after the experience occurred. That will be quite a visceral experience for the person who is giving the evidence. The concern we have is that it may not in fact alleviate trauma but potentially add to trauma.[99]

BAQ also identified that potential drawbacks include:

> … a continuing fallacy in social attitudes that victims will react a certain way even close in time to when they have been offended against. If the alleged victim in that video recording is sitting there relaying their experiences in a calm manner—in fact, potentially even seemingly detached—rather than in a heightened manner, will they be open to challenge in a contested hearing that perhaps the experience was not as damaging as they are saying during their evidence because of how they appeared shortly after the incident?[100]

In addition, BAQ identified that in their experience, often DFV offences occur in circumstances where potentially the victim and the perpetrator are affected by alcohol. BAQ advised:

> That concern is significantly alleviated by the current court processes or investigation processes, which would see a victim being brought into a police station to provide their statement sometime after the incident has occurred when they are no longer affected by the heightened emotions of the moment and certainly no longer affected by any alcohol and, in our experience, is in a better position to properly explain their evidence than they would be either whilst in that heightened state or affected by alcohol.[101]

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96 Public hearing transcript, Brisbane, 1 February 2022, p 16.

97 Public hearing transcript, Brisbane, 1 February 2022, p 16.

98 Public hearing transcript, Brisbane, 1 February 2022, p 11.

99 Public hearing transcript, Brisbane, 1 February 2022, p 11.

100 Public hearing transcript, Brisbane, 1 February 2022, pp 11-12.

101 Public hearing transcript, Brisbane, 1 February 2022, p 12.

QLS agreed, advising:

> There will be some cases where the evidence-in-chief is not appropriate, and that may work to the advantage of the victim or the prosecution or to the advantage of the defendant. Situations may well be where the victim is intoxicated or is under the influence of drugs or in circumstances where she is in a particular state of distress. There might be environmental things happening which impact upon whether or not it is fair for that evidence to be admitted.[102]

2.2.1 Time limited pilot trial and evaluation

When introducing the Bill, the Attorney-General advised:

> Allowing an out-of-court statement to be used as evidence-in-chief also represents a significant departure from the usual rules of evidence that apply in criminal proceedings, so we do need to be careful there are no unintended consequences for both victims and the accused. The provisions in the bill therefore set up a framework for a pilot which will be time limited and subject to an independent evaluation. This evaluation will be used to inform any future extension or expansion of the use of the videorecorded evidence provisions. This approach will also ensure that the government can consider any relevant recommendations made by the Women's Safety and Justice Taskforce.
>
> The pilot will be established under a future regulation. I cannot pre-empt any ultimate decisions in relation to the making of the regulation; however, I can inform members that consideration is being given to the operation of a 12-month pilot which will run simultaneously in two Magistrates Court locations: Ipswich and Southport. Further consultation will occur as part of the operationalisation of the pilot by the Queensland Police Service and Department of Justice and Attorney-General. The provisions in the bill apply to criminal proceedings for a domestic violence offence, which is defined to include breaches of domestic violence orders as well as other criminal offences such as assault committed in a domestic violence context.[103]

The committee noted that Victoria operated a similar trial to the one proposed and sought further information from DJAG regarding the outcomes from that trial. DJAG advised that a full assessment was not able to be conducted due to there being few recordings for the duration of the trial that were played in court. DJAG advised that:

> … one of the purposes of running a trial in Queensland is to enable data to be obtained about the impacts on courts and the police but also obtaining evidence around victims' experiences in giving evidence in that way.[104]

In relation to the evaluation and the timeframe for the trial, DJAG also advised:

> The details of the pilot are yet to be settled. They will be prescribed in regulation under the legislative framework in the bill. The Attorney-General has indicated in her explanatory speech that consideration, as Leanne said before, is given to those two locations, in Ipswich and Southport, for a duration of 12 months.[105]

Stakeholders, including the QLS, supported the time limited trial. QLS advised:

> We consider a time-limited pilot-model provides the appropriate 'checks and balances' for the proposal. As such, we support the 12-month operational period for the VRE Pilot proposed in the Introductory Speech. QLS would welcome the opportunity to provide feedback on the development of the VRE Pilot regulation and any subsequent amendments that relate to the regulation's scope and application. Similarly, QLS would also welcome the opportunity to contribute to any future reviews or evaluations of the VRE Pilot.[106]

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102 Public hearing transcript, Brisbane, 1 February 2022, p 17.

103 Queensland Parliament, Record of Proceedings, 16 November 2021, pp 3480-3481.

104 Public briefing transcript, Brisbane, 29 November 2021, p 4.

105 Public briefing transcript, Brisbane, 29 November 2021, p 4.

106 Submission 5, pp 1-2.

However, QLS identified that:

> There needs to be clarity about which cases the pilot will apply to. From the material, it seems that the VRE pilot will enable video recorded statements as evidence-in-chief in a criminal proceeding that relates to a charge for a domestic violence offence, whether or not the proceeding also relates to other offences, and where the type of criminal proceeding, and the court and place hearing the proceeding, are prescribed by regulation.[107]

DJAG confirmed that QLS's interpretation is correct. DJAG also confirmed that further consultation will occur as part of the operationalisation of the pilot.[108]

DJAG advised:

> … the Bill does not override the court's discretion to exclude evidence on the basis, for example, that its probative value is substantially outweighed by its prejudicial effect on the accused person. The Bill makes it clear that the court may rule all or any part of the contents of a recorded statement as inadmissible (section 103H).[109]

QLS also suggested that:

> … consideration should also be given to the potential cost implications for parties involved in any pilot proceedings. The time required for transcribing and/or viewing statements may add to legal costs. Where these costs become prohibitive, this may result in access to justice issues.[110]

DJAG confirmed that the impact on all parties involving the use of VRE, including cost implications, can be monitored and would form part of the evaluation process.[111]

QLS also commented on the commencement of the provisions advising:

> … the proposed amendments would apply to proceedings only if the proceeding starts on or after the commencement irrespective of the date of an offence or when the recording is taken. The retrospective application of such changes can create confusion and QLS would generally caution against this approach.[112]

DJAG advised:

> The VRE provisions in the Bill operate to proceedings prospectively (that is, to those started after commencement), but may apply in relation to statements taken and offences that occurred before commencement. DJAG notes that this is consistent with the usual approach for procedural related amendments and give clarity about the operation of the provisions based on the commencement of a criminal proceeding, noting that an investigation and offence may not be charged until sometime after it is alleged to have occurred.[113]

2.2.2 Clause 36 – unauthorised possession of, or dealing in, section 93A criminal statements

Clause 36 replaces existing section 93AA (Unauthorised possession of, or dealing in, s 93A criminal statements) with a new section 93AA (Unauthorised possession of, or dealing in, section 93A criminal statements or section 93A transcripts) and new section 93AB (Permitted use of section 93A transcript by employment-screening applicant or applicant's lawyer), and inserts new section 93AC (Publishing section 93A criminal statements or section 93A transcripts prohibited).[114]

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107 Submission 5, p 2.

108 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, pp 17-18.

109 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 18.

110 Submission 5, p 2.

111 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 21.

112 Submission 5, p 3.

113 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 34.

114 Explanatory notes, pp 23-24.

The explanatory notes state:

> New sections 93AA and 93AB are not intended to change the operation of the existing offence in section 93AA.[115]

Clause 39 inserts the definition of a 'section 93A transcript' and provides that:

> … a section 93A transcript means a transcript of a section 93A criminal statement and will include, if the context permits, a summary or copy of a summary of a transcript of a section 93A criminal statement.[116]

ARTK opposed the amendments to sections 93AA, 93AC, 103A and 103S on principle that the proposed amendments create or continue offences:

> … relevant to reporting and/or publication, particularly offences that introduce or perpetuate a risk that journalists could be imprisoned for nothing more than doing their job.[117]

In relation to proposed section 93AA, ARTK advised:

> It has been an offence pursuant to s93AA of the Act to possess, supply, offer to supply, copy or permit the copying of a s93A criminal statement since 2003. There is no defence for a journalist coming into possession of a s93A criminal statement in the ordinary course of investigations conducted in preparation to report the news. Moreover, since 2003 the applicable maximum penalties have included a 100 penalty unit fine or *2 years imprisonment* for an individual or a 1,000 penalty unit fine for a corporation.
>
> The Bill repeals and replaces the current s93AA, simplifying the section and rendering it technology neutral by extending the offence to possession et al of a s93A transcript. The new s93AA continues to potentially risk journalists going to jail for doing their jobs, without the provision of a defence let alone our preferred option of being exempted from this provision.
>
> It is untenable that a journalist could go to jail for, for example, possessing a document access [sic] for the purposes of news gathering and reporting, including for the preparation and investigation of a potential news report.[118]

ARTK are seeking that this 'deficiency' be addressed by 'providing an exemption for news gathering and reporting' or alternatively by 'incorporating a defence for the purpose of news reporting'.[119]
In relation to section 93A, ARTK advised:

> Section 93A was first inserted into the Act in 1989 and while it has differed in form since that time, the substance of the section has remained the same. It has not previously been an offence under the Act to publish the contents of a s93 criminal statement and ARTK is not aware of any complaints about such publications having been made to any of ARTK's member or more generally expressed.
>
> Despite this lack of expressly articulated concern about publication, the Bill creates the offence of publishing all or part of a s93A statement or transcript. There is no exception for the publication having occurred in the ordinary course of reporting the news; nor is there an exception for the publication reporting parts of a s93A criminal statement or transcript that were disclosed in open court. Rather, the only exception is that the publication is approved by the presiding court – where approval can only be granted in extraordinary circumstances – and the publication complies with any conditions imposed by the court: s93AC.[120]

115 Explanatory notes, p 24.

116 Explanatory notes, p 25.

117 Submission 4, p 3.

118 Submission 4, p 4.

119 Submission 4, p 4.

120 Submission 4, p 4.

ARTK considers that 'this is an extraordinary and unjustified intrusion upon the open administration of justice' and section 93AC should be deleted.[121]

DJAG responded that the amendments are not intended to change the operation of the offence and the provision has been redrafted for clarity and alignment with the corresponding new offence related to recorded statements. DJAG also noted that section 93A provides for the admissibility of out of court statements made by children and people with an impairment of the mind.[122]

In relation to proposed new section 93AC DJAG confirmed that the section is directed at preventing the publication of a section 93A criminal statement or transcript and the provision would operate alongside existing provisions or orders which restrict access to and publication of particular proceedings and prohibit the identification of certain persons.[123]

2.2.3 Definitions – video recorded evidence

Clause 37 inserts new Part 6A (Recorded statements) into the Evidence Act. Proposed new section 103B defines key terms used in new Part 6A.

2.2.4 Proposed section 103B – Meaning of domestic violence offence

Proposed section 103B defines the term 'domestic violence offence'. The explanatory notes state that the term is defined in a way that mirrors the definition under section 1 of the Criminal Code and also includes any offence against Part 7 (Offences) of the Domestic and Family Violence Protection Act.[124]

The definition of 'domestic violence offence' is:[125]

> **103B Meaning of *domestic violence offence***
>
> A ***domestic violence offence*** is—
>
> (a) an offence against the *Domestic and Family Violence Protection Act 2012*, part 7; and
>
> (b) an offence against another Act committed by a person where the act or omission that constitutes the offence is also—
>
> (i) domestic violence or associated domestic violence under the *Domestic and Family Violence Protection Act 2012* committed by the person; or
>
> (ii) a contravention of the *Domestic and Family Violence Protection Act 2012*, section 177(2).
>
> Note—
>
> Under the *Domestic and Family Violence Protection Act 2012*, section 177(2), a respondent against whom a domestic violence order has been made under that Act must not contravene the order.

121 Submission 4, p 5.

122 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 30.

123 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, pp 30-32.

124 Explanatory notes, p 25.

125 Evidence and Other Legislation Amendment Bill 2021, clause 37.

The Women's Legal Service Queensland (WLSQ) highlighted their concern that the word 'and' between proposed section 103B(a) and 103B(b) means that the recorded statement can only be used when there is a domestic and family violence charge and an offence against another Act. WLSQ advised:

> If interpreted this way, and the defendant was not convicted of the substantive offence then it seems to mean that the recording can not be relied upon to prove the separate but related domestic violence offence under the Domestic and Family Violence and Protection Act. If that is the case, and the intention of the legislature, then the unintended consequence would be to encourage defendants to defend the substantive criminal offence because if they are not convicted of this offence, the recorded statement would necessarily be inadmissible in relation to the remaining offence against the Domestic and Family Violence Protection act.[126]

WLSQ argued:

> … this significant limitation proposed in the existing draft should be amended to reflect a wider application of the recorded statement being admissible in evidence, for offences against the Domestic and Family Violence Protection Act **OR** an offence against another Act.[127]

WLSQ explained:

> My thought is that it should be 'or' because it is very common for people charged with domestic violence type offences to also have other offences attached to those charges. The way it is worded, from my interpretation and my reading, means that your defence lawyer would be actually suggesting not to plead guilty or to fight certain offences so that this cannot be triggered. The application of allowing witness statements in evidence cannot be triggered because of the way this is worded.[128]

And,

> My reading of this section is that you cannot use a recording for another offence unless it is also being used for a domestic violence offence. That would mean that you cite the domestic violence offence so that you do not get that offence attached to the other offences and therefore can exclude the recording.[129]

DJAG advised that it is intended that both limbs separately fall under the definition and it is considering the issue raised by submitters.[130]

2.2.5 Proposed section 103D – Recorded statements

Proposed new section 103D (Use of recorded evidence as complainant's evidence-in-chief) deals with how a recorded statement may be used as a complainant's evidence-in-chief and that the evidence-in-chief of a complainant in a domestic violence proceeding may be given, either wholly or partly, in the form of a recorded statement.[131]

In regard to the definition of 'recorded statement' including both video and audio recordings, BAQ advised that it:

> … does not consider that recorded statements used in DFV and related criminal proceedings would increase access to justice or streamline proceedings for victims. In the Association's view, the Pilot may impede the efficient administration of justice, is not required in the interests of justice and has the potential to prejudice an accused and their ability to obtain a fair trial.

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126 Submission 2, p 3.

127 Submission 2, pp 3-4.

128 Public hearing transcript, Brisbane, 1 February 2022, p 7.

129 Public hearing transcript, Brisbane, 1 February 2022, pp 7-8.

130 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 27.

131 Explanatory notes, p 24.

> DFV and related criminal proceedings are, by their very nature, difficult offences to prosecute and to defend. Often the cases will rely mainly on an allegation and a denial. Typically, there will be conflicting versions presented by the parties involved. This presents a tribunal of fact with a difficult task and requires them to make a careful assessment, in the most effective way, of the plausibility of the complaint and the credibility or reliability of the complainant.
>
> An accused person must at all times be accorded the right to a fair trial. Recorded evidence is hearsay evidence, which is not the best evidence. Exceptions to the hearsay rule are made only in special circumstances; for example, regarding evidence given by children. These exceptions are justified because children are the most vulnerable of witnesses or complainants, who are afforded special measures because of features which are not reflected in adult witnesses or complainants. Even in the case of video recorded evidence-in-chief given by children, it is invariably done in a controlled environment according to mandated and organised procedure. The Association notes that the Bill does not mandate a similar process with respect to alleged DFV offences.[132]

In response DJAG advised that it is expected that the evaluation of the pilot will consider the issue raised by BAQ.[133] DJAG reiterated the Attorney-General's comments that:

> Allowing an out-of-court statement to be used as evidence-in-chief also represents a significant departure from the usual rules of evidence that apply in criminal proceedings, so we do need to be careful there are no unintended consequences for both victims and the accused. The provisions in the Bill therefore set up a framework for a pilot which will be time limited and subject to an independent evaluation.[134]

DJAG also confirmed that:

> … Implementation activities for the VRE Pilot provisions in the Bill will include police training and the development of relevant procedures and guidelines around the taking of recorded statements.[135]

2.2.6 Proposed section 103E – Requirements for making recorded statements

Proposed new section 103E sets out the requirements that must be met for making a recorded statement. The explanatory notes state:

> Subsection (1) requires that the statement be made as soon as practicable after the events happen that constitute the alleged domestic violence offence and that the statement be taken by a trained police officer. Subsection (4) defines a 'trained police officer' for the purposes of this section. Subsection (2) provides that failure to comply with these requirements does not prevent a complainant's evidence being taken or recorded under Part 6A or affect the admissibility of any recorded statement so taken.[136]

With regard to the training requirements, BAQ noted:

> Whilst it is envisaged that these recorded statements must be taken by a trained police officer; the Bill also provides that, if an officer is not trained, that does not affect the admissibility of any evidence taken. A trained police officer is defined to mean a police officer who has successfully completed a training course approved by the commissioner of the police service.

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132 Submission 1, p 2.

133 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 15.

134 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 14.

135 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 22.

136 Explanatory notes, p 26.

> The Association does not consider police officers to be appropriately equipped to receive video recorded and intended as evidence-in-chief, particularly when that evidence is made as soon as practicable after the events constituting the alleged domestic violence offence. Often, a complainant will not be in an emotional state which allows a cogent or fair recording of their account of what has recently transpired. Furthermore, police are not required to subsequently take a formal witness statement from an aggrieved person whose account has been recorded. It seems inevitable that some police officers will not do so. This is likely to significantly disadvantage victims, who might have otherwise been able to provide a coherent account after being given time for calm reflection. Thus, inconsistencies in their evidence are likely to emerge for the first time in the witness box, with consequently adverse impact on credibility.[137]

In addition, BAQ considered:

> Having police officers take this evidence conflates the investigative role of police attending an alleged event of domestic violence, who may not be sufficiently trained in the law of evidence, with the role of prosecutions. In the Association's view, a skilled, experienced and appropriately qualified prosecutor, relying upon a proof of evidence including a sworn statement can elicit evidence-in-chief effectively and efficiently, in a safe, supervised and appropriate setting.[138]

In response to the issue of the evidence being recorded as soon as practicable after the events, DJAG advised:

> The words 'as soon as practicable' are intended to ensure a degree of flexibility, allowing the needs of the complainant to be met before a statement is made. It would also allow for a recorded statement to be made at a police station where it would not be appropriate for the statement to be taken at the scene of the domestic violence incident.
>
> The requirement in the Bill (new sections 103E and 103F of the Evidence Act) to obtain the complainant's informed consent seeks to ensure that the complainant is fully aware of relevant matters, including the way in which the recorded statement might be used or disclosed. It is noted that this approach accords with a victim-centric approach.[139]

In addition, QPS provided further information advising:

> A videorecorded statement is intended to replace the need to take a written statement. However, a written statement may still be obtained in certain circumstances (e.g. if the complainant withdraws consent to the taking of a videorecorded statement). The proposed legislative amendments do not bar a police officer from obtaining a written statement from the victim after a video recorded statement is obtained, should the victim recall further information or seek to clarify a matter contained in the video recorded statement. Obtaining a clarifying statement and disclosing same to the defendant or the defendant's legal representative would ensure natural justice and procedural fairness is afforded to the accused. The rules of evidence also permit a prosecutor to seek further information from the victim during evidence-in-chief, in furtherance of the video recorded statement, if required.[140]

137 Submission 1, p 2.

138 Submission 1, p 2.

139 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, pp 18-19.

140 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 19.

WLSQ also raised concerns in relation to the training of police officers. WLSQ recommended that:

> … crucial training, resourcing and support be provided to the Police Officers who will be part of the pilot programs, and then later when (if) the program rolls out to the state. In particular, the WLSQ recommendation would be that the definition of "trained police officer" at section 103E (4) Requirements for making recorded statements, be amended to:
>
> > ***trained police officer*** means a police officer who has successfully completed a training course approved by the police commissioner, which incorporates domestic and family violence education and awareness, and trauma informed work practices, for the purpose of taking recorded statements.[141]

WLSQ expanded on the areas to be included in police training:

> … couple of key elements are that there is an appropriate training program that is really directed at domestic and family violence education and awareness, recognising that it does pose a different role for police. It is an extremely specialist area, and the need for specialist training in order for police to be able to be appropriately supported if this legislation proceeds is critical. That also includes an awareness of trauma informed work practices which, again, in the domestic violence space is a particular specialist nature of awareness that we are seeking.[142]

WLSQ expressed the view that the training needs to include techniques for interviewing people who are survivors or trauma so that the officer taking the statement does so in a way that is trauma informed.[143]

WLSQ explained the definition of 'trauma informed':

> Trauma informed is essentially a practice of working with a client, in this case a survivor, that actually puts their experience of trauma at the front and centre of the way you engage with them. For example, where I would be saying that the police need to get specific training about how to do this in a trauma informed manner, it would include things like accepting that somebody who has just been traumatised or is traumatised is very likely to provide a narrative that is not chronological. A lot of research says that a symptom of trauma is speaking about an incident in a way that is not from the beginning to the end. Usually statements are taken that way. If an officer is videorecording someone who is the survivor of trauma and is expecting that narrative to run from the beginning to the end, that is not trauma informed work practice.[144]

In relation to re-traumatisation of complainants, DJAG advised that anecdotal views from the Victorian trial evaluation participants, including police, police prosecutors and a magistrate, were that:

> … the use of DREC does reduce the potential for re-traumatisation. Observations included that the use of DREC reduces the number of times that complainants had to re-tell their story and reduces pressure on the complainant to retell their story in as much detail during cross-examination.[145]

141 Submission 2, p 2.

142 Public hearing transcript, Brisbane, 1 February 2022, p 5.

143 Public hearing transcript, Brisbane, 1 February 2022, p 6.

144 Public hearing transcript, Brisbane, 1 February 2022, p 7.

145 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 20.

QLS also commented on the issue of training advising:

> QLS also notes the lack of clarity around the nature and extent of training for police officers who will be participating in the process. Currently, the Bill simply provides that a recorded statement must be taken by a trained police officer, with 'trained police officer' meaning a police officer who has successfully completed a training course approved by the police commissioner. Appropriate, ongoing education and training on domestic and family violence including the dynamics of domestic violence and the impact of trauma on victims is critical to a police officer's capacity to engage with victims in a way which prioritises safety and does not re-traumatise victims, whilst also ensuring that an appropriately particularised statement is able to be taken.[146]

In relation to police training, QPS advised that it:

> … will develop a training package to ensure police are confident and capable of taking videorecorded statements in a way that is victim-centric and trauma informed and has consideration to the rules of evidence. The independent evaluation of the trial will consider its implementation.[147]

QPS advised the committee that the training for police officers comprises 13 modules. QPS advised:

> That includes things like a refresher for police in terms of the considerations around investigating domestic and family violence and obviously the legal elements that will arise through the legislative amendments. On average we envisage that it will be near to a full day's worth of training. That will include mock interviews that will comprise investigative interviewers within the Queensland Police Service academy who will train frontline officers within both of the pilot locations on the most appropriate way to obtain video statements in a way that is victim-centric and trauma informed.[148]

In addition, QPS advised that it:

> … has consulted with interstate jurisdictions on adequate training materials to equip officers in the taking of video recorded evidence statements. The QPS training has also incorporated learnings from other jurisdictions (identified from analysing evaluation outcomes) to ensure, to the greatest extent possible, cogent, admissible, trauma-informed and victim-centric recordings are obtained from victims.[149]

BAQ also highlighted its concern that research has found the misidentification of the victim of DFV as the perpetrator in multiple cases. BAQ also noted the recommendation contained in the 2020-21 Annual Report of the Domestic and Family Violence Death Review and Advisory Board that:

> … the Queensland Government implement policy and practice reform focussed on accurately identifying the person most in need of protection in domestic and family violence matters.[150]

BAQ stated that it is:

> … concerned that evidence given in that theoretical scenario may wrongly be preferred and form the basis of a prosecution, thereby worsening the consequences of misidentification.[151]

On this issue, DJAG advised:

> … issues in relation to the misidentification of the victim of domestic violence as the perpetrator have been identified and recently considered by the Women's Safety and Justice Taskforce (WSJ Taskforce) in its first report. The findings of the WSJ Taskforce will be considered in implementing the pilot.[152]

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146 Submission 5, p 3.

147 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 25.

148 Public briefing transcript, Brisbane, 29 November 2021, p 5.

149 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 26.

150 Submission 1, pp 2-3.

151 Submission 1, p 3.

152 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 20.

WLSQ also suggested that, in the interests of the safety of the victim/complainant, the legislation be amended to state that the recorded statement should be recorded in the absence of the defendant/respondent.[153]

WLSQ explained that this recommendation is around the impact on the person giving the recorded statement:

> So it is a recognition of the quite unusual situation that arises in domestic violence which can sometimes be characterised by a long history of control over the person who is giving the statement. It is not as straightforward as, for example, taking a statement from someone who might have been involved in a crime of some sort. This is a specialist area because of the nature of the trauma and sometimes the long-term nature of the trauma that the victim might have been subjected to …[154]

And,

> … the need for the person giving the statement to feel that they are in an appropriately safe space, the recognition that they could still be experiencing the physiological and psychological impact of that trauma as they are giving that statement.[155]

In response, DJAG confirmed that the Bill allows for a degree of flexibility which would allow for a recorded statement to be made at a police station where it would not be appropriate for the statement to be taken at the scene of the incident.[156]

In addition, QPS advised that:

> … an assessment will be undertaken by the officer in consultation with the complainant to ascertain the appropriateness of the location and discussion with the aggrieved, noting the legislative requirements.[157]

DJAG also noted that the evaluation process will include assessing the impact on and experience of domestic violence victims.[158]

2.2.7 Proposed section 103H – Admissibility of recorded statements

Proposed section 103H sets out the admissibility of a recorded statement in a domestic violence proceeding.[159] QLS supported proposed section 103H advising:

> The usual rules of admissibility in relation to the contents of the video evidence should continue to apply, and the Court must retain an overriding discretion to exclude evidence or require evidence-in-chief to be given in person if it is in the interests of justice to do so. Accordingly, we support section 103H(2), which allows a court to rule all or a part of a recorded statement as inadmissible where appropriate.[160]

However, QLS also advised that:

> Consideration should be given to appropriate trial directions to ensure that a jury does not place too little or too much weight to the evidence because it was given in pre-recorded form.[161]

153 Submission 2, p 2.

154 Public hearing transcript, Brisbane, 1 February 2022, p 5.

155 Public hearing transcript, Brisbane, 1 February 2022, p 6.

156 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 29.

157 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 29.

158 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 29.

159 Explanatory notes, p 27.

160 Submission 5, pp 2-3.

161 Submission 5, p 3.

BAQ also commented on this issue suggesting:

> While there are safeguards proposed in the pilot Consultation Draft Bill envisaging directions being given to a jury, it is the Association's view that the interests of justice are best served by the current protective measures available for special witnesses, which allows *inter alia,* evidence to be given remotely. Evidence should, as far as practical, be given with due respect for the importance of the solemnity of the Court environment and to the quality of the evidence being given in circumstances which allow the enhanced ability of the jury to assess the nature, quality and reliability of the evidence of an engaged (and present) witness.[162]

In response, DJAG noted that the Bill does not override the court's discretion to exclude evidence and the VRE provisions are intended to operate alongside existing provisions in relation to the evidence of special witnesses. DJAG also confirmed that issues relating to impacts on the quality of evidence will be considered in the evaluation process. DJAG also noted that the use of VRE implements recommendations made by the WSJ Taskforce.[163]

Proposed section 103C defines a domestic violence proceeding as:[164]

> **103C Meaning of *domestic violence proceeding***
>
> A ***domestic violence proceeding*** is a criminal proceeding—
>
> (a) that relates to a charge for a domestic violence offence, whether or not the proceeding also relates to other offences; and
>
> (b) of a type prescribed by regulation; and
>
> (c) held before a court at a place prescribed by regulation for the type of proceeding mentioned in paragraph (b).

WLSQ advised:

> WLSQ reading of the proposed legislation confines the use of the recorded statement to criminal proceedings only.[165]

WLSQ suggested that the Bill be amended to enable the recorded statement of a complainant to also be admitted and relied upon in civil proceedings where the complainant or the police are seeking a domestic and family violence protection order and the application is contested. WLSQ advised:

> We would argue that the aim of limiting the trauma to victims by reducing the amount of times they need to tell their story, is also important when seeking a protection order, and the recorded statement should be available at a hearing in relation to whether or not an order should be made, which is a civil proceeding. Similarly, the recorded statement should be admissible in those proceedings as the victim/ aggrieved's evidence-in-chief, with the same rules in relation to admissibility as set out in s103H of the Bill, in relation to the aggrieved attesting to the truthfulness of the contents of the recorded statement, and being available for cross-examination and re-examination.[166]

DJAG advised that the position with respect to evidence in proceedings under the *Domestic and Family Violence Protection Act 2012* (DFVP Act) provides that the court is not bound by the rules of evidence or any practices or procedures applying to courts of record and may inform itself in any way it considers appropriate. DJAG advised that:

> … police body worn camera evidence is currently admitted in proceedings under the DFVP Act at the discretion of the presiding magistrate.[167]

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162 Submission 1, p 3.

163 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 23.

164 Evidence and Other Legislation Amendment Bill 2021, clause 37.

165 Submission 2, p 3.

166 Submission 2, p 3.

167 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 21.

DJAG also advised:

> … the offence provision in the Bill for unauthorised possession of, or dealing in, recorded statements (section 103Q) provides an exception where something is done for a legitimate purpose related to a domestic violence proceeding or another proceeding. This would include a civil proceeding under the DFVP Act.[168]

2.2.8 Offences relating to recorded statements

Proposed new section 103Q (Unauthorised possession of, or dealing in, recorded statements) creates an offence, including a maximum penalty of 100 penalty units or 2 years imprisonment for an individual or 1,000 penalty units for a corporation, in relation to the unauthorised possession, supply and copying of recorded statements.[169]

The explanatory notes state:

> Subsection (1) provides that a person commits an offence in the following circumstances:
>
> - the person possesses a recorded statement or a transcript of a recorded statement;
> - the person supplies, or offers to supply, a recorded statement, or a transcript of a recorded statement to another person; or
> - the person copies, or permits another person to copy, a recorded statement or a transcript of a recorded statement.[170]

And,

> Subsection (2) provides that a person may do something mentioned in subsection (1):
>
> - for a legitimate purpose related to a domestic violence proceeding or another proceeding; or
> - if required or permitted to do so under an employment-screening Act (other than to the extent stated in subsection (3)); or
> - if permitted under new section 103R (Permitted use of a transcript of recorded statement by employment-screening applicant or applicant's lawyer).[171]

Clause 21 inserts new section 590AOB (Disclosure of recorded statement) into the Criminal Code, and sets out the disclosure requirements for recorded statements. The explanatory notes state:

> Subsection (1) provides that the prosecution must not give the accused person a copy of a recorded statement for a relevant proceeding otherwise than as required under this section.
>
> Subsections (2) and (3) provide that where the prosecution would otherwise be required to give the accused person a copy of a recorded statement, they must instead give the accused person a written notice describing the recorded statement and specifying other matters, including certain matters which vary depending on whether or not the accused person has a lawyer acting for them.
>
> Subsection (4) applies if an accused person has a lawyer acting for them, in which case the notice must state that the prosecution will give the lawyer a copy of the recorded statement subject to specified conditions relating to the handling of the copy, including that the lawyer must not give a copy of the recorded statement to the accused person and that the copy must only be given to persons, other than the accused person, stipulated in the subsection and in accordance with the conditions in the subsection and for a legitimate purpose connected with the relevant proceeding or a proceeding for a relevant charge.[172]

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168 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, pp 21-22.

169 Explanatory notes, p 29.

170 Explanatory notes, p 29.

171 Explanatory notes, p 29.

172 Explanatory notes, p 18.

In its submission, BAQ raised issues in relation to proposed section 590AOB(4) regarding copying of a recorded statement.[173] Subsequent to the committee's public hearing, BAQ advised that it 'no longer holds concerns' in relation to this issue.[174]

However, QLS advised the committee that issues in relation to copying of a recorded statement may arise when defendants are unrepresented. QLS advised:

> In our view there is potential for miscarriages of justice if persons charged with serious offences who are not legally represented are not able to have access to the full scope of the evidence against them, and perhaps some more consideration should be given to how to best give effect to that.[175]

ARTK also commented on the amendments proposed to sections 103Q and 103S advising that it opposes these sections for similar reasons to those expressed in relation to proposed sections 93AA and 93AC.[176]

DJAG confirmed that the restrictions on the disclosure of recorded statements and offences for unauthorised possession, use and publication of recorded statements are included as part of a range of safeguards intended to limit trauma and protect the privacy of complainants.[177]

DJAG also confirmed:

> … the offence provisions in the Bill are directed at the recorded statement itself (and a transcript of a recorded statement), having regard to the sensitivity of the recorded statements and the significant negative impact that misuse of a recorded statement could have on a complainant's right to privacy.[178]

2.2.9 Proposed section 103O – Editing or otherwise altering recorded statements

Proposed new section 103O provides for when a recorded statement may be edited or altered. The explanatory notes state that this may only occur when:

- with the consent of the parties to the domestic violence proceeding in which the recorded statement is, or is to be, presented (subject to subsection (2) if the defendant does not have a lawyer acting for them); or
- where editing or altering the recorded statement is required to either avoid disclosure of material that does not need to be, or must not be, disclosed to the defendant, or, to comply with a direction or order of the court.[179]

BAQ highlighted its concern regarding the editing of recorded evidence, advising:

> The Association is also concerned that recorded evidence could be excluded on many occasions as inadmissible. In the Association's experience, video recorded evidence-in-chief given by children most often requires significant editing. Whilst the Consultation Draft Bill allows a court to rule as inadmissible the whole, or any part of, a recorded statement and direct that it be edited accordingly, editing should only be accepted in extraordinary or special circumstances for the protection of uniquely vulnerable witnesses, like children.

173 Submission 1, p 4.

174 Bar Association of Queensland, correspondence, 7 February 2022, p 1.

175 Public hearing transcript, Brisbane, 1 February 2022, p 17.

176 Submission 4, pp 5-6.

177 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 32.

178 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 32.

179 Explanatory notes, p 28.

> The adulteration of evidence (by editing or partial use) given by adults, is more likely to unreasonably offend established principles of fairness that would result in numerous applications to exclude all the recorded evidence on the basis that partial editing "may distort or pervert the remaining evidence". The Consultation Draft Bill allows unilateral editing of recorded evidence to avoid disclosure of material that is not required to disclose, a potentially broad category of evidence.
>
> While the Consultation Draft Bill envisages applications contesting admissibility and use of these recordings, the Association's view is it will significantly increase the number of pre-trial applications under s590AA and the associated burden on the court, as well as the cost involved in prosecuting and defending DFV matters, with no real benefit to DFV complainants or victims.[180]

In response, DJAG advised:

> … new section 103O of the Evidence Act allows for the editing or altering of recorded statements in a range of circumstances. The circumstances outlined in 103O reflect those contained in a corresponding provision relating to the Victorian DREC scheme. Section 387I of the Criminal Procedure Act 2009 (Vic) provides for a recorded statement to be edited or otherwise altered only with the consent of the parties to the proceeding or if editing or altering the statement is required for reasons including to avoid disclosure of material that is not required to be disclosed, or must not be disclosed, to the accused or to comply with a direction of the court that a recorded statement be edited or otherwise altered to delete any part that is inadmissible.[181]

In relation to the impact on court proceedings and cost implications DJAG advised that these issues would be monitored and form part of the evaluation of the pilot.[182]

2.2.10 Proposed section 103S – Publishing recorded statements or transcripts of recorded statements prohibited

Proposed new section 103S creates an offence for publishing all or part of a recorded statement or transcript of a recorded statement. The explanatory notes state:

> A person must not publish (as defined in the section) all or part of a recorded statement or a transcript of a recorded statement unless the publication is approved by the court presiding at the domestic violence proceeding at which the recorded statement is presented and complies with any condition attached to the court's approval, which, under subsection (2), may only be given in exceptional circumstances.[183]

ARTK highlighted its concern that the provision makes no distinction about who is authorising the publishing. ARTK advised:

> Section 103S consequently prohibits a survivor from using the internet to inform the public about his or her own experience of domestic violence to the extent that the same matters are included in a recorded statement be that by Facebook, Twitter, a blog, a website operated by a support group, in a submission to the Queensland government to be posted on a Queensland government website or any other equivalent means. ARTK does not support any law which has this effect.[184]

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180 Submission 1, p 3.

181 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 28.

182 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 28.

183 Explanatory notes, p 30.

184 Submission 4, p 6.

In relation to this issue, DJAG advised that the proposed provision limits the publication of the recorded statement or transcript of the recorded statement and:

> … does not otherwise prevent the publication by person of information about their experience or related to the recorded statement, noting however that publication may be subject to restrictions under other laws or court orders.[185]

2.2.11 Committee comments – video recorded evidence

The committee notes that the proposed amendments allow a trial of VRE and are aimed at reducing the trauma for DFV victims. Stakeholders have identified a number of issues which will need to be considered during the trial and evaluation phase of the proposal.

The committee notes DJAG's response that it is considering the issues raised by submitters in relation to the definition of 'domestic violence offence'. The committee seeks clarification in relation to the outcomes of these considerations.

Recommendation 3

The committee recommends that the Attorney-General, in the second reading speech, provide an update on the consideration of the issues raised by submitters in relation to the definition of 'domestic violence offence'.

The committee supports the provisions as proposed.

2.3 Viewing and examination of the body of a deceased person

The coronial inquest into the death of Daniel Morcombe commenced on 11 October 2010 with the Coroner's Report delivered on 5 April 2019. The state coroner recommended that 'the Queensland Government amend the Criminal Code to ensure a time limit is imposed on the testing of human remains in circumstances where the prosecution and defence fail to reach agreement on the identity of the deceased'.[186]

The Morcombe family had submitted to the coroner that 'the prosecution and defence should be given three months to carry out testing, after which the family has their loved one's remains returned for burial'. In the case of Daniel Morcombe, his remains were located in December 2011 and were not released by the coroner until November 2012.[187]

In November 2019, the government responded to the coroner's recommendation agreeing to the recommendation in principle that there should be a reasonable time limit imposed on the testing of human remains in criminal proceedings.[188]

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185 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, p 33.

186 Coroners Court of Queensland, *Findings of inquest into the disappearance and death of Daniel James Morcombe*, April 2019, p 67.

187 Coroners Court of Queensland, *Findings of inquest into the disappearance and death of Daniel James Morcombe*, April 2019, p 66.

188 Department of Justice and Attorney-General, 'Inquest into the death of Daniel James Morcombe', https://www.justice.qld.gov.au/__data/assets/pdf_file/0007/633895/qgr-morcombe-dj-20211124B.pdf

However, the response stated:

> … this needs to be balanced against a court's obligation to safeguard the accused person's right to a fair trial. This fundamental principle seeks to avoid miscarriages of justice and ensure proceedings are conducted in a manner consistent with the fundamental principles of procedural fairness that preserves the interests of justice. The criminal justice system requires that the prosecution prove the case against the accused person beyond a reasonable doubt and has an obligation for pre-trial disclosure to the accused so that they are informed of the case against them. An accused person is presumed innocent until proven guilty and also has a right to silence. Similar obligations for pre-trial disclosure by the defence therefore generally do not currently exist in Queensland and the accused has the right to test and examine the veracity of the evidence which the prosecution relies on to prove its case. That can include evidence about a person's identity such as human remains. There is also currently no time limit in the law as to when the defence needs to inform the prosecution or the court as to whether they wish for those tests to be done or not.[189]

The government gave a commitment to undertake further analysis about how best to implement the underlying intent of the recommendation noting the complexities involved.[190]

The explanatory notes state:

> To achieve the underlying intent of the State Coroner's recommendation in the Morcombe inquest findings, the Bill amends Part 8, Chapter 62, Chapter Division 3 of the Criminal Code which deals with procedures relating [to] prosecution disclosure. Section 590AB provides that this chapter division of the Criminal Code acknowledges that it is a fundamental obligation of the prosecution to ensure criminal proceedings are conducted fairly, with the single aim of determining and establishing the truth. There are a number of provisions that place mandatory disclosure obligations on the prosecution recognising the necessity of proper and timely disclosure to ensure that the accused is fully aware of the case against them. This is integral to a fair trial and also aims to balance the inequality of resources between the prosecution and the accused person.[191]

DJAG advised:

> The bill contains amendments to the Criminal Code to implement the government's response and address the underlying intent of the coroner's recommendation to ensure a deceased person's remains should be returned to their family and loved ones as soon as possible for burial by inserting a new specific provision dealing with the viewing and examination of the body of a deceased person. This new provision is intended to clarify the process for testing human remains and ensure the prosecution and court can have regard to a coroner's duties under the Coroners Act as well as the need to ensure the integrity of the body is protected, as is currently required.[192]

2.3.1 Stakeholder views – viewing and examination of a deceased person's body

Stakeholders who commented on this issue supported the proposed amendments.[193] BAQ advised that it:

> … does not oppose the proposed amendments to the *Criminal Code Act 1899* which enact recommendation 2 of the *Inquest into the disappearance and death of Daniel Morcombe*.[194]

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189 Department of Justice and Attorney-General, 'Inquest into the death of Daniel James Morcombe', https://www.justice.qld.gov.au/__data/assets/pdf_file/0007/633895/qgr-morcombe-dj-20211124B.pdf

190 Explanatory notes, p 3.

191 Explanatory notes, p 9.

192 Public briefing transcript, Brisbane, 29 November 2021, p 3.

193 Refer submissions 1 and 5.

194 Submission 1, p 1.

In relation to the definition of 'body', QLS advised:

> The Explanatory Notes provide that the definition of 'part of a human body' covers samples of hair, bone and blood. However, it is not clear from the Bill how the proposed provisions would relate to samples, including microscopic samples, and how those samples may be retained for the purpose of retesting.
>
> In light of this uncertainty, QLS is concerned that the amendments as currently drafted, may lead to a loss of evidence and therefore, to potential miscarriages of justice. As such, it is our view that the Bill should be amended to provide further clarity as to the handling and testing of samples under the new provisions.[195]

DJAG advised that the definition of 'body' in the *Coroners Act 2003* includes 'part of a body' and:

> This definition is broad and would encompass samples, including microscopic samples. If a body has already been released by the Coroner and samples are retained under section 24 of the Coroners Act 2003 these would still fall under the proposed new provision of the Criminal Code being inserted by the Bill.
>
> Any concern relating to the potential for loss of evidence could be dealt with through the imposition of conditions by the court or prosecution under new section 590ASA relating to the need to ensure that the integrity of the body (which includes samples) is protected.[196]

2.3.2 Committee comments – viewing and examination of a deceased person's body

The committee considers that the proposed amendments provide a balance between the rights of families and loved ones of deceased persons and the rights of the accused to a fair trial.

2.4 Computer warrants

DJAG advised the bill contains:

> … a technical amendment to the Bail Act to support the operation of a scheme to allow the electronic transfer of warrants between Queensland courts and the Queensland Police Service which was introduced last year. The bill makes a clarifying amendment to section 33 of the Bail Act and contains related transitional and validating provisions to reflect that judicial notice of the signature of the person who issued a warrant is not relevant to a computer warrant.[197]

DJAG further explained:

> This is a technical amendment that arises really because of the provisions in section 33 of the Bail Act. The Justices Act 1886 sets up a framework for the use of computer warrants. The proceedings and improved procedures for computer warrants are prescribed by regulation, which includes warrants issued under the Bail Act. Section 68 of the Justices Act provides—
>
> > The creation of a computer warrant by a person under the approved procedures has the same effect as the issue of the same type of warrant under the person's hand.
>
> and—
>
> > … a requirement under an Act that a warrant be issued by a person, issued under a person's hand, or signed by a person, is taken to be complied with if the person creates the warrant as a computer warrant.
>
> Then it relates to the interplay with section 33 of the Bail Act, which does provide at the moment that a defendant who fails to surrender into custody in accordance with the bail undertaking and is apprehended under a warrant issued in relation to that failure under other sections of the Bail Act commits an offence.

195 Submission 5, p 8.

196 Department of Justice and Attorney-General, correspondence, 27 January 2022, Attachment, pp 35-36.

197 Public briefing transcript, Brisbane, 29 November 2021, p 3.

> As part of that proceeding it requires that the production to the court of the warrant that has been issued for the defendant's apprehension is evidence and, in the absence of evidence to the contrary, conclusive evidence of the undertaking and of the failure to surrender into custody and that the issue of that warrant was duly authorised by the decision or order of the court. It also provides that judicial notice be taken of the signature of the person who issued the warrant and that that person was duly authorised to issue the warrant. The amendments in the bill ensure that, consistent with the provisions in the Justices Act, where a computer warrant is issued the judicial officer does not have to take judicial notice of the signature on the warrant because it is irrelevant.[198]

2.4.1 Stakeholder views – computer warrants

Stakeholders who commented on this aspect of the Bill supported the proposed amendments.[199]

BAQ advised that it:

> … does not oppose the proposed amendments to the *Bail Act 1980* as they relate to the use of computer warrants.[200]

2.4.2 Committee comments – computer warrants

The committee considers that the proposed amendments are of a technical and administrative nature and supports the proposed amendments.

2.5 Magistrates' regional service

DJAG advised:

> … the bill makes a minor amendment to the *Magistrates Act 1991* to ensure that service as a magistrate in Toowoomba constitutes regional experience for the purposes of a transfer decision. This amendment, which is being progressed at the request of the Chief Magistrate, mirrors a 2017 amendment made in relation to Gympie service. As was the case with Gympie, the distance of Toowoomba from Brisbane makes it unsustainable for a Brisbane based magistrate to travel there on a daily basis.[201]

2.5.1 Committee comments – magistrates' regional service

The committee supports the proposed amendments.

198 Public briefing transcript, Brisbane, 29 November 2021, p 6.

199 Refer submission 1.

200 Submission 1, p 1.

201 Public briefing transcript, Brisbane, 29 November 2021, p 4.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 Right to privacy regarding personal information

Summary of provisions

The shield law provisions in clause 33 of the Bill include provision for a court to order a journalist or relevant person to disclose the identity of a confidential informant or provide information that may enable their identity to be ascertained.

In relation to video recorded evidence (VRE), clause 37 allows for the video recording of a statement of a complainant in relation to a domestic violence offence, which could be in close proximity to a domestic or family violence incident, and which may subsequently be used and disclosed in a domestic violence proceeding.

Issue of fundamental legislative principle

The ability of a court to order disclosure of a confidential source raises issues of fundamental legislative principle relating to the rights and liberties of individuals, regarding an individual's right to privacy with respect to their personal information.[202]

The provision for the video recording of a statement of a complainant also impact on a person's right to privacy.

Comment

The right to privacy and the disclosure of private or confidential information, are relevant to whether legislation has sufficient regard to the rights and liberties of the individual.

Shield laws

In relation to the shield law aspect, a court may make a disclosure order if it is satisfied that the public interest in disclosing the informant's identity outweighs:

- the public interest in the communication of facts and opinions to the public by the news media and the news media's ability to access sources of facts, and
- any likely adverse effect of the disclosure on the informant or another person.

[202] *Legislative Standards Act 1992* (LSA), s 4(2)(a).

Thus, any disclosure would be pursuant to a court order which, as observed in the explanatory notes, would be the result of the court balancing competing rights.[203] The explanatory notes state the breach of fundamental legislative principle is justified on this basis.[204] Further:

> Before making the order, the court must balance the public interest in disclosing the informant's identity against any likely adverse effect of the disclosure on the informant or another person, and the public interest in the communication of facts and opinion to the public by the news media and the ability of the news media to access sources of facts. The effects of the departure are also mitigated by providing that a court may only make such an order if it is in the public interest and may restrict who may have access to the disclosed information or how the information may be used or published.[205]

VRE provisions

Regarding the video recording of a statement of a complainant, the explanatory notes state the breach of fundamental legislative principle is justified:

> … as it will allow the collection of evidence which illustrates the demeanour and experience of the complainant close to the time of the event and will minimise the need for the complainant to re-tell their story on subsequent occasions. It may also limit the ability of the accused to influence, coerce or intimate [sic] the complainant.[206]

The explanatory notes refer to the presence of safeguards:

> The effect of the departure is mitigated by important safeguards, including requiring that the complainant give informed consent to making the recording, limiting disclosure of and access to the recorded statement, and including offences for any unauthorised possession, supply, copying and publication of recorded statements.[207]

Committee comment

The committee is satisfied these provisions have sufficient regard to an individual's right to privacy.

3.1.1.2 General rights and liberties – reputation and freedom of speech

Summary of provisions

The shield law provisions in clause 33 establish a qualified privilege, with a journalist or relevant person unable to be compelled to disclose the identity of a confidential informant who has been promised confidentiality, unless a court requires the disclosure.

Issue of fundamental legislative principle

This may limit the rights and liberties of individuals in that freedom of speech is limited – with media outlets and the general public subject to a limitation on their right to obtain and disseminate information.

Comment

The explanatory notes note that any departure from fundamental legislative principle is justified as it is the result of the court balancing competing rights, including the right to freedom of speech, the right to privacy, and the right to a fair hearing.[208]

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203 Explanatory notes, p 11.

204 Explanatory notes, p 11.

205 Explanatory notes, p 11.

206 Explanatory notes, p 11.

207 Explanatory notes, p 11.

208 Explanatory notes, p 12.

Committee comment

The committee is satisfied these provisions have sufficient regard to an individual's right to freedom of expression.

3.1.1.3 General rights and liberties – right to a fair trial

Summary of provisions

The VRE pilot provisions in clause 37 of the Bill remove the rule of evidence regarding hearsay. This has the effect that an out of court statement can be used as evidence of the existence of a fact contained within it.

Issue of fundamental legislative principle

This may limit the right of an individual to a fair trial.

Comment

The explanatory notes acknowledge the limitation on the right of the individual to a fair trial, and refer to safeguards in the Bill:

> While this represents a departure from the ordinary rules of evidence, the Bill includes a range of safeguards to protect an accused person's right to a fair trial, including a requirement that the complainant be available for cross-examination and re-examination (unless parties to the proceeding consent to noncompliance with this requirement) and ensuring that a court can rule any or all of the statement inadmissible. Further, the Bill does not impact the court's general overriding discretion to exclude evidence and includes a provision making it clear that certain provisions in Part 6 of the Evidence Act continue to apply in relation to a recorded statement.[209]

The explanatory notes conclude that the breach of fundamental legislative principle is justified:

> … having regard to the safeguards included in the Bill, and the potential benefits for DFV victims in being able to give their evidence in this way, including reducing the trauma associated with giving evidence in court.[210]

Committee comment

The committee is satisfied that these provisions have sufficient regard to an individual's right to a fair trial.

3.1.1.4 Proportionality and relevance of penalties

Summary of provisions

The Bill contains three offence provisions.

The VRE pilot amendments in clause 37 create two new offences in relation to recorded statements relating to:

- the unauthorised possession of, or dealing in, recorded statements or transcripts of recorded statements
- publishing a recorded statement and transcripts of a recorded statement.

Clause 36 creates a new offence relating to publication of section 93A criminal statements or transcripts of section 93A criminal statements.

In each case, an offence attracts a maximum penalty for each offence of 100 penalty units ($13,785), or 2 years imprisonment.

[209] Explanatory notes, p 13.

[210] Explanatory notes, p 13.

Issue of fundamental legislative principle

Proportion and relevance

The creation of new offences and the imposition of penalties affect the rights and liberties of individuals.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

> In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.
>
> … Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.[211]

Comment

In relation to issues of fundamental legislative principle arising from these three offences, the explanatory notes provide a brief overall justification, stating:

> The penalties for these offences are considered proportionate and relevant to the action to which they apply, taking into account comparable existing offences …[212]

There follows reference to two such comparable offences, section 21AZC of the Evidence Act and section 387L of the *Criminal Procedure Act 2009* (Vic).

Section 21AZC(1) of the Evidence Act creates an offence for a person to publish all or part of a recording other than with the approval of the relevant court and in accordance with any condition attached to that approval.

The maximum penalty for an individual is the same as that for the proposed offences, that is, 100 penalty units or 2 years imprisonment.[213]

Section 387L of Victoria's *Criminal Procedure Act 2009* sits within a division of that Act providing for the use of recorded evidence-in-chief of complainants in family violence offence proceedings. It creates an offence for a person to publish a 'recorded statement' unless permitted by that section, with a penalty of a maximum 2 years imprisonment.[214]

Committee comment

There is consistency between the proposed penalties and the other (similar) provisions. The committee is satisfied the penalties in the Bill are proportionate and relevant.

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211 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p. 120.

212 Explanatory notes, p 13.

213 There is a penalty for a corporation of 1,000 penalty units.

214 Section 387C(1) of that Act defines 'recorded statement' as 'an audiovisual or audio recording of a complainant answering questions put to a complainant by a trained police officer'.

3.1.1.5 Is the Bill consistent with the principles of natural justice?

Summary of provisions

Clause 21, relevant to the VRE pilot scheme, inserts new section 590AB in the Criminal Code to place limits on the disclosure of a recorded statement to an accused person.

The Bill also includes provisions that raise this issue of fundamental legislative principle by limiting access to court proceedings in certain circumstances, in relation to the shield law amendments and the VRE pilot amendments.

The shield law provisions in clause 33 include inserting new section 14W in the Evidence Act, by which a court, in deciding an objection or application regarding journalist privilege, may exclude from the room all persons other than the accused person in criminal proceedings and those it specifies may remain. Additionally, if a court makes an order removing the privilege, it may impose any conditions that it considers appropriate. The court may also make any order that it considers appropriate, including restricting who may access a document or information and what may be done with it.

It might also be noted that the VRE pilot provisions in clause 37 (inserting new Part 6 A in the Evidence Act) include a provision to make it clear that the new Part 6A does not limit the existing powers of a court under the Evidence Act or another Act to close the court or exclude particular persons from the court where a court is hearing a domestic violence proceeding. The court may exercise this existing power to protect the privacy of DFV victims who are complainants in a proceeding. As this is an existing power, it is not further considered in this report.

Issue of fundamental legislative principle

Limiting the disclosure of a statement to an accused could be seen as inconsistent with natural justice, as it restricts the right of a person to know the case against them.

The explanatory notes suggest that the principles of natural justice encompass procedural fairness requirements such as ensuring that court processes are transparent as part of natural justice. The powers for a court to exclude persons from a hearing or to limit access to certain documents or information limit this requirement for transparency.

Comment

Limits on disclosure of VRE statements

In relation to the limits on disclosure of VRE statements, the explanatory notes state:

> … the purpose of these provisions is to maintain the privacy of the victim and ensure an accused person is unable to share or misuse the recorded statement in a way that may further victimise or compromise their privacy.[215]

The explanatory notes refer to a number of safeguards:

> However, the Bill includes a range of safeguards to ensure that an accused person is still made aware of the contents of a recorded statement, including by requiring that the prosecution give the accused person a written notice which describes the recorded statement. If the accused person has a lawyer acting for them, the lawyer will be given a copy of the recorded statement, and if the accused is unrepresented, they will be allowed to view the statement in certain circumstances if the prosecution or court considers it is appropriate. This provision does not prevent the disclosure of a transcript to an unrepresented accused person or their lawyer, and the notice to an unrepresented accused person must state that prosecution must, on request, give the accused person a transcript of the recorded statement that is in the possession of the prosecution.[216]

[215] Explanatory notes, p 14.

[216] Explanatory notes, p 14.

The explanatory notes conclude:

> These provisions balance the rights and protections of a complainant against the rights of an accused person to have procedural fairness in a way that is considered consistent with FLPs.[217]

Transparency to promote procedural fairness

In relation to the issue of transparency of court proceedings, the explanatory notes state that any departure from fundamental legislative principles arising from the ability to exclude persons from a courtroom hearing an objection or application regarding journalist privilege is justified:

> … to protect the journalist-informant relationship, promote a free, independent, and effective media, and to balance competing rights.[218]

Committee comment

The committee is satisfied any inconsistency with the principles of natural justice is justified, having regard to the safeguards in place and to the purpose of the provisions.

3.1.2 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

Summary of provisions

Clause 33 inserts proposed section 14ZE in the Evidence Act providing for applications to the Supreme Court to decide whether a sealed or stored document or thing may be dealt with in a way authorised under a warrant. Proposed section 147ZE(2) provides for such applications to be able to be made by:

a) the journalist or relevant person for the journalist
b) the authorised officer (the person authorised under the warrant)
c) the chief executive of the entity that appointed the authorised officer (or their delegate)
d) another person prescribed by regulation.

Clause 37 inserts proposed section 103C in the Evidence Act to define a 'domestic violence proceeding' (for the purposes of the VRE pilot) as:

a) a criminal proceeding that relates to a charge for a domestic violence offence, whether or not the proceeding also relates to other offences
b) of a type prescribed by regulation, and
c) held before a court at a place prescribed by regulation for the type of proceeding mentioned in paragraph (b).

In other words, the type of proceeding and the location of the court are as prescribed by regulation.

Issue of fundamental legislative principle

The power to prescribe proceedings and court locations and applicants by regulation raises the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament. Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.[219]

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217 Explanatory notes, p 14.

218 Explanatory notes, p 14.

219 LSA, s 4(4)(a).

Comment

The appropriateness of delegation of additional powers under regulation depends on the subject matter of the legislation.[220]

The explanatory notes state that the delegation of this power:

> … is necessary to ensure that the legislation is sufficiently flexible to enable the scope and operation of the VRE pilot to be controlled (i.e. to be suspended, limited or expanded). This is consistent with the policy objective of the Bill, which is to enable to operation of these provisions on a pilot basis. It is therefore considered appropriate to delegate powers in this case.[221]

The explanatory notes continue:

> Further, any regulation pursuant to the delegation contained in the Bill will be subject to scrutiny of the Legislative Assembly in accordance with the usual notification, tabling and disallowance provisions of the *Statutory Instruments Act 1992*, as well as examination by the relevant portfolio committee under section 93 of the *Parliament of Queensland Act 2001*.[222]

Committee comment

It might be considered that the existence of the usual notification, tabling and disallowance provisions, and the fact of scrutiny by a portfolio committee, are irrelevant to the issues of whether a delegation of legislative power is appropriate and whether any breach of fundamental legislative principle is justified. It is not appropriate for these matters to be put forward, as done here, as elements in justification for a breach of fundamental legislative principle.

Nonetheless, noting the nature of the provisions as enabling a pilot scheme, the committee is satisfied the breach of fundamental legislative principle is justified, on the basis of a need for flexibility.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. Generally, the notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

220 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 153.

221 Explanatory notes, p 15.

222 Explanatory notes, p 15.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[223]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.[224]

The HRA protects fundamental human rights drawn from international human rights law.[225] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

4.1 Human rights compatibility

Human rights issues

Various human rights are relevant to the provisions of the Bill (clause 9-51) that:

a) create qualified privilege in relation to journalistic sources
b) provide a basis for a pilot program on the use of video evidence in domestic violence proceedings, and
c) relate to the care of human remains in the context of criminal prosecutions.

The specific provisions of the HRA relevant to the human rights raised by the Bill are:

- Section 21 Freedom of expression
- Section 25 Privacy and reputation
- Section 27 Cultural rights—generally
- Section 28 Cultural rights—Aboriginal peoples and Torres Strait Islander peoples
- Section 31 Fair hearing
- Section 32 Rights in criminal proceedings

223 HRA, s 39.

224 HRA, s 8.

225 The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

In relation to the qualified privilege for journalistic sources, the Bill brings Queensland into line with other Australian jurisdictions including those with human rights legislation similar to the HRA.[226] Qualified privilege for journalists has been held to be compatible with the *European Convention on Human Rights 1950* by the European Court of Human Rights[227] and by the Human Rights Committee in relation to the *International Covenant on Civil and Political Rights 1966*.[228]

The general principles on the protection of journalistic sources applied by the European Court of Human Rights have been described in the following manner:

> 335. The protection of journalistic sources is one of the cornerstones of freedom of the press. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital "public watchdog" role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected (*Ressiot and Others v. France*, § 99; *Goodwin v. the United Kingdom*, § 39; *Roemen and Schmit v. Luxembourg*, § 57; *Ernst and Others v. Belgium*, § 91; *Tillack v. Belgium*, § 53).
>
> 336. The two legitimate aims most frequently relied on to justify interference with the protection of sources are "national security" and "to prevent the disclosure of information received in confidence". "The prevention of disorder", "the prevention of crime" and "protection of the rights of others" have also been relied on in several affairs of this nature.
>
> 337. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, an interference cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest (*Goodwin v. the United Kingdom*, § 39; *Weber and Saravia v. Germany (dec.)*, § 149; *Financial Times Ltd and Others v. the United Kingdom*, § 59; *Tillack v. Belgium*, § 53). Accordingly, limitations on the confidentiality of journalistic sources call for the most careful scrutiny by the Court (*Goodwin v. the United Kingdom*, §§ 39-40).
>
> 338. There are two aspects to the confidentiality of journalistic sources: it concerns not only journalists themselves, but also and especially sources who assist the press in informing the public about matters of public interest (*Stichting Ostade Blade (dec.)*, § 64; *Nordisk Film & TV A/S v. Denmark (dec.)*).
>
> 339. The Court has emphasised that the right of journalists not to disclose their sources cannot be considered a mere privilege to be granted or taken away depending on the lawfulness or unlawfulness of their sources, but is part and parcel of the right to information, to be treated with the utmost caution (*Nagla v. Latvia*, § 97; *Tillack v. Belgium*, § 65).[229]

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226 See the *Evidence Act 2011* (ACT), s 126K and *Evidence Act 2008* (Vic), s 126K. See also Anna Kretowicz, Reforming Australian Shield Laws, Press Freedom Policy Papers, Reform Briefing 2/2021, https://law.uq.edu.au/files/68845/shield-laws.pdf.

227 See, for example, European Court of Human Rights, Guide on Article 10 of the European Convention on Human Rights – Freedom of Expression, Updated – 30 April 2021, https://www.echr.coe.int/documents/guide_art_10_eng.pdf, [335]-[355].

228 See Human Rights Committee, General Comment No 34 (2011), UN Doc CCPR/C/GC/34, 12 September 2011, [45].

229 European Court of Human Rights (n 2), [335]-[339].

The Human Rights Committee, in General Comment No 34 (2011), on Article 19 (freedoms of opinion and expression) made the following observation:

> States parties should recognize and respect that element of the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources.[230]

In relation to the pilot proposed regarding video evidence in domestic violence proceedings, the Bill follows a similar initiative taken in Victoria. The Bill's clauses regarding human remains implement recommendations made in the *Inquest into the disappearance and death of Daniel James Morcombe*.

4.1.1 Journalistic shield laws

a) *nature of the human right*

The Bill balances freedom of expression, human rights regarding privacy and reputation and fair hearing rights and rights in criminal proceedings.

b) nature of the purpose of the limitation

This balancing involves limitations on freedom of expression and privacy in order to protect fair hearing rights and rights in criminal proceedings. Related balancing is provided for limiting fair hearing rights and rights in criminal proceedings in order to protect freedom of expression and privacy through journalistic privilege and broader public interests related to freedom of expression.

c) the relationship between the limitation and its purpose

The relationships between the limitations and their purposes are rational and reasonable and follow the pattern in other Australian jurisdictions and under international human rights instruments.

d) whether there are less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available means to achieve the purposes of the Bill.

e) the importance of the purpose of the limitation

The purposes of the limitations are important and justify the limitations.

f) the importance of preserving the human right

The human rights being balanced by the Bill are important and require preservation in a manner that does not undermine other human rights and broader public interests.

g) the balance between the importance of the purpose of the limitation and the importance of preserving the human right

The Bill strikes an appropriate balance between the relevant human rights and interests.

4.1.2 Video recorded evidence

a) nature of the human right

The Bill, in authorising a pilot program, seeks to balance the right to privacy and reputation of victims of domestic violence with the fair hearing rights and rights in criminal proceedings of persons accused of domestic violence offences. The changes provided for in the Bill to criminal procedures do not appear to limit the enjoyment of fair hearing rights and rights in criminal proceedings.

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[230] Human Rights Committee (n 3), [45]. The footnote provided by the Human Rights Committee to this paragraph of the General Comment cited concluding observations made in respect of a national report by Kuwait in which the Committee observed that it was "concerned about the implications of penal proceedings against journalists requiring them to prove their good faith and reveal their sources, raising issues not only under article 19 but also with regard to the presumption of innocence guaranteed by article 14, paragraph 2, of the Covenant."

b) nature of the purpose of the limitation

The limitations on privacy and reputation and changes regarding evidentiary rules are designed to reduce the capacity of defendants to intimidate complainants in domestic violence proceedings and to reduce, where possible, the trauma, stress and anxiety for complainants associated with recounting the circumstances of alleged domestic violence.

c) the relationship between the limitation and its purpose

The relationships between the limitations and their purposes are rational and reasonable.

d) whether there are less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available means to achieve the purposes of the Bill.

e) the importance of the purpose of the limitation

The purposes of the limitations are important and justify the limitations.

f) the importance of preserving the human right

The human rights being balanced by the Bill are important and require preservation in a manner that does not undermine other human rights. Appropriate safeguards (for example in relation to cross-examination) appear to have been included in the Bill.

g) the balance between the importance of the purpose of the limitation and the importance of preserving the human right

The Bill strikes an appropriate balance between the relevant human rights and interests.

4.1.3 Viewing and examination of the body of a deceased person

a) nature of the human right

The Bill, in implementing the relevant recommendations of the *Inquest into the disappearance and death of Daniel James Morcombe* seeks to balance cultural, family and religious rights regarding deceased persons with rights related to criminal proceedings.

b) nature of the purpose of the limitation

The limitation is intended to avoid unnecessary delays in releasing the body of a deceased person for burial.

c) the relationship between the limitation and its purpose

The relationship between the limitation and its purpose is rational and reasonable.

d) whether there are less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available means to achieve the purposes of the Bill.

e) the importance of the purpose of the limitation

The purpose of the limitation is important and justifies the limitation.

f) the importance of preserving the human right

The human rights being balanced by the Bill are important and require preservation in a manner that does not undermine other relevant human rights.

g) the balance between the importance of the purpose of the limitation and the importance of preserving the human right

The Bill strikes an appropriate balance between the relevant human rights.

Committee comment

The Minister's Statement of Compatibility expresses the view that the relevant provisions of the Bill are justified in accordance with the substantive rights in the HRA and the factors set out in s 13(2) of the HRA.

The committee is required to provide a conclusion of compatibility. The committee finds the Bill is compatible with human rights having regard to section 13 of the HRA.

4.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	Bar Association of Queensland
002	Women's Legal Service Queensland
003	Queensland Council for Civil Liberties
004	Australia's Right to Know coalition of media organisations
005	Queensland Law Society

Appendix B – Officials at public departmental briefing held 29 November 2021

Department of Justice and Attorney-General

- Mrs Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Ms Julie Rylko, Director, Strategic Policy
- Ms Trudy Struber, Acting Principal Legal Officer, Strategic Policy

Queensland Police Service

- Mr Ben Martain, Acting Superintendent, Commander Vulnerable Persons Group in the Domestic, Family Violence and Vulnerable Persons Command

Appendix C – Witnesses at public hearing held 1 February 2022

Australia's Right to Know coalition of media organisations

- Ms Gina McWilliams, Senior Legal Counsel, News Corp Australia
- Mr Paul Murphy, Chief Executive, Media, Entertainment and Arts Alliance
- Ms Georgia-Kate Schubert, Head of Policy and Government Affairs, News Corp Australia

Women's Legal Service Queensland

- Ms Kristen Podagiel, Interim Chief Executive Officer
- Ms Julie Sarkozi, Solicitor

Queensland Council for Civil Liberties

- Mr Michael Cope

Bar Association of Queensland

- Mr Joseph Murphy, Lawyer
- Ms Ruth O'Gorman QC, Barrister

Queensland Law Society

- Ms Kara Thomson, President
- Ms Rebecca Fogerty, Acting Chair, Criminal Law Committee
- Mr Andrew Shute, Chair, Litigation Rules Committee

Statement of Reservation

Use of Recorded Evidence as Evidence-in-Chief

The LNP is committed to ensuring every effort is made to protect victims of domestic and family violence, including providing a justice system which is safe and accessible. The trial of the use of recorded evidence as evidence-in-chief must be given the right scope and application to be successful.

There were numerous submitters who raised concerns regarding the definition of a 'trained police officer' to take recordings. The majority of these submitters recommended amending the definition to include that the officer must be trained in domestic and family violence, not simply recording evidence. The LNP shares these concerns and supports this recommendation.

For this legislation to be effective and the trial to be extended, appropriate resourcing for QPS will be essential. That must include trauma-informed training in domestic and family violence to ensure victims are not further traumatised through the justice system.

The LNP would like to see clarity around the evaluation of the pilot, including the independent assessor, the measures they will be assessing and whether the evaluation will be made public.

Laura Gerber

Deputy Chair

Member for Currumbin

Andrew Powell

Member for Glasshouse