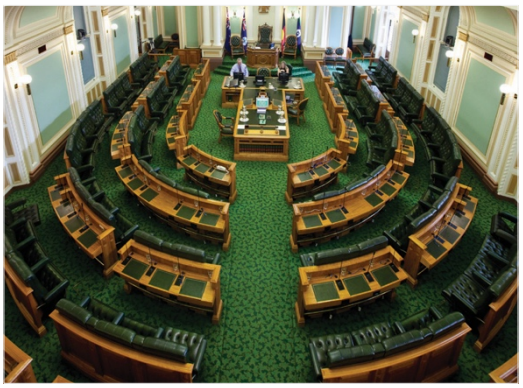
Parliamentary Committees


Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024

Report No. 46, 57th Parliament

Community Support and Services Committee

July 2024

Community Support and Services Committee

Chair	Mr Adrian Tantari MP, Member for Hervey Bay
Deputy Chair	Mr Stephen Bennett MP, Member for Burnett
Members	Mr Michael Berkman MP, Member for Maiwar
	Ms Cynthia Lui MP, Member for Cook
	Dr Mark Robinson MP, Member for Oodgeroo
	Mr Robert Skelton MP, Member for Nicklin
Committee Secretariat	
Telephone	+61 7 3553 6623
Email	cssc@parliament.qld.gov.au
Committee webpage	www.parliament.qld.gov.au/cssc

Acknowledgements

The committee acknowledges the assistance provided by the Department of Justice and Attorney-General and Queensland Corrective Services.

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

Contents

Chair's foreword

This report presents a summary of the Community Support and Services Committee's examination of the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024.

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 and the assistance of the Department of Justice and Attorney-General as well as Queensland Corrective Services.

I commend this report to the House.

Adrian Tantari MP

Chair

Recommendations

Report Summary

This report presents a summary of the Community Support and Services Committee's examination of Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024.

The committee recommends the Bill be passed.

The objective of the Bill is to implement the third major tranche of the legislative reforms arising from recommendations made by the Women's Safety and Justice Taskforce (Taskforce) in its two reports, *Hear her voice – Report One – Addressing coercive control and domestic and family violence in Queensland* and *Hear her voice – Report Two – Women and girls' experiences across the criminal justice system*.

The Bill proposes amendments to the *Attorney-General Act 1999*, the *Corrective Services Act 2006*, the Criminal Code, the *Evidence Act 1977*, the Evidence Regulation 2017 and the *Penalties and Sentences Act 1992*. The Bill also makes related consequential and transitional amendments. Key reforms proposed by the Bill include:

- statutory review of the legislative reforms made in response to the recommendations of the Taskforce
- reform in relation to the inadmissibility of admissions made during programs while prisoners are in custody
- reform to the 'position of authority' offence, where the victim is 16 or 17 years of age
- alternative arrangements for special witnesses
- reform in relation to expert evidence in proceedings for sexual offences
- amendment to the law relating to the consideration of tendency evidence and coincidence evidence in court for sexual offence cases.

Stakeholders were generally supportive of the proposed reforms in the Bill. The key issues raised by stakeholders and considered by the committee during the examination of the Bill included:

- implementation and the timing of the review of the Taskforce reforms
- government coordination and collaboration with local and non-government organisations, including those representing Aboriginal and Torres Strait Islander peoples
- greater clarity and communication about the implications of the reforms relating to the inadmissibility of evidence made by prisoners in remand, and in respect to the parameters of the position of authority offence
- the reliability and value of expert evidence in proceedings
- the need for the introduction of tendency evidence and coincidence evidence provisions.

The committee is satisfied that sufficient regard has been given to fundamental legislative principles, to the rights and liberties of individuals and the institution of parliament, and that any limitations on human rights are reasonable and justifiable.

Overall, the committee supported the purpose of the Bill. The committee makes an additional three recommendations in relation to the creation of clear and appropriate guidelines and future review of the operation of certain provisions, once implemented.

1 Introduction

1.1 Policy objectives of the Bill

Hon Yvette D'Ath, MP Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, 21 May 2024

This bill further reflects the government's unwavering commitment to end all forms of domestic, family and sexual violence in Queensland and to improve the experiences of women and girls across the criminal justice system.[1]

On 21 May 2024, Hon Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, introduced the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024 (Bill) into the Queensland Parliament.

The objective of the Bill is to implement the third major tranche of legislative reforms arising from recommendations made by the Women's Safety and Justice Taskforce (Taskforce) in its 2 reports:

- Hear her voice – Report One – Addressing coercive control and domestic and family violence in Queensland (Report One)
- Hear her voice – Report Two – Women and girls' experiences across the criminal justice system (Report Two).[2]

More specifically, the Bill aims to:

- create a new position of authority offence (part of recommendation 42 of Report Two)
- improve protections to support special witnesses through the court process (recommendations 53, 54 and 57 of Report Two)
- extend the maximum duration of non-contact orders (recommendation 60 of Report Two)
- codify the law as it relates to the admissibility of tendency evidence and coincidence evidence (recommendation 75 of Report Two)
- expand the scope for the admission of expert evidence (recommendation 79 of Report Two)
- remove any doubt that participation in a program while on remand in custody cannot be used in evidence in proceedings relating to the offence for which the person has been charged (recommendation 149 of Report Two)
- establish a statutory review of amendments from both Taskforce reports (recommendation 84 of Report One and recommendation 186 of Report Two)
- clarify the law as it relates to the admissibility of recorded statements in particular committal proceedings relating to domestic violence offences.[3]

1.2 Background

The Taskforce was established in 2021 to review the experiences of women in the criminal justice system. Report One, released on 2 December 2021, made 89 recommendations for reforms to Queensland's domestic and family violence (DFV) and justice systems. The Queensland Government's response outlined a commitment to support, or support-in-principle, all of these recommendations. Report Two, released on 1 July 2022, included a further 188 recommendations focussing on the experiences of woman and girls in the criminal justice system—both the experiences of victim-

1 Record of Proceedings, 21 May 2024, p 1621.

2 Explanatory notes, p 1.

3 Department of Justice and Attorney-General (DJAG), correspondence, 6 June 2024, p 1.

survivors of sexual violence, and the experiences of accused persons and offenders. The Queensland government committed to supporting 103 recommendations in full, 71 in principle, and noted the remaining 18.[4]

This Bill represents the Queensland Government's third tranche of legislative reforms in response to the recommendations of the Taskforce. It follows the:

- *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (First Taskforce Act)
- *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Second Taskforce Act).

1.3 Consultation

The Department of Justice and Attorney-General (DJAG/department) has provided information in relation to consultation undertaken by the Taskforce in the preparation of Report One and Report Two, including:

- for Report One – receiving over 700 submissions from stakeholders, conducting stakeholder forums throughout Queensland, and holding over 125 individual meetings including with the judiciary, legislators, police, the legal profession, policy makers, academics and service providers
- for Report Two – receiving 19 submissions from women who were offenders and 250 submissions from victim-survivors of sexual assault, holding 79 consultations and engagements across Queensland.

In addition to the consultation activities undertaken by the Taskforce, DJAG advised that it undertook consultation on a draft copy of the Bill with the judiciary, relevant statutory bodies and key legal, DFV and sexual violence stakeholders.[5]

1.4 Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.4.1 Legislative Standards Act 1992

The LSA sets out fundamental legislative principles that are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'.[6] The principles include that legislation has sufficient regard to:

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

The committee's assessment of the Bill's compliance with the LSA identified issues which may be considered to have insufficient regard to rights and liberties of individuals, as summarised below:

- amendments to the *Corrective Services Act 2006* (CSA) in relation to conferral of immunity from prosecution:
  - inadmissibility of admissions made during programs while prisoners are remanded

4 DJAG, correspondence, 6 June 2024, p 1.

5 DJAG, correspondence, 6 June 2024, p 1.

6 *Legislative Standards Act 1992* (LSA), s 4.

- amendments to the *Evidence Act 1977* (Evidence Act) in relation to natural justice:
  - alternative arrangements for special witnesses
  - expert evidence in proceedings for sexual offences
  - tendency evidence (also referred to as 'propensity evidence') and coincidence evidence (also referred to as 'similar fact evidence').

1.4.2 *Human Rights Act 2019*

The committee's assessments of the Bill's compatibility with the HRA are included below. The committee finds the Bill is compatible 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 did not always contain sufficient information to facilitate understanding of the Bill in relation to its compatibility with human rights and the purpose of the limitation of certain rights, specifically:

- consideration of less restrictive measures to achieve the purpose of the limitations on the right to liberty and security of person through the amendments made by cls 8 and 9
- sufficient connection between the new imprisonment terms, including the life imprisonment term, introduced by the proposed amendment to s 229B and the purpose of the limitations on the right to liberty and security of person made by these amendments.

1.5 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends that the Bill be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Statutory review

2.1.1 Background

The Taskforce recommended a statutory requirement for the operation of legislative reforms arising from Report One and Report Two to be reviewed 5 years from when the amendments commence, with the review to include consideration of the impacts and outcomes achieved for women and girls.[7]

2.1.2 Amendments

Clauses 3 and 4 of the Bill amend the *Attorney-General Act 1999* to require a review to be carried out into the operation and effectiveness of the legislative amendments made in response to the recommendations of the Taskforce. The following pieces of legislation are covered:

- the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023*
- the *Justice and Other Legislation Amendment Act 2023*, which made amendments to the *Criminal Law (Sexual Offences) Act 1978*
- the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*
- the Queensland Community Safety Bill 2024 (which contained Taskforce related amendments to the *Youth Justice Act 1992*)[8]
- the *Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024*.[9]

The Bill would provide that the review must start as soon as practicable 5 years after commencement of the statutory review provision. The review must consider:

- the outcomes of the amendments
- the effects of the amendments on victims and perpetrators of sexual violence and DFV
- the outcomes for, and the effects of the amendments on, Aboriginal and Torres Strait Islander peoples
- whether the amendments are operating as intended.[10]

The Bill would also provide that the Attorney-General must determine the terms of reference of the review[11] and table a report of the review in Parliament as soon as practicable after the review is completed.[12]

---

7 Women's Safety and Justice Taskforce, *Hear her voice – Report One – Addressing coercive control and domestic and family violence in Queensland* (Report One), Recommendation 84; Women's Safety and Justice Taskforce, *Hear her voice – Report Two – Women and girls' experiences across the criminal justice system* (Report Two), Recommendation 186.

8 This Bill is currently under examination with the Community Safety and Legal Affairs Committee and is due to table its report in the Queensland Legislative Assembly on 2 August 2024.

9 Bill, cl 4 (Attorney-General Act, new s 14(1)).

10 Bill, cl 4 (Attorney-General Act, new s 14(3)).

11 Bill, cl 4 (Attorney-General Act, new s 14(2)).

12 Bill, cl 4 (Attorney-General Act, new s 14(4)).

2.1.3 Stakeholder feedback and department response

The Queensland Family and Child Commission (QFCC), the North Queensland Women's Legal Service (NQWLS), the Royal Australian and New Zealand College of Psychiatrists (RANZCP) and Legal Aid Queensland (LAQ) were generally supportive of the statutory review provisions in the Bill. In particular, QFCC noted that these reviews would 'provide ongoing, longitudinal data on effectiveness of the amendments and implemented measures'.[13]

2.1.3.1 Whole-of-system responses

The Queensland Indigenous Family Violence Legal Service (QIFVLS) noted the necessity of coordination and collaboration across government agencies, and with local communities and non-government organisations, including those which are Aboriginal and Torres Strait Islander Community Controlled Organisations.[14] QIFVLS submitted that the approach taken should align with achieving reductions in the justice targets of the National Agreement on Closing the Gap, in addition to the overarching reform areas which have been identified as objectives.[15] When asked by the committee if there were foreseeable issues with the over-incarceration of First Nations peoples in the Bill, QIFVLS advised:

Thelma Schwartz, Principal Legal Officer, QIFVLS, Public Hearing, 19 July 2024
We have to find a balance with respect to ensuring the safety and well-being of victim-survivors, where they are seen and how they are heard in the criminal courts, and the ability then to mete out a sentence that imposes – if it is going to impose a jail term – real accountability for behaviours, and changing behaviours so people do not cycle back in again.[16]

DJAG noted that the Queensland Government is currently implementing the fourth and final action plan of the *Domestic and family violence prevention strategy 2016-2026.*[17] In response to recommendation 1 of Report One, the First Nations Justice Office was established to co-design a whole-of-government and community strategy (Strategy) to address the over-representation of First Nations peoples in Queensland's criminal justice system.[18] The draft Strategy has 4 focus areas which centre on working together, early intervention and prevention with local decision making, a better and fairer justice system, and addressing offending and reoffending; and those that align with the Priority Reforms under the National Agreement on Closing the Gap, in particular, justice targets 10 and 11.

The draft Strategy aims to improve cross-sector partnerships and improve holistic and integrated responses to address underlying socio-economic issues and drivers of incarceration, in sectors such as health, disability, education, violence prevention, employment, housing, early childhood and justice.

Committee comment

The committee acknowledges that the amendments which have come about as a part of the draft Strategy are being implemented across various sectors in Queensland and emphasises the need for holistic collaboration in achieving positive outcomes for the Queensland community.

13 Submission 4, p 2.

14 Submission 7, p 4.

15 Submission 7, p 4.

16 Public hearing transcript, Brisbane, 19 July 2024, p 20.

17 DJAG and Queensland Corrective Services (QCS), correspondence, 15 July 2024, p 5.

18 DJAG and QCS, correspondence, 15 July 2024, p 5.

2.1.3.2 Scope of Review

The NQWLS submitted that it 'trusts stakeholders will be provided ample opportunity to provide submissions and relay feedback on the effects of the amendments on impacted groups and individuals.[19] Further, LAQ noted that the construction of s 14(3)(b)(ii) and (iii) differs in operation of what may be considered by the review based on the demographic of the persons impacted by the Bill. LAQ noted that the construction of the subsections is inconsistent with the findings of the Taskforce, namely:

> The five-year review of the operation of the legislative reforms in this chapter should consider the outcomes achieved for victims, including victim safety, and for perpetrators, with a particular focus on impacts for Aboriginal and Torres Strait Islander peoples. This should include whether the legislation has been implemented in a way that is consistent with the National Agreement on Closing the Gap.[20]

In response, the department noted that the Bill grants the Attorney-General the power to determine the scope of the terms of reference of such a review, which will be a matter for the government at the time the review takes place.[21] Further, the department noted that in the context of the work and recommendations of Taskforce generally, the stipulated provisions for review will necessarily encapsulate consideration of the outcomes of the amendments on victims and perpetrators.[22]

Committee comment

The committee acknowledges that the statutory review provisions of the Bill are drafted in a way so as to afford a degree of latitude in approach when the review takes place.

2.1.3.3 Commencement of Review

The NQWLS noted that the proposed period of 5 years was too long to review the extensive amendments to the *Domestic and Family Violence Protection Act 2012* (DFVP Act). The NQWLS suggested that a 2 year period would be more appropriate, while still allowing adequate time to pass to allow for the effects of the amendments to become apparent, and allow for any necessary adjustments to be made.[23]

The department noted that the Queensland Government's response to recommendation 84 of Report One and 186 of Report Two commit to legislating a statutory review as soon as practicable after 5 years.[24] The department anticipates that a minimum of 5 years from commencement was the period of time recommended by the taskforce, and is necessary to ensure that the impact of the amendments can be realised, and that adequate data can be collected for review.[25]

Additionally, the NQWLS submitted that the construction of s 14(3)(a) of the Bill makes it unclear when the statutory review process is intended to formally commence.[26]

The department responded that the 5 year period for review will begin at the commencement of the statutory review provision itself, based on the operation of s 32F(2) of the *Acts Interpretation Act 1954* which provides that where a provision of an Act makes reference to 'the commencement' without indicating a particular provision, it is a reference to the commencement of the provision in which the reference occurs.[27]

---

19 Submission 10, p 2.

20 Report One, vol III, p 782.

21 DJAG and QCS, correspondence, 15 July 2024, pp 6-7.

22 DJAG and QCS, correspondence, 15 July 2024, pp 6-7.

23 Submission 10, p 2.

24 DJAG and QCS, correspondence, 15 July 2024, p 7. See also Report One, vol I, p xxxi.

25 DJAG and QCS, correspondence, 15 July 2024, p 7.

26 Submission 10, p 2.

27 DJAG and QCS, correspondence, 15 July 2024, p 8.

Committee comment

The committee acknowledges that the timeline is complicated by a staggered commencement by proclamation and encourages the department to develop guidelines and/or criteria to assist in establishing the terms of reference for the statutory review.

2.2 Inadmissibility of admissions made during programs while prisoners are remanded

2.2.1 Background

The Taskforce found that women in custody may be concerned that participation in a program while on remand may be perceived as an admission of guilt and detrimentally impact their defence. This could be the case regardless of the type of program offered, as prisoners may not always be aware whether a program will involve the discussion of the offending they are detained on remand for.

The Taskforce recommended amendments to the CSA to remove any doubt that participation in a program or engaging in a service while a prisoner on remand cannot be used in evidence in any criminal, civil or administrative proceedings relating to the offence for which the prisoner on remand has been charged (recommendation 149 of Report Two). The Queensland Government response supported this recommendation in principle.

2.2.2 Admissions made by prisoners

The Bill proposes to insert new s 344AB into the CSA to provide that an admission made by a prisoner as part of their participation in a program or service is not admissible against the prisoner in any legal proceedings for the facts constituting the alleged offence for which the prisoner is detained on remand.[28] According to the explanatory notes, the aim of this provision is to encourage participation in programs and provide clarity for prisoners that any discussion about their offending cannot be used against them in proceedings.[29]

An admission may include any written material made by the prisoner or anything said or done by the prisoner that makes it evident the prisoner committed the offence.[30] The inadmissibility provision does not affect information being adduced before, or considered by, the Parole Board.[31] Ineligible programs or services may be prescribed by regulation.[32] DJAG noted that amendments to the *Youth Justice Act 1992* which respond to recommendation 149 in the context of detainees in youth detention centres have been progressed separately in the Queensland Community Safety Bill 2024.[33]

2.2.3 Issues of fundamental legislative principle

2.2.3.1 Rights and liberties of individuals – conferral of immunity from prosecution

To have sufficient regard for the rights and liberties of individuals, legislation should not confer immunity from proceeding or prosecution without adequate justification.[34] One of the fundamental principles of the law is that everyone is equal before the law, and each person should be fully liable for their acts or omissions.[35]

---

28 Bill, cl 6 (*Corrective Services Act 2006* (CSA), new s 344AB); DJAG, correspondence, 6 June 2024, p 4.

29 DJAG, correspondence, 6 June 2024, p 4.

30 Bill, cl 6 (CSA, new s 344AB(4)); DJAG, correspondence, 6 June 2024, p 4.

31 Bill, cl 6 (CSA, new s 344AB(6)).

32 Bill, cl 6 (CSA, new s 344AB(8)).

33 DJAG, correspondence, 6 June 2024, p 2.

34 LSA, s 4(3)(h).

35 Office of the Queensland Parliamentary Counsel (OQPC), '*Fundamental legislative principles: the OQPC Notebook*' (Notebook), p 64.

The explanatory notes state that the conferral of immunity from prosecution provided for by new s 344AB of the CSA is justifiable on the basis that the amendment will act as an incentive for a prisoner who may wish to participate in a program while in custody on remand to further their rehabilitation and promote community safety. Further, the Bill provides that the inadmissibility of evidence is limited to proceedings about the offence for which the prisoner is remanded.[36]

Committee comment

The committee considers the Bill pays sufficient regard to the rights and liberties of individuals, with sufficient justification for the conferral of immunity in circumstances where prisoners on remand are encouraged to take part in programs and services for their wellbeing.

The committee notes that the conferral of immunity is limited to admissions in relation to the particular offence for which the prisoner is on remand.

2.2.4 Stakeholder feedback and department response

2.2.4.1 Scope of application

LAQ, RANZCP, QIFVLS, Soroptimist International of Brisbane (SI Brisbane) and the QFCC generally supported the introduction of these amendments.[37] The QFCC submitted that 'doing so will allow for accused persons to engage with specialised programs while in custody to address their needs'.[38]

However, LAQ noted that the scope of the amendments may be limited because the term 'admission' is undefined, and it is unclear whether partial admissions or statements against interest are included in the term.[39] LAQ suggested that the new provision is ambiguous and requires interpretation on a case-by-case basis.[40] The University of the Sunshine Coast (UniSC) noted that the current provisions do not protect admissions about uncharged offences.[41] The NQWLS suggested that immunity for disclosures should apply for charged and uncharged offences.[42]

LAQ and UniSC expressed concern that the power to prescribe an 'ineligible program' will rely on the creation of regulations, which can lead to uncertainty amongst prisoners and participants on the basis that a program can be deemed ineligible at any time.[43] LAQ noted that there was no remedy available for human error if a participant is not informed of a program's ineligibility in advance and that programs may become ineligible after a participant has begun to engage, which will have a negative impact on those most in need.[44]

Further, the Bar Association of Queensland (BAQ) did not support the 'use of information provided by a prisoner in a program or service against them for offences allegedly committed while participating in a section 266 program'.[45] The BAQ cautioned that accused persons may not be able to distinguish between information related to their charges, and 'other uncharged misconduct without legal advice' and 'rehabilitation efforts may be hindered if voluntary disclosures in therapy or programs can be used in later criminal investigations or proceedings'.[46]

---

36 Explanatory notes, p 22; Bill, cl 6 (CSA, new s 344AB(2)).

37 See for example, submissions 4, 5 and 12.

38 Submission 4, p 1.

39 Submission 5, p 3.

40 Submission 5, pp 3-4.

41 Submission 9, p 5.

42 Submission 10, pp 2-3.

43 Submission 5, p 4; submission 9, p 4.

44 Submission 5, pp 4-5.

45 Submission 13, p 1.

46 Submission 13, pp 1-2.

In response, Queensland Corrective Services (QCS) noted that s 344AB(2) provides an inclusive, but not exhaustive, definition of 'admission' to ensure that the provision is not limited in operation and the context of other actions which fall outside of the charged offending may be considered.[47] Further, QCS clarified that partial admissions and statements of interest are intended to be encapsulated by the new s 344AB(2)(a) and (4), where such statements (including in writing) are made as a part of participation in a program, and it is clear an offence has been committed.[48] QCS clarified that the inadmissibility provisions are intended to apply to any criminal, civil or administrative proceedings for the facts of the offence in which the person is on remand and the scope of this provision is consistent with the recommendation of the Taskforce.[49]

QCS acknowledged that the provision includes appeals and subsequent proceedings, with the prescribed exception of parole proceedings.[50] The operation of the provision acknowledges that such information is crucial to the exercise of the Parole Board's functions.[51] QCS noted that information used in parole proceedings is in light of the fact that community safety is a high priority for decisions made by the Parole Board Queensland, and decision making involves consideration of whether there is unacceptable or greater risk to the community if a person is released without supervision.[52]

QCS noted that the scope of the amendments is consistent with recommendation 149 of Report Two, to remove doubt that participation in such programs and services cannot be used in evidence relating to the offence for which the person has been charged.[53] QCS submitted that the focus on admissions relating to the conduct which has been charged balances the need for supportive rehabilitation environments with the necessity of maintaining the integrity of legal proceedings and the need to hold offenders accountable for misconduct.[54] QCS noted that sentenced prisoners participate in similar programs without protections for uncharged conduct, and that it is critical that uncharged conduct is not protected from accountability.[55]

QCS further noted that the new provisions contain safeguards to ensure that participants are aware of the eligibility of the program at the outset, and that participation is voluntary so any admission which arises during the course of their participation is not compelled.[56] Specifically, the provision requires that participants be notified if a program is ineligible under the provisions and by prescribing eligibility by regulation, it will assist prisoners in having clear guidance on which programs and services are availability to them without fear of legal repercussions.[57]

47 DJAG and QCS, correspondence, 15 July 2024, p 11.

48 DJAG and QCS, correspondence, 15 July 2024, p 11.

49 DJAG and QCS, correspondence, 15 July 2024, p 12.

50 DJAG and QCS, correspondence, 15 July 2024, p 12.

51 DJAG and QCS, correspondence, 15 July 2024, p 13.

52 DJAG and QCS, correspondence, 15 July 2024, pp 12-13.

53 DJAG and QCS, correspondence, 24 July 2024, p 4.

54 DJAG and QCS, correspondence, 24 July 2024, p 4.

55 DJAG and QCS, correspondence, 24 July 2024, pp 5, 17-18.

56 DJAG and QCS, correspondence, 15 July 2024, pp 13, 18.

57 DJAG and QCS, correspondence, 15 July 2024, p 13.

Committee comment

The committee acknowledges the response from Queensland Corrective Services in clarifying the operation of the provisions but notes the concerns from stakeholders.

The committee encourages Queensland Corrective Services to develop and provide educational materials and guidance to be provided to participants, and their support networks, to ensure their participation in such programs is fully informed.

Further, the committee encourages the Attorney-General to review the provision to allow for a remedy to be available in the event that a prisoner is improperly informed of the ineligibility of a program before participation, to ensure that any admission made does not result in a miscarriage of justice.

2.2.4.2 Programs for sex offenders

LAQ submitted that sexual offenders often fall outside of protected categories, despite the demonstrative need for offence specific programs and rehabilitation services.[58] UniSC noted that the provisions are unclear as to whether high-risk offenders' admissions will be covered by the provision.[59]

QCS noted the concerns of LAQ, but explained that some programs for prisoners, due to their nature and duration, need to be prescribed as ineligible as they may not be appropriate, for example, those that are designed to specifically target a prisoner's criminogenic needs and causes of offending which are empirically linked to rates of recidivism.[60] These programs require prisoners to address their 'dynamic changeable risk factors and discuss their individual crimes, including the completion of offence mapping, to better understand factors contributing to their offending behaviour'.[61] QCS emphasised that the perception that an alleged prisoner could admit to such conduct in custody and subsequently avoid conviction may cause particular distress to victim-survivors and erode confidence in the justice system.[62]

Committee comment

The committee notes the concerns around distinguishing some offending behaviour from the protection of the new inadmissibility provisions. However, the ability to exclude certain programs from the scope of these provisions allows for continuous review and consideration of the public perceptions of certain offending and allows the justice system to respond appropriately to ensure that offenders, especially those who have engaged in high harm offending, are able to be held accountable.

2.2.4.3 Disclosure of admissions that may lead to a serious risk to the health or safety or a child or vulnerable person

The Nerang Neighbourhood Centre submitted that the proposed amendments make no allowance for the disclosure of admissions of, or with respect to, conduct which could lead to a serious risk to the health or safety of a child or vulnerable person.[63] They suggest that 'voiding admissibility for all admissions made by a prisoner participating in a section 266 program' would 'ensure that no action (protective or otherwise) may be taken with respect to that child or vulnerable person'.[64]

58 Submission 5, p 4.

59 Submission 9, p 5.

60 DJAG and QCS, correspondence, 15 July 2024, p 13.

61 DJAG and QCS, correspondence, 15 July 2024, p 14.

62 DJAG and QCS, correspondence, 15 July 2024, p 14.

63 Submission 1, p 2.

64 Submission 1, p 2.

QCS provided that the Bill inserts the new s 344AB into the CSA to provide that an admission made by a prisoner on remand as part of their participation in a program or service is not admissible against the prisoner in legal proceedings about the alleged offence for which they are on remand.[65]

QCS noted that these sections operate to relate to past conduct, not future risk.[66] Therefore, the provision does not interfere with disclosure obligations under other legislative regimes where information comes to light which indicates serious risk to a person's life, health, or physical safety, because it does not apply to uncharged conduct or future offending.[67]

2.2.4.4 Location in Act

The Nerang Neighbourhood Centre drew attention to the placement of the provisions within the Act, suggesting that the proposed placement may create confusion. They suggested the provision should be placed alongside s 266 in Part 2 (Chief Executive) of Chapter 6 (Administration) instead of in Part 13 (Information) in Chapter 6 (Administration) of the CSA.[68]

In response QCS stated that the provision is appropriately placed, given that it aligns the nature of the amendment with the purpose of the Division of the Act, and other provisions within that Division, namely, sensitive and confidential information.[69]

2.2.4.5 Gender-neutral language

The Nerang Neighbourhood Centre raised concerns that the gender-neutral language of the provisions would result in men accessing the provisions, which would 'run counter to the purpose of the amendment' to target 'women who are remanded in custody'. They suggested that, if it is the intention of the government that males should access these provisions, that the impact and consequences of this should be a specific focus of the review provisions set out in cls 3 and 4 of the Bill.[70]

Conversely, DVConnect supported the amendments, based on their experience in advocating for similar provisions for men on remand in the DFV space.[71] In their written submission, and at the public hearing, DVConnect submitted that 'timely intervention is critical, and concerns about the admissibility of information shared in targeted programs can be a barrier'.[72]

QCS acknowledged that the genesis of these amendments was prompted by recommendations for improved provisions for women and girls but noted that QCS provides 'for the humane containment, supervision, and rehabilitation of all offenders, regardless of their gender'.[73] QCS confirmed that the amendments will apply to any program or service established or facilitated by the chief executive under s 266 of the CSA, unless it is an ineligible program or service.[74]

65 DJAG and QCS, correspondence, 15 July 2024, pp 8-11.

66 DJAG and QCS, correspondence, 15 July 2024, p 9.

67 DJAG and QCS, correspondence, 15 July 2024, p 9.

68 Submission 1, p 2.

69 DJAG and QCS, correspondence, 15 July 2024, p 9.

70 Submission 1, p 2.

71 Submission 8, p 4.

72 Submission 8, p 4. See also public hearing transcript, Brisbane, 19 July 2024, pp 3-4.

73 DJAG and QCS, correspondence, 15 July 2024, p 10.

74 DJAG and QCS, correspondence, 15 July 2024, p 10.

Committee comment

The committee notes the explanation from Queensland Corrective Services and considers it appropriate that the amendments apply to all persons under the care and control of Queensland Corrective Services, regardless of gender.

2.2.5 Human Rights Act 2019

LAQ raised concerns that the inadmissibility provisions were broadly inconsistent with the HRA. Notably, that the amendment limits the right to be free from discrimination.[75]

QCS noted that the Bill has been produced with a statement of compatibility pursuant to s 38 of the HRA.[76] QCS acknowledged that prisoner access to such programs while in custody engages a range of human rights, but the inadmissibility provision does not result in a limitation of rights.[77]

Committee comment

The committee notes the concerns of LAQ but is satisfied that the statement of compatibility appropriately considers any limitations posed on rights contained under the HRA and that the Bill is compatible with the HRA.

2.2.6 Resourcing for programs in custody

UniSC noted that barriers exist in offering these programs, including staff shortages, overcrowding and insufficient offerings for special demographics (like women).[78] They also expressed concern that programs are often unavailable for those on shorter sentences and that shortening periods of remand should be a priority.[79] Further, UniSC noted that there are often issues in assuring continuity for client outcomes and reducing recidivism after sentencing.[80]

QCS noted that referral to such programs occurs through a rage of pathways, including assessment and planning, self-referral and staff referral.[81] QCS emphasised that it operates on a philosophy of voluntary participation, and therefore, a participant must be ready, willing and able to participate in such a program, alongside staff who work to motivate that individual to engage with offending behaviour and desistance-based programs.[82] QCS noted that while programs are technically available to persons in custody, often, their participation is dependent on their ability to complete the program and many prisoners on remand are being released on the day of sentence, without having participated in rehabilitative program during their time in custody.[83] QCS acknowledged that there is also a risk that post-sentencing, a prisoner may be transferred to a new corrective facilities centre mid-program.[84]

While QCS acknowledged the limitations raised by UniSC, they noted that the practical logistics of offering and resourcing such programs is outside of the scope of the Bill.[85]

---

75 Public hearing transcript, Brisbane, 19 July 2024, pp 3-4.

76 DJAG and QCS, correspondence, 15 July 2024, p 14.

77 DJAG and QCS, correspondence, 15 July 2024, pp 14-15.

78 Submission 9, p 4.

79 Submission 9, p 4.

80 Submission 9, p 4.

81 DJAG and QCS, correspondence, 15 July 2024, p 16.

82 DJAG and QCS, correspondence, 15 July 2024, p 16.

83 DJAG and QCS, correspondence, 15 July 2024, pp 16-17.

84 DJAG and QCS, correspondence, 15 July 2024, p 17.

85 DJAG and QCS, correspondence, 15 July 2024, pp 16-17.

Committee comment

The committee notes that logistical processes may be outside of the scope of the Bill. Nonetheless, the committee encourages Queensland Corrective Services to consider how such programs may be adapted for those serving shorter sentences, to increase rehabilitation even for those in custody a short time. Further, the committee supports the review of other barriers to participation that may be solved through additional resourcing and support.

2.3 Position of authority offence

2.3.1 Background

Recommendation 42 of Report Two was to review and amend, if necessary, the Criminal Code to ensure it addresses sexual exploitation of children and young people aged 12 to 17 years old by adults who occupy a position of authority over those children.[86]

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) recommended that states and territories should review any position of authority offences applying in circumstances where the victim is 16 or 17 years of age, and, if the offences require more than the existence of the relationship of authority (for example, that it be 'abused' or 'exercised'), amendments should be made so that the existence of the relationship is sufficient.[87]

According to the explanatory notes, all other Australian states and territories have criminalised this type of conduct.[88] Currently, it is not a criminal offence in Queensland for an adult in a position of authority (such as a teacher, school principal, foster carer, health practitioner or corrective services officer) to have consensual sex with a 16- or 17-year-old child who is under their care, supervision or authority.[89]

2.3.2 Protection of young people over age of consent but under 18 years of age

In response to these recommendations, the Bill at cl 8 proposes to introduce:

- a new standalone offence, proposed s 210A, 'Sexual acts with a child aged 16 or 17 under one's care, supervision or authority' (standalone offence), to Chapter 22 of the Criminal Code
- a second limb to the existing course of conduct offence in s 229B, 'Repeated sexual conduct with a child', of the Criminal Code.[90]

According to the explanatory notes, these amendments are intended to capture and deter members of the community who may use the influence, trust and power that is vested in them when a young person is under their care, supervision or authority. It is intended that these amendments will provide a protective function for young people over the age of consent, but under the age of 18 years.[91]

2.3.2.1 Application

The explanatory notes state that the amendments will apply to adult defendants only, and only to a complainant who is 16 or 17 years of age.[92]

---

86 Explanatory notes, p 5.

87 Explanatory notes, p 4.

88 Explanatory notes, p 4. See, for example, *Crimes Act 1900* (NSW), ss 73 and 73A; *Crimes Act 1900* (ACT), s 36A; *Criminal Code Act 1924* (Tas), ss 124A, 335, 336, 336B, 337 and 337B.

89 Explanatory notes, p 6.

90 DJAG, correspondence, 6 June 2024, p 5.

91 Explanatory notes, p 4.

92 Explanatory notes, p 5.

2.3.2.2 Sexual acts

The standalone offence criminalises a range of acts set out in s 210A(1) and (2), by an adult who has a child under their care, supervision or authority.[93] These proscribed acts are identical to the offences of rape (Criminal Code, s 349), indecent treatment of children under 16 (Criminal Code, s 210) and repeated sexual conduct with a child (Criminal Code, s 229B).[94]

2.3.2.3 Care, supervision or authority

It is an element of the new position of authority offence and the expansion to s 229B that the child was under the 'care, supervision or authority' of the accused. These 3 terms are not intended to be read together and that the prosecution need only prove that one of care, supervision and authority existed at the time of the charged act/s.

The proposed s 210A(3) lists certain categories of person who are deemed to have a child under their 'care, supervision or authority'. The list also operates in relation to the expansion to s 229B.[95] This is a non-exhaustive list and does not preclude other categories of person being captured by the offences.[96]

It will be a question of fact for a jury to determine whether the child was under the defendant's care, supervision or authority. A jury will make this finding based on the particular evidence presented in the case. A jury will not, however, be required to make this finding if they are satisfied the defendant is a person captured by proposed s 210A(3).[97]

2.3.2.4 Defences

Defences to charges under proposed ss 210A or 229B(1A) include:

- that the accused person believed on reasonable grounds that the child was at least 18 years of age
- that the accused person is less than 3 years older than the child, and the acts or omissions that constitute the offence did not, in the circumstances, constitute sexual exploitation of the child
- that the accused person and the child were lawfully married.[98]

It will remain open for an accused person to raise a defence under s 24 of the Criminal Code, that they honestly and reasonably believed the child was not under their care, supervision, or authority. Such a defence is not intended to be available to accused persons captured by proposed s 210A(3).[99]

2.3.2.5 Penalty and disposition

An adult convicted of a penetrative act under proposed s 210A(1) would be liable to a maximum penalty of 14 years imprisonment.[100] For the expanded offence under proposed s 229B, an adult convicted of the offence would be liable to a maximum penalty of life imprisonment.

An offence under s 210A will be captured by s 552B(1)(a) of the Criminal Code and will be an offence that must be heard and decided summarily on a plea of guilty, unless the defendant elects for a jury

93 Explanatory notes, p 5.

94 DJAG, correspondence, 6 June 2024, p 7.

95 Explanatory notes, p 5.

96 Explanatory notes, p 5.

97 DJAG, correspondence, 6 June 2024, p 7.

98 Bill, cl 8 (Criminal Code, new s 201A(4)); explanatory notes, p 7.

99 Explanatory notes, p 7.

100 DJAG, correspondence, 6 June 2024, p 8.

trial. It is also subject to s 552D (When Magistrates Court must abstain from jurisdiction) of the Criminal Code.[101]

2.3.3 Stakeholder feedback and department response

RANZCP supported the introduction of specific offences for children who are above the age of consent as children, adolescents and youth are a priority group when addressing the mental health harms of witnessing and experiencing sexual violence.[102]

2.3.3.1 Unintended criminalisation of consensual relationships

The Queensland Law Society (QLS), QBA and LAQ oppose the introduction of the position of authority offences to varying degrees. The QLS noted that the new offence in s 210A poses a real risk of criminalising a consensual relationship between 2 individuals both over the age of consent.[103] The example provided by the QLS at the public hearing was that 'a lawful, informed and voluntary sexual act between a 17-year-old at a university college and a young 18- or 19-year-old tutor at the college would be captured by this provision and the defence would not apply'.[104] Similarly, LAQ expressed concerns that the new offence could unduly limit the agency of children with capacity who are deemed to have the cognitive ability to consent and the use of 'supervision' in the Bill is too broad.[105]

In response, DJAG noted that these amendments are in response to both the Taskforce and the Royal Commission to address sexual exploitation of children and young people by those who occupy a position of authority over those children.[106] DJAG acknowledged that views may differ as to whether a position of authority offence is the appropriate path forward to protect children from exploitation by persons who have authority over them, but noted that the Royal Commission ultimately recommended review of such offences, and amendments to ensure that prosecutions of such offences must prove more than 'the existence of a relationship of authority'.[107]

DJAG further stated that there are safeguards in the Bill to prevent consensual, appropriate relationships from being captured by the provision and that Queensland is the only jurisdiction in Australia which has not criminalised this conduct.[108] Specifically, DJAG noted that the inclusion of the word 'supervision' was based on legislation in Western Australia and Victoria, and its inclusion reflects the policy intention of the section.[109]

Committee comment

The committee notes the concerns of various stakeholders on the implications of the new offence provisions. However, the Bill is clear in its intention to protect vulnerable children from predatory behaviour, and proposed s 210A at cl 8 contains appropriate safeguards to limit misapplication of the offence. The committee notes the need for codification of such offences, to reflect community concerns that a person in a position of authority should not be engaging in a sexual relationship with any child with whom they are in a position of authority.

101 Explanatory notes, p 7.

102 Submission 12, p 8.

103 Submission 11, pp 1-2.

104 Public hearing transcript, Brisbane, 19 July 2024, p 14.

105 Submission 5, p 6.

106 DJAG and QCS, correspondence, 15 July 2024, p 19.

107 DJAG and QCS, correspondence, 24 July 2024, pp 5-6.

108 DJAG and QCS, correspondence, 15 July 2024, pp 19-20; DJAG and QCS, correspondence, 24 July 2024, pp 5-6.

109 DJAG and QCS, correspondence, 15 July 2024, p 20.

Further, the operation of the Bill does not displace the discretion and judgement of law enforcement in its pursuit of charges for criminal acts, and where there is a legitimate explanation of consent between 2 individuals, there is no requirement that the conduct is pursued legally. The committee notes that any implications on liability as a result of the employment of a person who would otherwise be able to utilise the defence available in the section is a matter between that person and their employer, and that there is likely to be prohibitions on relationships between staff and children in such situations.[110]

The committee notes that the Bill is clear in its intention to prevent at-risk and vulnerable youth who may not have the capacity to consent from being exploited by a person who exercises authority over them, and the protection of vulnerable persons is consistent with prevailing public view and the recommendations of the Taskforce and the Royal Commission.

Recommendation 2

The committee recommends the Department of Justice and Attorney-General develop guidelines to assist law enforcement in administering the new offence provisions in relation to specific offences for children who are above the age of consent.

2.3.3.2 Persons not captured under s 210A(3)

The NQWLS noted that other persons may be captured by the new list in s 210A and used the example of a 'kitchenhand in a youth detention centre may be captured by the offence'.[111] The BAQ proposed that the list contained in s 210A(3) should be exhaustive.[112] Conversely, UniSC proposed that the list should be expanded to include more staff and contractors in school settings who have access to facilities, and by extension, students.[113]

UniSC also sought further clarification about the meaning of 'health practitioner – previous patient' and recommended that the provision ought to be expanded to include instances where a child was a previous patient of a health practitioner.[114] The NQWLS and UniSC identified the absence of a definition for 'health practitioner' in the Bill, which DJAG noted and advised they would consider further.[115]

DJAG noted that the Bill reflects the vulnerability of children in custody and in accommodation services, and that equivalent offences in other jurisdictions encapsulate employees in correctional and accommodation settings.[116] Further, DJAG noted that additional examples of persons who were not explicitly captured in the subsections as proposed by UniSC may still be captured under the section because it is not limited in operation by subsection (1) and (2) of the offence.[117] In particular, DJAG noted that there is differing definition of the categories of person under the definition of 'spouse'.[118]

110 See, for example, Duchesne College, University of Queensland, *Child and Youth Protection Policy*, 2023, Guiding Principles 1, 2, 4 and 7.

111 Submission 10, p 4.

112 Submission 13, p 2; submission 9, pp 6-7.

113 Submission 9, p 7.

114 Submission 9, p 7.

115 DJAG and QCS, correspondence, 15 July 2024, p 23.

116 DJAG and QCS, correspondence, 15 July 2024, pp 20-21.

117 DJAG and QCS, correspondence, 24 July 2024, p 22.

118 DJAG and QCS, correspondence, 15 July 2024, p 24.

DJAG responded that the list of persons who may be captured under s 210A(3) is not read to be limiting the broader operation of the offence.[119] DJAG explained that this means that although an adult is not captured by the list in s 210A(3), a jury may, nonetheless, find that a child was in the care, supervision or authority of that adult.[120] This subsection was informed by feedback during departmental consultation as well as reliance on interstate examples.[121]

2.3.3.3 Maximum penalties and defences

There was a general view from submitters that the operation of defences under ss 210A and 229B is unclear and needs review in line with the intention of the Bill.[122] The QLS suggested that the maximum penalties under s 210A should be informed by those in interstate jurisdictions.[123] The QLS further submitted that the maximum penalty of life imprisonment for the new s 229B(1A) 'repeated sexual conduct with a child' is unwarranted and that a defence of 'an absence of sexual abuse or exploitation' should be included.[124] Conversely, UniSC suggested that the maximum penalties should be increased to 'reflect the seriousness of this type of offending and community attitudes toward it'.[125]

The NQWLS queried whether s 24 of the Criminal Code, which allows for mistake of fact defence, would be applicable to this new offence.[126] Further, the NQWLS queried an anomaly between the defences available under s 229B(1) and (1A), where a person may maintain an unlawful relationship with a child under their care, but rely on the defence that they thought they were committing another offence which would not attract liability.[127]

In response, DJAG clarified that there was no explicit prohibition in using the mistake of fact defence in the Bill and noted that accused persons may rely on the 'similar age' defence where a person is no more than 3 years older than the complainant child, and in the circumstances, their conduct did not constitute exploitation of the child.[128] However, DJAG noted that no other jurisdiction provides a defence which relies solely on the absence of sexual exploitation to avoid liability.[129]

The department noted that anomalies in application will be considered in detail.[130]

Committee comment

The committee notes the differing interpretations of proposed s 210A(3) at cl 8 of the Bill and the department's existing view of certain terminology. The committee is concerned that various members of the legal profession have expressed varying positions on this topic.

Nonetheless, the committee wishes to emphasise that it is appropriate to convey to the community, through the codification of this offence, that persons who interact with vulnerable children should not be engaging in sexual relationships with those children, on the basis of their relationship of care, supervision and authority with that child.

119 DJAG and QCS, correspondence, 15 July 2024, pp 20-21, 23 citing explanatory notes, p 6; DJAG and QCS, correspondence, 24 July 2024, pp 5-6.

120 DJAG and QCS, correspondence, 24 July 2024, p 6.

121 DJAG and QCS, correspondence, 24 July 2024, pp 6-7.

122 Submission 5, pp 7-9; submission 9, p 6; submission 10, pp 3-4; submission 11, p 2.

123 Submission 11, p 2.

124 Submission 11, pp 2-3.

125 Submission 9, p 6.

126 Submission 10, p 3.

127 Submission 10, p 4.

128 DJAG and QCS, correspondence, 24 July 2024, pp 7-8.

129 DJAG and QCS, correspondence, 24 July 2024, p 7.

130 DJAG and QCS, correspondence, 15 July 2024, p 25.

Recommendation 3

The committee encourages the Attorney-General to undertake a review of the persons listed in proposed section 210A(3) at clause 8 of the Bill, and consider developing guidance material on the same.

The committee encourages the Attorney-General to undertake a review of the operation of the defences available under proposed sections 210A or 229B once the provisions have commenced, and consider developing guidance material.

2.4 Alternative arrangements for special witnesses

2.4.1 Background

The Taskforce recommended amending the Evidence Act so that a special witness is entitled to give evidence in a remote room or by alternative arrangements.[131] The Taskforce considered that this would reduce the need for victim-survivors to justify having the measures, which would improve victim-survivors' experience of the court process and reduce re-traumatisation.[132]

Currently, s 21A of the Evidence Act provides that where a special witness is to give or is giving evidence in any proceeding, the court may order that the special witness give evidence by certain alternative arrangements.[133] An alternative arrangement is an adaption of the normal procedures of the court. A special witness means:

- a child under 16 years
- a person who, in the court's opinion:
  - would, as a result of a mental, intellectual or physical impairment or a relevant matter, be likely to be disadvantaged as a witness
  - would be likely to suffer severe emotional trauma, or
  - would be likely to be so intimidated as to be disadvantaged as a witness, if required to give evidence in accordance with the usual rules and practice of the court
- a person who is to give evidence about the commission of a serious criminal offence committed by a criminal organisation or a participant in a criminal organisation
- a person:
  - against whom domestic violence has been or is alleged to have been committed by another person, and
  - who is to give evidence about the commission of an offence by the other person, or
- a person:
  - against whom a sexual offence has been, or is alleged to have been, committed by another person, and
  - who is to give evidence about the commission of an offence by the other person.[134]

The meaning of special witness is not altered by the Bill.

131 Report Two, Recommendation 53; DJAG, correspondence, 6 June 2024, p 10.

132 DJAG, correspondence, 6 June 2024, p 10.

133 Explanatory notes, p 7.

134 *Evidence Act 1977* (Evidence Act), s 21A(1); DJAG, correspondence, 6 June 2024, p 8.

2.4.2 Alternative arrangements for special witnesses

The Bill proposes amendments to s 21A of the Evidence Act in relation to special witnesses giving evidence.[135]

The Bill proposes to insert a new s 21A(3) providing that the court must, on the application of a party to the proceedings, make an order for alternative arrangements unless:

- the court is satisfied that it would not be in the interests of justice to do so, or
- appropriate equipment and facilities are unavailable.[136]

The alternative arrangements are set out in current s 21A(2) of the Evidence Act and include:

- that the person charged or other party to the proceeding be obscured from the view of the special witness while the special witness is giving evidence or is required to appear in court[137]
- that the special witness give evidence in a room other than the room in which the court is sitting, and from which all persons other than those specified by the court are excluded[138]
- that a person approved by the court be present while the special witness is giving evidence or is required to appear in court for any other purpose in order to provide emotional support to the special witness[139]
- that a videorecording of the evidence of the special witness or any portion of it be made and that the videorecorded evidence be viewed and heard in the proceeding instead of the direct testimony of the special witness.[140]

2.4.3 Issues of fundamental legislative principle

2.4.3.1 Rights and liberties of individuals – natural justice

The Bill raises issues of procedural fairness as it seeks to amend the way in which some witnesses give evidence. The explanatory notes seek to justify this potential infringement on the basis that the amendments are intended to support special witnesses to give their best evidence and reduce the trauma associated with giving evidence in court.[141] The explanatory notes highlight the safeguards in the Bill where the court is not required to grant an order for alternative arrangements if it is not in the interests of justice to do so.[142] Further, the proposed amendments do not alter an accused person's right to be heard or to answer allegations against them.[143]

Committee comment

In relation to alternative arrangements for special witnesses, the committee considers the Bill pays sufficient regard to the rights and liberties of individuals in the context of natural justice and, in particular, procedural fairness. The committee believes the provisions adequately balance the rights of the parties to proceedings, and the interests of justice.

135 Bill, pt 5 div 2, cls 14-25 (Evidence Act, pt 2, div 4); explanatory notes, pp 8-9.

136 Bill, cl 18 (Evidence Act, new s 21A(3)); explanatory notes, p 9.

137 Bill, cl 18 (Evidence Act, new s 21A(2)(a)(ii)).

138 Evidence Act, s 21A(2)(c).

139 Evidence Act, s 21A(2)(d).

140 Evidence Act, s 21A(2)(e).

141 Explanatory notes, p 23. See also statement of compatibility, p 8.

142 Explanatory notes, p 24.

143 Explanatory notes, p 24.

2.4.4 Stakeholder feedback and department response

There was broad general support for these amendments.[144] In particular, SI Brisbane submitted that 'introducing alternative arrangements for special witnesses, such as remote testimonies and support persons, will reduce traumatisation and enable victim-survivors to provide their best evidence'.[145]

2.4.4.1 Classification of special witnesses and practical implementation

QIFVLS noted that the victim-survivor is not a party to a proceeding (in that, the proceedings are brought by the State against the accused), so a trauma-informed approach to improving the experience of special witnesses in the courts process is welcomed.[146] QIFVLS and LAQ noted the need to prioritise capital upgrades to courts across Queensland to enable the practical operation of these amendments.[147]

In contrast, the QLS opposed a purported 'automatic classification' of a special witness without justification, particularly given the low threshold for such a justification.[148] LAQ submitted that the amendments were unnecessary and suggested that a clear exception be added to the Bill instead, where a victim-survivor does not want to access special witness measures and alternative arrangements.[149] Further, LAQ submitted that such provisions already exist for parties to apply for evidence to be pre-recorded, and in their experience, this regularly occurs in criminal trials.[150]

DJAG noted that the meaning of 'special witness' under the Evidence Act is not altered by the Bill. DJAG noted that there is no 'automatic special witness classification' and stated that the Taskforce found that victim-survivors are sometimes required to provide evidence to support their 'special witness' measures which is not always trauma-informed in practice.[151] DJAG also noted that these amendments have received support from sector stakeholders.[152]

DJAG noted that the Taskforce recommended the use of videorecording and storage of such evidence so that it is able to be used in retrials, with the aim of reducing re-traumatisation of victim-survivors.[153] DJAG explained that the amendments do not relate to the pre-recording of evidence, which they acknowledge is already contained in existing provisions of the Evidence Act.[154] The requirements imposed by the new sections will apply regardless of the manner the evidence is given (for example, remotely, live in a courtroom, or by pre-recording).[155] Importantly, the amendments operate to remove the need for the court to determine what should and should not be put in place for special witnesses in sexual offence proceedings and noted that it does not introduce a presumption of an alternative arrangement.[156]

144 See for example, submissions 3, 4, 6, 7, 8 and 12.

145 Submission 6, p 2.

146 Submission 7, p 4-5; public hearing transcript, Brisbane, 19 July 2024, pp 18-21.

147 Submission 5, p 13; submission 7, p 5.

148 Submission 11, p 3.

149 Submission 5, pp 10-11.

150 Submission 5, pp 11-13.

151 DJAG and QCS, correspondence, 24 July 2024, p 8.

152 DJAG and QCS, correspondence, 15 July 2024, p 31.

153 DJAG and QCS, correspondence, 15 July 2024, pp 37-38. See also Report Two, vol I, p 270.

154 DJAG and QCS, correspondence, 15 July 2024, p 37. See also Evidence Act, s 21A(2)(e).

155 DJAG and QCS, correspondence, 15 July 2024, p 37.

156 DJAG and QCS, correspondence, 24 July 2024, p 8.

Further, DJAG noted that capital upgrades are due to be completed by 30 June 2026, which will equip the majority of courts to carry out the purposes of these amendments.[157] The department acknowledged that where there is no purpose-built facility, there will be limitations in operation.[158]

2.4.4.2 Civil proceedings

The NQWLS submitted that the new s 21AAC(3)(c) of the Evidence Act should be clear as to the use of videorecorded evidence in civil proceedings under the DFVP Act.[159] Despite the fact that the Evidence Act is excluded from applying in civil proceedings under the DFVP Act, the *prima facie* reading of this Bill could indicate that videorecorded evidence is intended to be admissible in all civil proceedings related to the same allegations of conduct.[160]

The NQWLS noted that the DFVP Act does not mandate a ban on direct cross-examination of aggrieved self-represented parties and that in some circumstances, the court has the discretion to order a ban on such examination if an application is made by a party in the proceedings.[161] The NQWLS suggested amending the DFVP Act to allow the admission of videorecorded evidence from relevant criminal proceedings into civil domestic violence proceedings.[162]

DJAG noted this feedback and clarified that the operation of the new s 21AAC(3) makes videorecorded evidence admissible unless the relevant court orders otherwise, including a 'civil proceeding arising from the commission of an offence'.[163] DJAG confirmed that this new provision is consistent with the existing s 21A(6) of the Evidence Act which permits videorecorded evidence as admissible, in the absence of a court order.[164]

DJAG advised that there is an existing framework under the DFVP Act which contains specific provisions relating to procedure, directions, rules of evidence and protected witnesses and that the Bill is not intended to disrupt the operation of that framework.[165] Further, DJAG noted that s 145 of the DFVP Act does not bind the court by the rules of evidence and that the court may inform itself in any manner it considers appropriate.[166]

2.4.4.3 Culturally safe practices for special witnesses

QIFVLS noted that it is 'imperative to emphasis the value of culturally safe and holistic supports for special witnesses'.[167] They suggest that Aboriginal and Torres Strait Islander victim-survivors ought to be given the option of a support person or victim's advocate from an Aboriginal and Torres Strait Islander Controlled Organisation and the establishment of a non-legal victim's advocate.[168] QIFVLS submitted that these steps can be taken to work toward achieving Priority Reforms of the National Agreement on Closing the Gap.[169] Their position was echoed by RANZCP.[170]

---

157 DJAG and QCS, correspondence, 15 July 2024, p 31.

158 DJAG and QCS, correspondence, 15 July 2024, p 31.

159 Submission 10, p 4.

160 Submission 10, pp 4-5.

161 Submission 10, p 5.

162 Submission 10, p 5.

163 DJAG and QCS, correspondence, 15 July 2024, p 36.

164 DJAG and QCS, correspondence, 15 July 2024, p 36.

165 DJAG and QCS, correspondence, 15 July 2024, pp 36-37.

166 DJAG and QCS, correspondence, 15 July 2024, p 37.

167 Submission 7, p 5.

168 Submission 7, p 5.

169 Public hearing transcript, Brisbane, 19 July 2024, p 19.

170 Submission 12, p 6.

DJAG responded by clarifying that, depending on the circumstances, support persons or advocates could be a person from an Aboriginal and Torres Strait Islander Controlled Organisation.[171]

Committee comment

The committee notes that there is an over-representation of Aboriginal and Torres Strait Islander peoples in the justice system, both as victim-survivors and accused persons, and the need for culturally informed practice is paramount.

Recommendation 4

The committee recommends the Department of Justice and Attorney-General develop guidance for law enforcement and judicial officers to work collaboratively, with trauma-informed practices for Aboriginal and Torres Strait Islander peoples involved in the justice system, and consider cross-departmental support in developing those materials.

2.5 Directions hearings

2.5.1 Background

The Taskforce found that ground rules hearings (or directions hearings) in DFV and sexual offence proceedings could assist to ensure victim-survivors are only questioned in an appropriate manner, and only about content that is relevant and admissible.[172]

A directions hearing is a short hearing of the court to assist parties to determine what steps must to taken to progress a proceeding to a resolution by negotiation, mediation, or trial.[173]

In Queensland, directions hearings similar to ground rules hearings are mandatory in the intermediary scheme pilot program. This program currently applies to criminal proceedings for child sexual offences in certain locations. At these directions hearings, the intermediary must attend, inform the court of the communication needs of the witness and recommend to the court the most effective way to communicate with the witness. The court may then give directions about the giving of evidence by the witness that the court considers appropriate for the fair and efficient conduct of the proceeding. Queensland otherwise currently does not have the equivalent to ground rules hearings.[174]

2.5.2 Amendments to the *Evidence Act 1977* to allow directions hearings

The Bill at cl 20 proposes to insert new s 21AAB into the Evidence Act under which, in a 'relevant proceeding' (a criminal proceeding relating wholly or partly to a sexual offence or a domestic violence offence) the court may, on its own initiative or an application of a party, direct that:

- a directions hearing be held, about evidence to be given by a special witness
- further directions hearings be held at any later stage in the proceeding.

At a directions hearing, the court may:

- consider the communication needs of a special witness and the most effective way to communicate with the witness

171 DJAG and QCS, correspondence, 15 July 2024, p 30.

172 Explanatory notes, p 10.

173 Queensland Courts, *Procedural Fact Sheets (Civil) – Supreme and District Courts*, n.d., accessed 5 July 2024, p 1, courts.qld.gov.au/__data/assets/pdf_file/0009/781056/directions-hearings-and-reviews-fact-sheet.pdf.

174 DJAG, correspondence, 6 June 2024, p 12.

- give any directions about the giving of evidence by the witness that it considers appropriate for the fair and efficient conduct of the proceeding.[175]

The Bill provides that, without limiting the types of directions that can be given, a direction may be given about:

- the manner or duration of questioning the witness
- the questions that may, or may not, be put to the witness.
- if there is more than one defendant, the allocation among the defendants of the topics about which the witness may be questioned
- the use of models, plans, body maps or similar aids to help the witness communicate.[176]

DJAG advised that the new provisions will only apply to a proceeding for an offence committed before the commencement if an originating step for the proceeding is taken on or after the commencement.[177]

2.5.3 Stakeholder feedback and department response

RANZCP submits that taking a victim-centred approach to how the Queensland criminal justice system processes a sexual assault or domestic violence case means treating victim-witnesses with care and respect.[178] They submit that many aspects of the court process are disempowering for victim-witnesses and recognition of the social stigma associated with these crimes will assist the process.[179] This position was echoed by DVConnect.[180]

The QLS, LAQ and the BAQ opposed the amendments to the operation of directions hearings. LAQ noted that the law already acts as a safeguard against inappropriate or unnecessary questioning to protect vulnerable witnesses from being badgered.[181] The QLS noted that the new s 21AAB has the potential to unreasonably constrain cross-examination by the defence.[182] The BAQ noted that there is the potential for the accused to disclose their case through identifying topics of cross-examination in advance of trial.[183]

The BAQ suggested that restricting an accused's right to challenge the testimony through cross-examination in accordance with the rules of evidence is a breach of their right to choose their legal representation.[184] They also submitted that the introduction of further interlocutory steps in the trial process will result in delays in proceeding to trial and place a further strain on the justice system.[185]

At the public hearing, QIFVLS noted that proper case management and case conferencing should be taking place between the parties. They stated to the committee:

175 Explanatory notes, pp 9-10.

176 DJAG, correspondence, 6 June 2024, p 12.

177 DJAG, correspondence, 6 June 2024, p 12.

178 Submission 12, p 6.

179 Submission 12, p 6.

180 DJAG and QCS, correspondence, 15 July 2024, p 32.

181 DJAG and QCS, correspondence, 15 July 2024, p 32.

182 DJAG and QCS, correspondence, 24 July 2024, p 10.

183 DJAG and QCS, correspondence, 24 July 2024, p 10.

184 DJAG and QCS, correspondence, 24 July 2024, pp 10-11.

185 DJAG and QCS, correspondence, 24 July 2024, p 12.

Thelma Schwartz, Principal Legal Officer, QIFVLS, Public Hearing, 19 July 2024

[W]ith respect to the Bar Association of Queensland, I do not understand what the barrier with appropriate case conferencing will be. … You would have the QP9 [Court Brief], you would have your evidence, and you would work out whether the matter is proceeding to hearing. You would still have a case conferencing call with the magistrate to work out what issues are in dispute and whether we can narrow the issues to that we eventually get to a hearing we know that this is about. That is a cost saving to the court; and also a cost saving to the defendant. …

There is nothing preventing this interaction. I think it is working in a way, and probably the tension is that we are moving away from the purely adversarial ideology we have around how we go to criminal court. … It happens already in summary courts. I do not see why we have a difference in wanting to adopt a case conferencing model in our superior courts.[186]

DJAG noted that these amendments reflect the Taskforce's recommendation and the Queensland government's response.[187] The department noted that ground rules hearings have been introduced in Victoria with positive effect, and have the impact of bringing to the attention of counsel and judicial officers the comprehension, capacity and communication needs of vulnerable witnesses, which are relevant to such directions being made.[188] The department also acknowledged that the Bill is likely to increase demand on the judicial system and service providers, and noted that the government allocated a combined total of $588 million towards implementation of the Taskforce recommendations.[189]

DJAG noted that the Bill provides that, without limiting this power to give directions, a direction may be given about a number of specific matters including the questions that may or may not be put to the witness, and the allocation among defendants (where there is more than one) of the topics about which the witness may be questioned.[190] The court may consider the communication needs of a special witness and the most effective way to communicate with the witness, and give any directions about the giving of evidence by the witness that the court considers appropriate for the fair and efficient conduct of the proceeding.[191]

2.6 Expert evidence, tendency evidence and coincidence evidence

2.6.1 Background

2.6.1.1 Expert evidence reforms

The Taskforce recommended amending the Evidence Act to allow for the admission of expert evidence about the nature and effects of sexual violence in similar terms to the approach in Victoria, and to adopt particular sections of the Uniform Evidence Law (UEL).[192]

The Bill inserts new s 103ZZGB into the Evidence Act to allow for the admission of expert evidence about the nature of sexual offences and the social, psychological and cultural factors that may affect the behaviour of a person who has been the victim, or who alleges that they have been the victim, of a sexual offence, including the reasons that may contribute to delay on the part of the victim to report the offence.[193]

186 Public hearing transcript, Brisbane, 19 July 2024, p 20.

187 DJAG and QCS, correspondence, 15 July 2024, p 32.

188 DJAG and QCS, correspondence, 15 July 2024, pp 32-33.

189 DJAG and QCS, correspondence, 24 July 2024, p 12.

190 DJAG and QCS, correspondence, 15 July 2024, p 33.

191 DJAG and QCS, correspondence, 15 July 2024, p 33.

192 Explanatory notes, p 14.

193 Explanatory notes, p 15.

DJAG advised the purpose of this evidence is to assist juries to understand victim-survivor behaviour that may seem counterintuitive, for example a victim-survivor maintaining a relationship with the accused after an alleged sexual offence. The evidence must be relevant and it cannot be led or used to reason that it is more or less likely that the complainant is telling the truth or that the offending occurred as alleged.[194]

To support the amendments, the Taskforce also recommended establishing an expert evidence panel for sexual offence proceedings that could be used by the prosecution, defence and the court (recommendation 80 of Report Two).

Currently, the admissibility of expert evidence in Queensland is governed by the common law. Expert evidence is an exception to the general rule at common law that evidence of opinion or belief is inadmissible (that is, cannot be considered by the court).

The Bill would expand the sexual offence expert evidence panel (panel) in s 103ZZH of the Evidence Act (as inserted by the Second Taskforce Act).[195]

As noted by the Taskforce, it is generally recognised that in order for expert evidence to be admissible, the following must be established:

- there is an organised branch of special skill or knowledge related to that area
- the witness must be sufficiently qualified in that area
- the opinion must not be in respect to a matter of common knowledge
- the opinion must not be in respect of the 'ultimate issue' (this prevents a witness from expressing an opinion about a fact that the court or a jury must determine themselves)
- the facts upon which the opinion is based must be capable of proof by admissible evidence.[196]

2.6.1.2 Panel members

The Bill provides that an expert is someone who can demonstrate specialised knowledge, gained by training, study or experience, of a matter that may constitute evidence about a sexual offence. An expert can be engaged whether or not they are on the panel. An expert can also be engaged by a party, or a court, if no party has engaged the expert and the court considers there is a good reason to call an expert. A party to the proceeding, a relative, friend or acquaintance of a party to the proceeding, or a potential witness in the proceeding (to a matter in issue other than the provision of expert evidence in this division) are excluded from giving expert evidence.[197]

The Bill also provides that the chief executive may have regard to the cultural competence and capability of the person, including whether they can demonstrate knowledge and understanding of a particular cultural group, for example, particular First Nations communities. The Bill provides criteria for the panel:

A person will not be suitable for the panel if they have:

- been the subject of professional discipline
- been denied, or removed from, professional registration, or

194 Explanatory notes, p 15.

195 Explanatory notes, p 16.

196 DJAG, correspondence, 6 June 2024, p 18.

197 DJAG, correspondence, 6 June 2024, p 21.

- a criminal history which indicates a lack of suitability to give evidence in a relevant proceeding.[198]

2.6.1.3 Admission of expert evidence

Clauses 28-38 and 44-45 of the Bill propose to amend the Evidence Act to allow for the admission of expert evidence about:

- the nature of sexual offences
- the social, psychological and cultural factors that may affect the behaviour of a person who has been the victim, or who alleges that they have been the victim, of a sexual offence, including the reasons that may contribute to a delay on the part of the victim to report the offence.[199]

This evidence can only be given in a criminal proceeding relating wholly or partly to a sexual offence (for example, rape). As recommended by the Taskforce, this is consistent with s 388 of the *Criminal Procedure Act 2009* (Vic).[200]

2.6.1.4 Implementation in stages

DJAG advised that, similar to the first stage of the panel, this stage will initially operate as a pilot in the Brisbane and Townsville Supreme and District Courts. This stage of the panel will also initially operate in the Brisbane, Caboolture, Cleveland, Redcliffe and Townsville Magistrates Courts for committal proceedings. The Bill amends the Evidence Regulation 2017 to prescribe these locations. However, the provisions do not prevent a party to a relevant proceeding in a prescribed location from engaging an expert who is not on the panel. Further, for proceedings outside prescribed locations, a party is still able to engage an expert who is not on the panel to provide expert evidence.[201]

2.6.1.5 Tendency and coincidence evidence

The Taskforce considered the threshold for the admission of propensity (or tendency) and similar fact (or coincidence) evidence in sexual offence cases and noted findings by the Royal Commission that Queensland has the most restrictive approach to the admissibility of this evidence in Australia. A modified form of the common law applies in relation to the admissibility of similar fact and propensity evidence in Queensland.[202]

DJAG explained the meaning of tendency evidence and coincidence evidence as follows:

> **Tendency (or propensity) evidence** is evidence of a person's discreditable character or previous conduct that is adduced to show that the person has or had a tendency to act in a particular way or to have a particular state of mind.
>
> **Coincidence (or similar fact) evidence** is evidence of previous events that is adduced to show that a person did a particular act or had a particular state of mind on the basis that it is improbable that the previous events and the charged event occurred coincidentally, having regard to any similarities in the events.[203]

Queensland does not currently have any legislative provisions governing the standard of proof for tendency evidence and coincidence evidence. Rather, this is found in common law. Tendency evidence and coincidence evidence are a type of circumstantial evidence, being an intermediate fact that the prosecution seeks to establish and rely on as circumstantial proof of the elements of the offence itself.

---

198 Bill, cls 34-36.

199 DJAG, correspondence, 6 June 2024, p 19.

200 Explanatory notes, p 14.

201 Explanatory notes, p 16.

202 DJAG, correspondence, 6 June 2024, p 21.

203 DJAG, correspondence, 6 June 2024, pp 21-22.

Case law establishes that only indispensable intermediate facts need to be proved beyond reasonable doubt and, in appropriate cases, a judge may give a direction to that effect. While some case law suggests that ordinarily, proof of the accused's tendency to act a particular way will not be an indispensable intermediate step in reasoning to guilt, other cases suggest that a jury should not be instructed to act upon evidence of sexual interest unless satisfied of the interest beyond reasonable doubt.[204]

The Taskforce recommended that Queensland amend the law relating to propensity (or tendency) and similar fact (or coincidence) evidence, in relation to all offences of a sexual nature, by amending the Evidence Act to adopt provisions in the terms of ss 97, 97A, 98 and 101 of the *Evidence Act 1995* (NSW) (NSW Evidence Act). The Taskforce, noting the gendered terms of reference under which it was operating, limited this recommendation to offences of a sexual nature.[205]

The Taskforce also considered that Queensland would benefit from existing jurisprudence in UEL jurisdictions when applying these provisions. Clauses 39 to 43 of the Bill give effect to this Taskforce recommendation, by adopting the law as it operates in New South Wales (NSW) and other UEL jurisdictions (with minor changes to reflect modern drafting practice and necessary Queensland modifications).[206]

2.6.1.6 Admissibility of coincidence and tendency evidence

Clauses 39 to 43 of the Bill propose to amend the Evidence Act to introduce rules governing the admissibility of tendency evidence and coincidence evidence in criminal proceedings.

The amendments provide that tendency evidence or coincidence evidence is not admissible unless it satisfies the 2-limbed test found in the NSW Evidence Act, and in other UEL jurisdictions. Proposed new ss 129AB(2) and 129AD(2) provide a 2-limbed test that such evidence is only admissible if:

- the court thinks that the evidence, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, will have significant probative value, and
- if the evidence is adduced by the prosecution about a defendant—the probative value of the evidence outweighs the danger of unfair prejudice to the defendant.[207]

DJAG advised that the proposed amendments require notice to be given if a party intends to adduce tendency evidence or coincidence evidence. The requirements for notice, in proposed new s 129AE reflect those found in the NSW Evidence Act and Evidence Regulation 2020 (NSW). This is a procedural requirement that, if not complied with, can be waived with leave of the court if the court is satisfied that it would be in the interests of justice to do so.[208]

2.6.1.7 Standard of proof

The Bill amends the Evidence Act to introduce new s 129AF to clarify the standard of proof applicable to tendency evidence and coincidence evidence. These provisions are largely modelled on relevant provisions in NSW, but have been drafted as a statement of law, rather than as directions to be given to a jury. The approach taken in the Bill means judges have the discretion to require tendency evidence or coincidence evidence to be proved beyond reasonable doubt in appropriate cases where such evidence is an indispensable link in a chain of reasoning towards an inference of guilt.

There are 2 exceptions to the standard of proof:

---

204 DJAG, correspondence, 6 June 2024, p 22.

205 Explanatory notes, p 17.

206 Explanatory notes, p 17.

207 DJAG, correspondence, 6 June 2024, p 24.

208 DJAG, correspondence, 6 June 2024, p 24.

- the court is satisfied that there is a significant possibility that a jury will rely on the tendency evidence or coincidence evidence as being essential to its reasoning in reaching a finding of guilt, or
- the evidence is adduced as both tendency evidence or coincidence evidence, and as proof of an element or essential fact of a charge.[209]

2.6.1.8 Transitional provisions

DJAG advised that the proposed provisions about tendency evidence and coincidence evidence will apply in a proceeding for an offence committed before the commencement only if an originating step for the proceeding is taken on or after the commencement.[210]

2.6.2 Issues of fundamental legislative principle

2.6.2.1 Expert evidence

The Bill raises issues relating to fundamental legislative principles including procedural fairness as it relaxes the normal rules of evidence applicable to legal proceedings. Any relaxation of the rules of evidence requires justification.[211]

The statement of compatibility states that the amendments may allow more expert evidence about the nature of sexual offences and about the social, psychological and cultural factors that may affect the behaviour of a person who has been the victim, or who alleges that they have been the victim, of a sexual offence.[212] The purpose of the amendments is to assist juries to make informed and unbiased assessments of the evidence by addressing common rape myths and misconceptions about the behaviour of victim-survivors.[213]

The explanatory notes seek to justify the relaxation of the normal rules of evidence on the basis that reports by experts are commonly admitted as an evidential facilitation and the expert can be cross-examined, providing a reasonable and practical opportunity to challenge the evidence in accordance with the principles of procedural fairness. Further, any departure from the normal rules of evidence may be justified on the basis that the expert evidence assists a court or jury to understand the issues at trial.[214] A further safeguard is that the court may exclude any evidence if satisfied that it would be unfair to the person charged.[215]

Committee comment

The committee considers the amendments proposed by the Bill pay sufficient regard to the rights and liberties of individuals in the context of natural justice and procedural fairness in light of the relaxation of the normal rules of evidence and the purpose for which the expert evidence is to be used.

2.6.2.2 Tendency and coincidence evidence

The amendments proposed by the Bill raise fundamental legislative principle issues in relation to procedural fairness as the amendments may allow more evidence to be admitted than under the current evidence rules.[216]

---

209 Explanatory notes, p 19.

210 DJAG, correspondence, 6 June 2024, p 24.

211 OQPC, Notebook, p 30.

212 Statement of compatibility, p 10.

213 Statement of compatibility, pp 10-11.

214 Explanatory notes, pp 24-5.

215 Explanatory notes, pp 24-5.

216 Explanatory notes, p 25. These proposed amendments may also raise issues in relation to the right to a fair hearing (*Human Rights Act 2019*, s 31). See statement of compatibility, pp 12-14.

The amendments are in response to recommendations from the Taskforce, are modelled on terms used in the NSW Evidence Act, and adopt similar language as used in the UEL (used in NSW, Victoria, Tasmania, the Australian Capital Territory and the Northern Territory).[217] The Taskforce noted that Queensland had the most restrictive approach to tendency evidence and coincidence evidence in Australia.[218]

The explanatory notes state that evidence that a defendant has behaved similarly in the past which is not presently admissible under the common law may be admissible under the proposed amendments.[219]

The statement of compatibility suggests that the amendments may allow more tendency evidence and coincidence evidence to be admitted in criminal proceedings, particularly in child sexual abuse proceedings, and that evidence may be considered prejudicial to the accused as it typically relates to an accused's prior misconduct, which may be influential in its effect upon a jury.[220] The statement of compatibility also states that the amendments will allow cross-admissibility of multiple victims' accounts and encourage more joint trials in multi-complainant cases against the same accused person, which will allow matters to be resolved more efficiently.[221]

The explanatory notes seek to justify these amendments on the basis of safeguards in the Evidence Act including that the court may exclude any evidence if it is satisfied that it would be unfair to the person charged to admit that evidence and a defendant has a reasonable and practical opportunity to challenge the evidence in court.[222]

Committee comment

The committee considers the amendments proposed by the Bill pay sufficient regard to the rights and liberties of individuals, in particular procedural fairness, in light of the relaxation of the normal rules of evidence in the context of tendency and coincidence evidence, considering its use in other jurisdictions and the safeguards built into the amendments.

2.6.3 Stakeholder feedback and department response

2.6.3.1 Common law and expert evidence

LAQ noted that legislative amendment is not required to allow expert evidence to be admitted in appropriate cases, providing certain common law rules are met.[223]

DJAG noted and acknowledged that the admission of expert evidence in Queensland is predominantly governed by common law.[224] The department noted that some stakeholders made submissions to the Taskforce, in similar terms to the concerns raised by LAQ, and said that where expert evidence is relevant and admissible in a trial, it is already routinely admitted in Queensland. Despite this feedback, the Taskforce considered that enabling the admission of expert evidence would support jury decision making in trials involving sexual offences.[225]

The department and the Taskforce acknowledged that, to allow this type of expert evidence to be admitted in Queensland, the common law rules relating to expert evidence as to common knowledge

217 Explanatory notes, pp 2, 14, 17-18, 28.

218 Explanatory notes, p 16.

219 Explanatory notes, p 26.

220 Statement of compatibility, p 12.

221 Statement of compatibility, p 12.

222 Explanatory notes, p 26.

223 Submission 5, pp 9-10.

224 DJAG and QCS, correspondence, 15 July 2024, p 41.

225 DJAG and QCS, correspondence, 15 July 2024, p 41.

and the ultimate issue rule would need to be abolished, as has been done in the UEL jurisdictions across Australia.[226]

2.6.3.2 Admission of expert evidence

RANZCP supported the amendments to allow for the admission of expert evidence about the nature of sexual offences and factors that may impact a victim-survivor's behaviour in sexual violence proceedings.[227] RANZCP cautioned that rape myths and stereotypes about how a genuine victim of sexual violence should behave might be unfairly used to discredit a victim-survivor witness in a criminal trial. For example, where a victim-survivor does not immediately report an offence, the delay in reporting the offence could be used as a tool to attack their credability or to suggest they are not telling the truth because of the assumption that a genuine victim would not behave in that way.[228]

QIFVLS supported the amendments and submitted that 'the admission of this evidence is a vital and necessary step to help clear misconceptions, rape myths and negative stereotypes about the nature of sexual offences and factors that might affect the behaviour of victims'.[229] DVConnect considered that expert panels generally possess a collective understanding of gendered violence, a contextual analysis of violence and victim-survivors' responses to violence and that this collective knowledge is integral to ensuring victim-survivors' wellbeing in criminal proceedings.[230] The NQWLS and SI Brisbane also supported the amendments.[231]

Conversely, the BAQ submitted that permitting an expert to give an opinion about common behaviours of sexual assault survivors to assist the jury to consider whether a complainant is truthful or offer opinions about whether the witness' behaviour is consistent or inconsistent with the behaviour of a survivor of sexual assault is illogical if the premise of such evidence is that there is no atypical response.[232] The QLS raised similar concern, stating that the purpose of schemes in other jurisdictions is to prevent juries from acting on common misconceptions or biases, rather than altering the standard of proof.[233] At the public hearing, representatives of the QLS stated that they struggled to see any benefit to the inclusion of expert evidence panels in jury trials for sexual offences.[234]

LAQ suggested that the most appropriate mechanism for dispelling myths, stereotypes and assumptions is via judicial direction.[235] LAQ raised concerns that introducing a new body of expert evidence is likely to add further complexity and time both at trial and while the evidence is being gathered and disclosed.[236] LAQ noted that there will likely be an increase in pretrial hearings to determine the admissibility and limits of expert evidence.[237] Further, LAQ suggested that the amendments could create a 'trial within a trial' where parties to a prosecution each lead evidence from competing experts.[238]

---

226 DJAG and QCS, correspondence, 15 July 2024, pp 41-42.

227 Submission 12, p 5.

228 Submission 12, p 5.

229 Submission 7, p 6.

230 Submission 8, p 5.

231 Submission 6, p 2; submission 10, p 5.

232 Submission 13, pp 3-4.

233 Submission 11, p 4.

234 Public hearing transcript, Brisbane, 19 July 2024, p 15.

235 Submission 5, p 14. See also *R v Cotic* [2003]QCA 435; Queensland Supreme and District Court Bench Book, direction 52a.

236 Submission 5, pp 13-15.

237 Submission 5, p 14.

238 Submission 5, p 14.

DJAG noted that the Taskforce noted that impacts of trauma on victim-survivors during and after the assault, and while being interviewed, medically examined, and giving evidence, were not well understood by police, the legal profession or judicial officers.[239]

Further, research commissioned by the Taskforce revealed some evidence of rape myths influencing participating community members' understanding and attitudes to sexual consent.[240] The Taskforce considered that the admission of expert evidence is likely to help address this lack of understanding about sexual offending, and likely support jury decision making in trials involving sexual offences.[241]

DJAG stated that the evidence must be relevant and cannot be led or used to reason that it is more or less likely that the complainant is telling the truth or that the offending occurred as alleged.[242] DJAG noted that while both judicial directions and expert evidence may seek to dispel myths and stereotypes, they perform distinct functions in the criminal justice process and may have distinct impacts upon a jury or a finder of fact.[243] A judicial officer is to direct the jury on the law and how they should approach their task. For example, the judicial directions legislated in other tranches of the Queensland government response to the Taskforce provide juries with more general guidance in this respect.

Committee comment

The committee appreciates the need for balance between the rights of the accused and the need to provide information to juries to assist in decision making. The committee acknowledges that expert evidence in these circumstances is appropriate and in line with Taskforce recommendations and prevailing public opinion.

2.6.3.3 Membership of the expert evidence panel

LAQ noted that the pilot expert evidence panel will not extend to all court locations across the state, and that this has the potential to result in disproportionate use of expert reports based on an accused's location (and may disadvantage accused persons from rural and remote areas, including having a disproportionate impact on First Nations communities).[244]

QIFVLS acknowledged the significance of the proposed s 103ZZH(4) as a means for ensuring that panel members are armed with cultural awareness.[245] QIFVLS proposed this should go further and cultural competence and capability be a pre-requisite for inclusion on the panel given the significant cohort of Aboriginal and Torres Strait Islander victim-survivors.[246] QIFVLS noted that it will be equally important to understand how the chief executive of the department determines that a prospective panel member possesses the requisite cultural competence and capability, and seeks opportunities for enhanced collaboration and partnership between DJAG and stakeholders in this field, including Aboriginal and Torres Strait Islander peak bodies for DFV and sexual violence.[247]

239 DJAG and QCS, correspondence, 15 July 2024, p 38.

240 DJAG and QCS, correspondence, 15 July 2024, pp 38-39.

241 DJAG and QCS, correspondence, 15 July 2024, p 38.

242 DJAG and QCS, correspondence, 24 July 2024, p 16.

243 DJAG and QCS, correspondence, 15 July 2024, p 39.

244 Submission 5, pp 14-15.

245 Submission 7, p 6.

246 Submission 7, pp 6-7.

247 Submission 7, pp 6-7.

Further, QIFVLS noted that new s 103ZZGE(1) provides that the expert engaged by a party to a criminal proceeding to give evidence need not be included on the panel.[248] QIFVLS considers that the parties to the proceeding should engage experts from the panel.[249]

Under the Bill, an expert can give an opinion explaining the social, psychological, and cultural factors that may clarify why a victim-survivor behaved in a particular way.[250] To support these amendments, the Bill expands the panel. This expanded stage will also operate as a pilot, initially in:

- the Brisbane and Townsville Supreme and District Courts, and
- the Brisbane, Caboolture, Cleveland, Redcliffe, and Townsville Magistrates Courts for committal proceedings.[251]

The department noted that the government funded the establishment of the pilot, which will provide access to expert reports and evidence, to support the relevant amendments in the Bill and other legislation.[252] This includes funding the provision of expert reports in prescribed locations, which will be covered by the panel's operating budget.[253] DJAG noted that the efficacy of the panel will be evaluated after it has been operating in the pilot locations for 2 years.[254]

Further, the department noted the Bill also provides that in determining whether to appoint a person to the panel, the chief executive may have regard to the cultural competence and capability of the person, including whether the person can demonstrate knowledge and understanding of a particular group.[255] This enables discretion on the part of the chief executive, acknowledging that this cultural competence and capability will be relevant in particular cases and for particular victims and enables a variety of experts to be appointed to form the panel.[256]

DJAG noted that an Expert Evidence Panel Program Team has been set up within DJAG and a Steering Committee comprising representatives from the judiciary, the profession, Office of the Victims Commissioner, the First Nations Justice Officer and relevant government departments has been established to oversee implementation activities.[257] DJAG acknowledged that further details, including in relation to appointment and establishment of the panel and opportunities for collaboration and consultation with key stakeholders, are being considered as part of implementation activities prior to commencement.[258]

Committee comment

The committee notes that review of the pilot program for the expert panel will occur outside of the statutory review provisions and that the accelerated review timeline for this program is appropriate.

248 Submission 7, p 7.

249 Submission 7, p 7.

250 Explanatory notes, p 16.

251 Explanatory notes, p 16.

252 DJAG and QCS, correspondence, 15 July 2024, pp 40-45.

253 DJAG and QCS, correspondence, 15 July 2024, p 43.

254 DJAG and QCS, correspondence, 15 July 2024, p 45.

255 DJAG and QCS, correspondence, 15 July 2024, pp 44-45.

256 DJAG and QCS, correspondence, 15 July 2024, pp 44-45.

257 DJAG and QCS, correspondence, 15 July 2024, p 45.

258 DJAG and QCS, correspondence, 15 July 2024, p 45.

2.6.3.4 Application of new tests

The BAQ submitted that if a new test is introduced, it should apply to all offences.[259] Conversely, the QLS suggested that if reform in this area is to be effected, it should be limited to sexual offence proceedings, and the test set out in the High Court case of *Pfennig v The Queen*[260] should continue to apply in all other criminal proceedings.[261] The QLS submitted that the proposition that uncharged, prior discreditable conduct evinces, in a relevant and admissible way on another or other occasions and/or has or had a particular state of mind on another or other occasions, is qualitatively different and less compelling in respect of charges of a non-sexual nature.[262]

The department noted that the Taskforce concluded, given its gendered terms of reference and the confined focus of its discussion papers and consultations, that the recommended amendments concerning tendency evidence and coincidence evidence should be limited to sexual offences.[263] However, the Taskforce ultimately concluded that this was an appropriate opportunity for the government to consider its application to all criminal offences in Queensland, as in the UEL jurisdictions.[264]

The department stated the new tendency and coincidence evidence framework will apply in all criminal proceedings, as noted by the BAQ.[265] The department advised this will ensure that a consistent approach is taken to tendency evidence and coincidence evidence in all criminal proceedings in Queensland.[266] DJAG acknowledged that this reflects the position in other UEL jurisdictions.[267]

2.6.3.5 Tendency and coincidence evidence

The NQWLS,[268] SI Brisbane,[269] and the RANZCP supported the amendments to the admissibility of propensity (tendency) and similar fact (coincidence) evidence. RANZCP submitted that the amendments 'ensure that relevant evidence is admitted in criminal trials and reduces the likelihood of unjust acquittals'.[270]

LAQ suggested that the case for reform was not apparent.[271] The submitter considered that the current common law position, in *R v McNeish*,[272] demonstrates that Queensland courts are alive to the dynamics of sexual abuse and framing the law responsively.[273] LAQ suggested that the amendments will not, in practice, achieve their intended purpose, but will instead substantially interfere with important human rights that are fundamental to the functioning of the criminal justice system.[274] LAQ submitted that the existing legislative framework already provides the 'less restrictive

259 Submission 13, pp 4-5.

260 [1995] HCA 7.

261 Submission 11, p 5; Queensland Law Society (QLS), correspondence, 26 July 2024, pp 1-2.

262 Submission 11, p 5.

263 DJAG and QCS, correspondence, 24 July 2024, p 25.

264 DJAG and QCS, correspondence, 24 July 2024, p 25. See Report One, vol II, p 327.

265 DJAG and QCS, correspondence, 24 July 2024, pp 24-25.

266 Explanatory notes, p 17.

267 DJAG and QCS, correspondence, 24 July 2024, p 25.

268 Submission 10, pp 4-5.

269 Submission 6, p 2.

270 Submission 12, pp 5-6.

271 Submission 5, p 20.

272 [2019] QCA 191, affirmed by *R v Thomson* [2022] QCA 36.

273 Submission 5, pp 15-20.

274 Submission 5, p 20.

and reasonably available' way of achieving the purpose of the amendments, which is more compatible with human rights of the accused and, in some cases, the victim.[275]

The BAQ submitted that the current common law test is adequate and amendments are not required.[276] The BAQ submitted that the new test for admissibility should recognise the potential for unfair prejudice to an accused and put in place protections against the dangers of this type of evidence.[277]
The BAQ noted that the UEL provisions upon which the amendments are based have been litigated for many years, including in the High Court.[278]

LAQ suggested that any proposed reforms to tendency evidence and coincidence evidence should be referred to the Queensland Law Reform Commission for detailed consideration.[279] The QLS noted that the current common law test is as set out in *Pfennig v The Queen* and that the validity of that test has not diminished with the passage of time:

> … the current common law test recognises the potent degree of prejudice for a defendant that attends the admission of evidence of uncharged and prior discreditable conduct. It is widely accepted that whatever judicial directions are given about the limits of the permissible use of such evidence, Jury's [sic] tend to give it more weight that it logically deserves. Accordingly, evidence of the type is only admissible if the criteria set out in Pfennig are met.[280]

The department noted that the Taskforce, in its report, discussed LAQ's submission to the Taskforce that, '[t]he relatively recent decision of *R v McNeish* provides a comprehensive statement of the law in Queensland' and considered a suggestion by LAQ that, to provide future certainty, all that was needed was to effectively 'codify' the law as outlined in that decision.[281] However, the Taskforce considered that to 'codify' *R v McNeish* would not be straightforward and, in any case, that this approach would neither address the problem of inconsistency between this aspect of the law in Queensland and that in all other Australian jurisdictions, nor meet the recommendations of the Royal Commission.[282] The Taskforce noted, however, that the decision in *R v McNeish* has, for the time being, moved Queensland closer to the position under the UEL and that to now adopt this aspect of the UEL provisions no longer represents such a significant change for Queensland legal practitioners.[283]

DJAG noted that the reforms introduce a new 2-limb test for the admissibility of tendency evidence and coincidence evidence.[284] This test recognises the potential for unfair prejudice to an accused and provides that such evidence is not admissible unless:

- the court thinks that the evidence, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, will have significant probative value, and
- if the evidence is adduced by the prosecution about a defendant—the probative value of the evidence outweighs the danger of unfair prejudice to the defendant.[285]

---

275 Submission 5, p 20.

276 Submission 13, p 4.

277 Submission 13, pp 4-5.

278 Submission 13, p 4.

279 Submission 11, p 5; submission 5, p 15.

280 QLS, correspondence, 26 July 2024, p 1-2.

281 DJAG and QCS, correspondence, 15 July 2024, p 47. See Report One, vol II, pp 326-327.

282 DJAG and QCS, correspondence, 15 July 2024, p 47.

283 DJAG and QCS, correspondence, 15 July 2024, p 47.

284 DJAG and QCS, correspondence, 15 July 2024, pp 51-52.

285 Explanatory notes, p 15.

DJAG otherwise noted that, consistent with the Taskforce's recommendation, the Bill is largely modelled on other UEL jurisdictions, with minor changes to reflect modern drafting practice and necessary Queensland modifications.[286]

2.6.3.6 Rebuttable presumption in child sexual offence proceedings

The BAQ strongly opposed the creation of a legislative presumption as to admissibility in sexual cases of 'tendency evidence'.[287] The BAQ considers that sexual offending against children is the most prejudicial type of similar fact evidence and is therefore most likely to be misused by a jury.[288] The BAQ considers that, for the probative value of the evidence to outweigh its purely prejudicial effect, it would have to show more than some sexual interest in a child at some point in the accused's life, and that sexual interest alone, without acting upon it, could not usually be significantly probative of anything.[289] The BAQ considers that the matters proposed in new s 129AC(4) are all of the matters that should be considered in determining whether the tendency evidence has any probative value, and whether that probative value exceeds the merely prejudicial effect of the evidence.[290] The BAQ considers that these matters should not be excluded from consideration, but rather should be the focus of the Inquiry into the probative value of the evidence.[291]

Conversely, the NQWLS wholly supported the amendments which allowed for the admissibility of relevant evidence for offences of a sexual nature which involve children.[292] They acknowledged the challenges in obtaining evidence from child victim-survivors and the frustration of the process when parents are told there is not enough evidence to pursue charges.[293] The NQWLS noted that any amendments which allow evidence to be admissible to assist in addressing these issues will be a benefit.[294]

DJAG noted that this reform is being progressed in response to recommendation 75 of Report Two, which was supported by government.[295] After careful consideration, the Taskforce supported implementation of the Royal Commission recommendations in respect of tendency evidence and coincidence evidence in child sexual offence proceedings, and concluded that Queensland should adopt ss 97, 97A, 98 and 101 of the of the NSW Evidence Act.[296]

DJAG noted that the rebuttable presumption will not operate in relation to tendency evidence generally and will only operate in criminal proceedings in which the commission of a child sexual offence is a fact in issue.[297] Further, the rebuttable presumption only applies to tendency evidence about the sexual interest the defendant has or had in children even if the defendant has not acted on the interest, or tendency evidence about the defendant acting on a sexual interest the defendant has or had in children.[298]

---

286 DJAG and QCS, correspondence, 24 July 2024, p 24.

287 Submission 13, pp 4-5.

288 Submission 13, p 4.

289 Submission 13, pp 4-5.

290 Submission 13, p 5.

291 Submission 13, p 5.

292 Submission 10, pp 4-5.

293 Submission 10, p 5.

294 Submission 10, p 5.

295 DJAG and QCS, correspondence, 15 July 2024, pp 46-47; DJAG and QCS, correspondence, 24 July 2024, p 22.

296 DJAG and QCS, correspondence, 15 July 2024, p 47; DJAG and QCS, correspondence, 24 July 2024, p 22.

297 DJAG and QCS, correspondence, 15 July 2024, pp 51-52; DJAG and QCS, correspondence, 24 July 2024, p 23.

298 DJAG and QCS, correspondence, 15 July 2024, p 52.

DJAG acknowledged the submission that the onus of satisfying a court that tendency evidence is admissible should be on the party seeking its admission.[299] Relevantly, DJAG clarified that the rebuttable presumption only applies to the first limb of the test for admissibility (that is, that the evidence will have significant probative value).[300] For the tendency evidence to be admitted, the second limb of the test must still be satisfied by the prosecution in each case (that is, that the probative value of the evidence outweighs the danger of unfair prejudice to the defendant).[301] In addition, new s 129AC(3) provides that the presumption may be rebutted if a court determines that the tendency evidence does not have significant probative value, if there are sufficient grounds to do so.[302]

2.6.3.7 Standard of proof

The BAQ suggested that a provision analogous to s 161A of the *Criminal Procedure Act 1986* (NSW) should be enacted to remove doubt about the standard of proof that applies to tendency and coincidence evidence.[303] DJAG noted that new s 129AF of the Bill is modelled on s 161A of the *Criminal Procedure Act 1986* (NSW).[304]

2.6.3.8 Proposed Part 7A

LAQ recommended that provisions be inserted into proposed Part 7A of the Bill that replicates s 94(1) and (3) of the UEL in NSW, Victoria and the Commonwealth.[305] LAQ raised concerns that not adopting the restrictions in these provisions would mean tendency and coincidence rules apply much more widely than is intended or is the case interstate and unfairly restrict the conduct of the prosecution case and defence case at trial.[306] LAQ noted that, if an equivalent of s 94(1) is not included, standard lines of cross-examination might be prevented.[307]

LAQ further submitted that a provision be inserted into Part 7A of the Bill that replicates s 94(2) of the UEL to avoid creating practical difficulties in the conduct of bail and sentencing hearings.[308] LAQ considers that, if s 94(2) is not included, bail hearings and sentence hearings might be slowed down significantly.[309]

QIFVLS noted that determining what is relevant evidence under s 103CB, including considering the evidence given by an expert on domestic violence, will be important considerations for the court.[310] QIFVLS emphasised that the explanatory notes highlight the potential for the proposed new 2-limb tests for tendency evidence and coincidence evidence to intersect with existing s 103CB of the Evidence Act.[311] QIFVLS noted that courts will need to consider the perspective of Aboriginal and Torres Strait Islander parties to proceedings and be mindful of the potential overlap that may occur where there are incidences involving a misidentified perpetrator of domestic violence.[312]

299 DJAG and QCS, correspondence, 24 July 2024, p 23.

300 DJAG and QCS, correspondence, 24 July 2024, p 23.

301 DJAG and QCS, correspondence, 24 July 2024, p 23.

302 DJAG and QCS, correspondence, 24 July 2024, p 23.

303 Submission 13, p 5.

304 DJAG and QCS, correspondence, 24 July 2024, p 24.

305 Submission 5, pp 20-21.

306 Submission 5, pp 20-21.

307 Submission 5, p 21.

308 Submission 5, p 21.

309 Submission 5, p 21.

310 Submission 7, pp 5-6.

311 Submission 7, p 5.

312 Submission 7, p 6.

DJAG noted that further consideration of this issue is required, having regard to the existing frameworks.[313] The *Bail Act 1980*, the *Penalties and Sentences Act 1992* and the Evidence Act provide relevant law for bail and sentencing procedure in Queensland.[314]

DJAG noted the feedback of the impact and operation of Part 7A for Aboriginal and Torres Strait Islander persons and the existing operation of the Evidence Act.[315]

2.6.3.9 Notice requirements

LAQ recommended that new s 129AE(1) be amended to remove the requirement that notice be given 5 weeks in advance of the start of trial.[316] Instead, LAQ proposed that parties intending to adduce tendency evidence or coincidence evidence be required to give 'reasonable notice' of their intention to adduce such evidence, with regulations or rules of court made to stipulate what constitutes 'reasonable notice'.[317] LAQ noted that this approach permits courts to devise appropriately tailored timelines, would enable timelines to be amended much easier if they proved unworkable, and would reduce the need for an excessive number of applications for leave to dispense with notice requirement.[318]

LAQ noted that it would be appropriate that a defendant, at least through their legal representatives, be able to approach that person and consider whether to call that person as a witness, and that concerns about the privacy or vulnerability of such potential witnesses could be ventilated by the prosecution at the hearing of such an application.[319] LAQ suggested that contact details (such as an email address or phone number) may be more appropriate to provide than a physical address.[320] LAQ recommended that a subsection in similar terms to ss 5(3) and 6(3) of the Evidence Regulation 2020 (NSW) be included in new s 129AE.[321]

DJAG acknowledged that the inclusion of provisions that are equivalent to s 94(1) and (3) of the NSW Evidence Act would exclude the application of the tendency and coincidence framework introduced by the Bill, where the evidence is adduced that relates only to the credibility of the witness, or evidence about a person's character, reputation or conduct, or a tendency that person had, if that is a fact in issue.[322]

313 DJAG and QCS, correspondence, 15 July 2024, p 49.

314 DJAG and QCS, correspondence, 15 July 2024, p 49.

315 DJAG and QCS, correspondence, 15 July 2024, p 52.

316 Submission 5, pp 22-23.

317 Submission 5, pp 22-23.

318 Submission 5, p 23.

319 Submission 5, p 24.

320 Submission 5, p 24.

321 Submission 5, p 24.

322 DJAG and QCS, correspondence, 15 July 2024, p 49-50.

Further, DJAG noted that a procedure already exists to enable a defendant to apply to receive contact details for a witness in Chapter 62 of the Criminal Code.[323] DJAG concluded that the existence of this framework would render the inclusion of provisions in the Bill in equivalent terms to ss 5(3) and 6(3) of the Evidence Regulations 2020 (NSW) unnecessary.[324]

Committee comment

The committee acknowledges that changes to the operation of evidence law are complex and may have far reaching implications. However, the committee is satisfied that the proposed introduction of uniform evidence law provisions is appropriate in light of the recommendations from the Women's Safety and Justice Taskforce and the Royal Commission into Institutional Responses to Child Sexual Abuse Report.

[323] DJAG and QCS, correspondence, 15 July 2024, pp 50-51.

[324] DJAG and QCS, correspondence, 15 July 2024, p 51.

Appendix A – Submitters

Sub #	Submitter
1	Nerang Neighbourhood Centre
2	The Uniting Church in Australia Queensland Synod
3	Queensland Sexual Assault Network
4	Queensland Family and Child Commission
5	Legal Aid Queensland
6	Soroptimist International of Brisbane Inc
7	Queensland Indigenous Family Violence Legal Service
8	DVConnect
9	University of the Sunshine Coast
10	North Queensland Women's Legal Service
11	Queensland Law Society
12	The Royal Australian and New Zealand College of Psychiatrists
13	Bar Association of Queensland

Appendix B – Officials at public departmental briefing

Public briefing – Brisbane – 10 June 2024

Department of Justice and Attorney-General

- Greg Bourke, Acting Executive Director
- Bridie McQueenie, Acting Director
- Ellen Corrigan, Principal Legal Officer
- Emma Hislop, Acting Principal Legal Officer
- Emily McGregor, Acting Senior Legal Officer

Appendix C – Witnesses at public hearing

Public hearing – Brisbane – 19 July 2024

DVConnect

- Michelle Royes, Director, Social Impact and Advocacy
- Rhea Mohenoa, Director, Client Services (Recovery & Healing)

Bar Association of Queensland

- Andrew Hoare KC, Chair, Criminal Law Committee
- Charlotte Smith, Member, Criminal Law Committee

University of the Sunshine Coast

- Dr Dominique Moritz, Associate Dean (Learning and Teaching)
- Dr Dale Mitchell, Lecturer in Law

Queensland Law Society

- Bridget Cook, Senior Policy Solicitor
- Patrick Quinn, Deputy Chair, Criminal Law Committee

Queensland Indigenous Family Violence Legal Service

- Thelma Schwartz, Principal Legal Officer
- Kulumba Kiyingi, Senior Policy Officer