

Justice and Other Legislation Amendment Bill 2023

Explanatory Notes

Short title

Justice and Other Legislation Amendment Bill 2023 (the Bill).

Policy objectives and the reasons for them

One of the principal objectives of the Bill is to clarify, strengthen and update legislation concerning the administration of justice, including legislation relating to the operation of courts and tribunals, the regulation of the legal profession, the conduct of civil proceedings and electoral matters.

Specific amendments contained in the Bill aim to:

- modernise the *Appeal Costs Fund Act 1973* (Appeal Costs Fund Act) and improve its current fee and administrative arrangements;
- replace the *Court Funds Act 1973* (Court Funds Act) with a new, modernised court funds legislative framework under the *Civil Proceedings Act 2011* (Civil Proceedings Act);
- clarify the operation of a provision of the Civil Proceedings Act with respect to payment of interest on a money order debt;
- recognise interstate cremation permits issued by coroners in other jurisdictions under the *Cremations Act 2003* (Cremations Act);
- remove restrictions in the *Criminal Law (Sexual Offences) Act 1978* (CLSO Act) which prohibit identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceedings;
- clarify the scope of the offence of assisting in the performance of a termination of pregnancy under section 319A of the Criminal Code with respect to ‘supplying or procuring the supply of a termination drug’ to address concerns that the offence might apply more widely than originally intended and extend to a person providing financial support to a pregnant person to access a lawful termination;
- amend the *District Court of Queensland Act 1967* (DCQ Act) and the *Magistrates Courts Act 1921* (MC Act) to allow the courts to make preliminary disclosure orders;
- make improvements to the *Electoral Act 1992* (Electoral Act) to enfranchise voters and optimise administrative efficiency ahead of the 2024 state general election;
- amend section 52 of the *Human Rights Act 2019* (HR Act) to provide that, in a proceeding in the Land Court or Land Appeal Court, a party to the proceeding must give notice in the approved form to the Attorney-General and the Queensland Human Rights Commission (QHRC) in certain circumstances;
- amend the *Justices of the Peace and Commissioners for Declarations Act 1991* (JPs Act) to enhance appointment, disqualification and complaints processes and conduct standards for Justices of the Peace (JPs) and Commissioners for Declarations (Cdecs);
- address issues that have arisen in the implementation of amendments made to the *Oaths Act 1867* (Oaths Act) by the *Justice and Other Legislation Amendment Act 2021*;

- address the increasing risk to clients' privacy and confidentiality arising from the prolonged retention of client documents by law practices, the Queensland Law Society (QLS) and community legal centres (CLCs), and the mounting substantial costs associated with securely storing large volumes of client files that are no longer of utility in the *Legal Profession Act 2007* (LP Act);
- reduce the regulatory burden for law practices while promoting costs transparency for consumers of legal services through changes to cost disclosure obligations under the Legal Profession Act;
- streamline processes around the advertising and appointment of various positions within the Queensland Civil and Administrative Tribunal (QCAT) under the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act);
- streamline the notification requirement for admission guidelines issued under the *Supreme Court of Queensland Act 1991* (SCQ Act); and
- remove public accountants from the scope of the *Trust Accounts Act 1973* (Trust Accounts Act).

The Bill will also, where possible, remove unnecessary provisions in the *Public Guardian Act 2014* (Public Guardian Act) and fall back on the general employment arrangements established in the *Public Sector Act 2022* (Public Sector Act) to clarify employment arrangements applying to community visitors.

Community visitors protect the rights and interests of adults with impaired capacity living in visitable sites, and children living in visitable locations across Queensland. Community visitors visit children and young people in care, including children in foster and kinship care, residential care, youth detention, correction facilities and mental health facilities. Community visitors are available whenever a child or young person needs their help; providing advocacy, support and information about any matter that is concerning them.

Community visitors are appointed under the Public Guardian Act and with the commencement of the Public Sector Act on 1 March 2023, are now treated as public sector employees. Consistent with the objectives of the Public Sector Act, the amendments will ensure community visitors, as public sector employees, have a consistent and fair employment framework, including rights and obligations.

However, in acknowledgement of the independent role of community visitors and the significant position of trust they hold in supporting and advocating for some of Queensland's most vulnerable, some existing longstanding arrangements under the Public Guardian Act will be continued. The amendments respect the unique position that community visitors hold and ensure they continue to be held to highest possible standards.

Another principal objective the Bill is to better recognise the deaths of unborn children as a result of criminal conduct. As under Queensland law an unborn child does not have legal status as a person and becomes a person capable of being killed only when it has completely proceeded in a living state from its mother (a legal position, known as the 'born alive' rule), offences such as murder and manslaughter do not apply in relation to an unborn child. Since 2014, following the death of an unborn child as a result of culpable driving, there have been calls to recognise unborn children as legal persons (also called 'fetal personhood'), and the Government committed to consider reforms to better recognise the deaths of unborn children as a result of criminal conduct.

The Bill also aims to make amendments of a minor, technical, and clarifying nature to various Acts.

Achievement of policy objectives

The Bill achieves these objectives by amending:

- the *Acts Interpretation Act 1954* and the *Statutory Instruments Act 1992* to clarify and simplify various provisions relating to the interpretation of Acts and statutory instruments;
- the *Attorney-General Act 1999* to clarify that the Attorney-General may grant fiats to enable entities to continue, as well as to start, proceedings in the Attorney-General's name;
- the Appeal Costs Fund Act to:
 - provide that the Appeal Costs Fund Board (the Board) must not make payment from the Appeal Costs Fund (the Fund) to Legal Aid Queensland;
 - remove the existing categories of claims on the Fund under section 15, compensation from the Fund following a successful civil appeal based on a question of law) and section 17 relating to claims in limited circumstances on a successful appeal from a decision of a Magistrates Court;
 - provide that the Board must not issue a certificate for payment from the Fund unless the applicant gives the Board an application within one year after an indemnity certificate for the payment is granted; or, if a person is entitled to the payment without the grant of an indemnity certificate, the day on which the entitlement arises. The Board may, however, allow an application outside of the one year period if it is reasonable to do so; and
 - streamline the current fees under the Appeals Cost Fund Act by removing them from the Act and combining them with general originating process fees;
- the *Civil Liability Act 2003*, the *Motor Accident Insurance Act 1994* and the *Personal Injuries Proceedings Act 2002* to simplify the annual indexation process for certain prescribed monetary amounts relating to costs and damages for personal injury under those Acts;
- the Court Funds Act to replace the Act with a new, modernised court funds legislative framework under the Civil Proceedings Act;
- the Civil Proceedings Act, section 59 to clarify that interest is payable on all orders for damages or costs, whether for a stated amount or, in the case of costs, an amount to be ascertained under the *Uniform Civil Procedures Rules 1999* or otherwise after the order is made;
- the Cremations Act to recognise interstate cremation permits issued by coroners in other jurisdictions as a permission to cremate in Queensland;
- the CLSO Act to remove the provisions which prohibit identification of an adult defendant charged with a prescribed sexual offence (being rape, attempt to commit rape, assault with intent to rape and sexual assault) prior to finalisation of committal proceedings;
- the Criminal Code, section 319A, to provide that, with regard to procuring the supply of a termination drug, an unqualified person assists in the performance of a termination if they procure the supply of the termination drug from another unqualified person,¹ to clarify that a person who provides financial assistance to facilitate access to a termination drug supplied by a qualified person does not commit an offence;

¹ An unqualified person in this context means a person who is not a medical practitioner, a prescribed student, or a prescribed practitioner providing the assistance in the practice of the practitioner's prescribed health profession.

- the DCQ Act and MC Act to allow the courts to make a preliminary disclosure order for the purpose of enabling the applicant to: (a) ascertain the identity or whereabouts of a prospective defendant; or (b) make a decision about starting a proceeding against a prospective defendant;
- the Electoral Act to:
 - provide that a ballot paper secured in the reply-paid envelope supplied by the Electoral Commission of Queensland that also contains a completed declaration on a declaration envelope may be counted regardless of whether the postal vote is actually inside the declaration envelope (note corresponding amendment made to the *Referendums Act 1997* (Referendums Act));
 - expand the definition of *special postal voter* to include electors who are patients in a hospital that is not a polling place, and electors who are ill or infirm and unable to travel to a polling place or those caring for the ill or infirm;
 - trigger the audit requirements for Electronically Assisted Voting (telephone voting) at by-elections only where there has been a major change to the information technology since the last audit;
 - remove a 60-day timeframe associated with the Queensland Redistribution Commission's (QRC) finalising an electoral redistribution and instead require it to be made 'as soon as practicable'; and
 - specify the cut-off time for the close of electoral rolls as 6pm on the relevant cut-off day (note corresponding amendments have been made to the Referendums Act);
- the HR Act, section 52 to provide that in a proceeding in the Land Court or Land Appeal Court, where a question of law arises that relates to the application of the HR Act or a question arises in relation to the interpretation of a statutory provision in accordance with the HR Act, a party to the proceeding must give notice in the approved form to the Attorney-General and the QHRC;
- the JPs Act to:
 - clarify and modernise the provisions relating to qualification for, and disqualification from, office as a JP or Cdec;
 - give legislative effect to a code of conduct for JPs and Cdecs;
 - enable the chief executive to suspend, and appoint an investigator to investigate the conduct of, JPs and Cdecs, with the investigation report to be provided to the Attorney-General for the purpose of deciding whether or not to recommend to the Governor in Council that the JP or Cdec be removed from office;
 - provide for the continuous criminal history monitoring of JPs and Cdecs post-appointment by the Queensland Police Service;
 - provide a reasonable excuse defence for persons who inadvertently breach the offence of acting as a JP or Cdec without holding such office because they did not know, and could not reasonably be expected to have known, that they did not hold the office (for example, because they are unaware that their appointment has been suspended or revoked); and
 - provide that anything done by a person in their purported capacity as a JP or Cdec is not invalid only because, at the time the thing was done, the person was not validly appointed, or the person's appointment had lapsed, was suspended, or had otherwise ended. This is to protect members of the community who utilise the services of a JP or Cdec and who are unaware the JP or Cdec is no longer authorised to provide those services;

- the LP Act to:
 - allow a law practice, the QLS and CLCs to destroy or dispose of any client documents held by a law practice if: a period of seven years has elapsed since the completion of the matter; the law practice has been unable to obtain instructions from the client, despite making reasonable efforts to do so; and it is reasonable in the circumstances, having regard to the nature and content of the document, to destroy the document;
 - increase the prescribed amount under section 311 of the LP Act (which triggers cost disclosure obligations for a law practice) from \$1,500 to \$3,000; provide that an abbreviated costs disclosure obligation will apply if the total legal costs in a matter, excluding disbursements, are not likely to exceed \$3,000, and that no costs disclosure obligations will apply if the total legal costs in a matter, excluding disbursements, are not likely to exceed \$750.
 - confirm that to be eligible for admission to the legal profession, applicants must have sufficient knowledge of written and spoken English to engage in legal practice; and
 - enable a judicial member of QCAT to hear and determine matters under section 328 of the LP Act (applications for the setting aside of costs agreements that are not fair or reasonable);
- the *Magistrates Act 1991* to clarify the operation of various provisions relating to regional coordinating magistrates and presiding at meetings of the court governance advisory committee;
- the Oaths Act to:
 - consolidate the substitute signatory provisions in the Oaths Act and the *Oaths Regulation 2022* (Oaths Regulation) to provide a clear and consistent framework in the Oaths Act for the use of substitute signatories for affidavits and statutory declarations and clarify that substitute signatories can be used for all affidavits and statutory declarations, regardless of whether they are witnessed in person and by audio visual (AV) link or signed on paper or electronically;
 - change the information that a witness is required to include in an affidavit or statutory declaration by:
 - clarifying that a special witness is only required to include particular information when they witness an affidavit or statutory declaration that is electronically signed or signed over AV link;
 - removing the requirement for JPs and Cdecs in any Australian jurisdiction to include their place of employment, except for certain JPs and Cdecs whose eligibility to be a special witness is tied to their employment; and
 - allowing other witnesses to provide their place of employment, employment address, home address, telephone number or email;
 - amend sections 13B(2)(e) and 13C(2)(e) to better reflect the relevant offences in the Criminal Code that apply to knowingly making a false affidavit or statutory declaration and to remove the examples which reference the offence of perjury;
 - amend section 31Q to provide a consistent approach across sections 16C, 31S and 31Q so that in all circumstances where a special witness is required, the witness list can be expanded by prescription; and
 - require a witness to be satisfied that a signatory for an affidavit or statutory declaration (however made) is freely and voluntarily signing the document (currently the requirement only applies to affidavits and statutory declarations under part 6A of the Oaths Act);

- the Oaths Regulation to omit those provisions about substitute signatories which will be consolidated into the Oaths Act, and to make consequential amendments arising from amendments to the Oaths Act in the Bill;
- the QCAT Act to:
 - provide for Land Court members to be appointed as supplementary members of QCAT;
 - remove advertising requirements applying to applications for appointment as QCAT adjudicators or JPs;
 - enable the QCAT President to make acting appointments for ordinary members and adjudicators from a pool of people approved by the Minister;
 - broaden the circumstances in which acting appointments for ordinary members, senior members and adjudicators can be made;
 - allow the Minister to appoint a person to act as a senior member;
 - empower the QCAT Deputy President to administer oaths of office to senior members, ordinary members and adjudicators; and
 - provide for specific appointment arrangements for associates to QCAT senior members;
- the SCQ Act to provide that an admission guideline takes effect on the day it is published on the court's website, or a later day fixed in the guideline, rather than on the Minister giving notice of the issuing of the guidelines;
- the Trust Accounts Act to remove provisions from the Act relating to public accountants so as to limit the scope of the Act to funeral benefit businesses only; and
- other Acts to address minor and technical issues.

In addition, the Bill amends the Public Guardian Act to clarify the interaction between the Public Guardian Act and the Public Sector Act in relation to community visitors by:

- making clear that suspension and termination provisions of the Public Sector Act will apply generally;
- aligning the resignation process for community visitors with the resignation process for public service officers under the Public Sector Act;
- setting out when the office of a community visitor becomes vacant; and
- making clear the suitability provisions in the Public Guardian Act generally apply only to community visitors.

Historically, the public guardian has had the power to ensure community visitors are suitable for this unique and sensitive role and the power to terminate a visitor who has been found guilty of an offence the public guardian considers makes the person unsuitable to perform the duties of a community visitor (former section 113(2)(d) and chapter 5, part 5). New section 113A and chapter, part 5, as amended by this Bill, continue this arrangement.

This is considered a balanced approach between ensuring the rights and entitlements of community visitors as public sector employees and valuing the special role of community visitors whose core function is to protect the rights and interests of adults with impaired capacity living in visitable sites, and children living in visitable locations across Queensland.

The Bill also amends the Criminal Code, the *Penalties and Sentences Act 1992* (PS Act), the *Youth Justice Act 1992* (YJ Act) and the *Victims of Crime Assistance Act 2009* (VCA Act) to enable better recognition of the destruction of the life of an unborn child as a result of offences committed in relation to a pregnant person.

The Bill amends the Criminal Code to enable an indictment for an offence committed in relation to a pregnant person that allegedly resulted in destroying the life of the person's unborn child to state the name of the unborn child, or a description of the unborn child (such as the unborn child of Jane Smith). The name, or description, of the unborn child may be stated in the indictment regardless of the gestational age of the unborn child. The amendments in the Bill do not require the inclusion of the name, or description, of an unborn child in an indictment; the inclusion of this information will be determined on a case-by-case basis.

The sentencing principles in the PS Act and the YJ Act are also amended by the Bill to provide that, in determining the appropriate sentence for an offender or child convicted of a relevant serious offence committed in relation to a pregnant person that resulted in destroying the life of the unborn child, the court must treat the destruction of the unborn child's life as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case. A relevant serious offence for the purpose of the aggravating factor is defined as an offence against sections 302 and 305 (murder), 303 and 310 (manslaughter), 320 (grievous bodily harm), 323 (wounding), 328A (dangerous operation of a vehicle) and 339 (assaults occasioning bodily harm) of the Criminal Code, and section 83 (careless driving) of the *Transport Operations (Road Use Management) Act 1995*. In accordance with section 11 of the Criminal Code, the amendments to the PS Act and the YJ Act will apply prospectively to sentencing decisions for offences committed after commencement.

The Bill also amends the VCA Act to expand the definition of *victim* for the purpose of the Charter of victims' rights and how prescribed persons deal with victims. The expanded definition includes a person who suffers harm because they would, if an unborn child had been born alive, have been a family member of the child, in circumstances where a crime is committed against a pregnant person and as a result of the crime the pregnant person dies or sustains a bodily injury resulting in the destruction of the life of the unborn child. The expanded definition of *victim* will apply prospectively in relation to crimes committed after commencement. The Bill also amends the definition of victim in the PS Act for the purpose of victim impact statements, to expressly include the new expanded definition of *victim* under the VCA Act.

The VCA Act is also amended to expand eligibility for funeral expense assistance to persons who incur, or are reasonably likely to incur, funeral expenses for the funeral of an unborn child of a primary victim of an act of violence if, as a direct result of the act of violence, the life of the unborn child is destroyed. A person eligible for funeral expense assistance may be granted up to \$8,000 for each unborn child of a primary victim. An application to the scheme manager for funeral expense assistance must be made within three years after the destruction of the life of an unborn child. The expanded eligibility for funeral expense assistance will apply prospectively in relation to acts of violence committed after commencement.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than by legislative amendment.

Estimated cost for government implementation

The amendments in the Bill are not expected to present any significant additional administrative or capital costs for government.

In relation to the amendments which remove the prohibition on identifying an adult defendant charged with a prescribed sexual offence prior to committal, demand impacts are difficult to predict but will be monitored and any funding impacts will be considered through future budgetary processes.

Consistency with fundamental legislative principles

The Bill has been drafted having regard to the fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992* (LSA). Potential breaches of FLPs associated with the Bill are addressed below.

Appeal Costs Fund Act

The amendments removing eligibility under sections 15 and 17, and placing a time limit on claims, will impact on the rights and liberties of those who would have an entitlement to claim under the existing provisions, and applicants seeking payment from the Fund as applications are not currently subject to time limitations. The amendments, however, have sufficient regard to rights and liberties of individuals to the extent that there will be transitional provisions. The transitional provisions allow for claims to be made, under sections 15 and 17, for matters started before the commencement and indemnity certificates granted before the commencement, and extend the time limitation on making a claim from one to two years, where the proceedings have been finally dealt with before the commencement and the applicant has not applied to the Board before commencement.

Criminal Law (Sexual Offences) Act

The amendments which remove the prohibition on identifying an adult defendant charged with a prescribed sexual offence prior to the matter being committed will potentially depart from the rights and liberties of individuals, in particular the right to privacy and confidentiality, as they will allow the publication of personal information that identifies a person accused of a prescribed sexual offence before a committal order is made in the proceedings. The departure can be justified on the basis that the removal of the current prohibition of publishing such information at the pre-committal stage is intended to promote open justice in relation to prescribed sexual offences which will bring that class of offences in line with all other criminal offences in Queensland regarding publishing information about a person accused of an offence. The amendments and the removal of the current restriction is also hoped to improve media reporting on sexual offences which may, in turn, encourage other victim-survivors of sexual assault to come forward and report. It is therefore considered that the departure from the right to privacy is justified. The right of privacy and confidentiality of a victim continues to be protected to the extent that the amendments do not change the existing law concerning the prohibition on identifying a complainant of a sexual offence.

The removal of the prohibition may be inconsistent with principles of natural justice. The amendments will allow publication of information that identifies a person accused of a prescribed sexual offence before a committal order. A foreseeable consequence is that media reports are made about a particular matter which identifies the defendant before the matter proceeds to trial. This may result in the public, and therefore the jury pool, being influenced by the media reporting and forming a prejudicial view, either against the defendant or complainant, before the matter proceeds to trial. This would limit the right to a fair hearing as the decision maker (in most cases, the jury) could be biased prior to the hearing.

The purpose of the amendments is to promote open justice in relation to prescribed sexual offences which will bring that class of offences in line with all other criminal offences in Queensland regarding publishing information about a person accused of an offence and will also promote freedom of speech. An ancillary aim of the amendments is that improved media reporting on sexual offences will encourage other victim-survivors of sexual assault to come forward and report. Furthermore, taking account of the safeguards in place that allow a defendant to make an application for a non-publication order, or a stay of the proceedings or judge alone trial, along with the promotion of the principle of open justice and freedom of speech, the potential departure from the principle of natural justice is justified.

Electoral Act (and corresponding amendments to the Referendums Act)

The amendments to set a specific time for close of the electoral roll may potentially limit a person's existing right to vote, however, these amendments are justified on the basis that they will provide certainty for the Electoral Commission of Queensland, candidates and voters and assist in the efficient and effective conduct of elections and referendums.

JPs Act

Several of the proposed amendments may raise FLP issues in relation to privacy and confidentiality. The right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues are relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

The amendments will provide for the investigation of JPs and Cdecs where the chief executive is satisfied on reasonable grounds that an investigation is warranted as to whether there are grounds for removal of the JP or Cdec from office.

The amendments will also provide for criminal history monitoring of JPs and Cdecs post appointment through the use of the continuous monitoring system provided by the Queensland Police Service, which alerts agencies of any changes in the previous 24 hours relating to persons who have been charged with offences committed in Queensland.

Both of the amendments may be a departure from FLPs in relation to privacy and confidentiality. However, the departure is considered justified to maintain the integrity of JPs and Cdecs and ensure public confidence in the services they provide, given their important role in the justice system and the community.

Legal Profession Act

Destruction of client files

The amendments engage FLPs in relation to legislation having sufficient regard to the rights and liberties of individuals in relation to the protection of the property and contractual rights of an individual. Further, in Queensland, a law practice holds client documents as bailee. The proposal to permit a law practice to destroy client documents also alters a fundamental element of the common law bailment relationship.

Amendments to the LP Act are proposed to allow a law practice to destroy or dispose of any client documents held by a law practice if: a period of seven years has elapsed since the completion of the matter; and the law practice has been unable to obtain instructions from the client, despite making reasonable efforts to do so. In addition, a law practice must have reasonably formed the view that, in all the circumstances and having regard to the nature and content of a document, it is

reasonable for the law practice to destroy or dispose of the document. It is proposed that the amendments would prevail over the terms of a client agreement.

The amendments depart from FLPs in relation to property and contractual rights and override common law bailment obligations. However, the departure and abrogation of the bailment obligations, in relation to permitting the destruction of client documents in certain circumstances, is considered justified to protect the interests of consumers of legal services against the increasing risk to client privacy and confidentiality arising from the prolonged retention of client documents (both physical and electronic) that are no longer considered to be of utility. Safeguards provided for in the amendments mitigate the risk that the proposed amendments could be interpreted as authorising the destruction of such documents to the detriment of the client or others, by providing for disciplinary consequences for a breach of the provision.

Providing that the amendments prevail over the terms of a client agreement ensures that where there is an ethical duty to retain document, that obligation will prevail even if the client agreement would allow the document to be destroyed after seven years.

Eligibility requirements

Amendments to confirm English proficiency is an eligibility requirement for all applicants seeking admission into the legal profession, not just those who have attained their qualifications in a foreign country, will impact on the rights and liberties of those applicants with qualifications obtained locally (ie. within Australia) as they are not currently captured by any requirement of this nature. Despite this, the amendments will achieve greater equality before the law by ensuring applicants from all backgrounds will be assessed against the same criteria. The amendments also protect consumers of legal services and the public generally by ensuring that practitioners are appropriately qualified for practice and understand their client's instructions, Queensland laws and their professional obligations.

Oaths Act

The Bill allows courts and tribunals to make rules of court or practice directions about execution requirements for affidavits and declarations that are to be filed or admitted into evidence in a proceeding. This may engage the fundamental legislative principle provided for in section 4(4)(a) of the LSA that allows the delegation of legislative power only in appropriate cases and to appropriate persons, as well as the principle in section 4(4)(c) of the LSA which provides that a Bill should only authorise the amendment of an Act by another Act. This amendment is considered justified as courts and tribunals need to be able to set requirements for documents which are prepared for use in proceedings. The amendment is also consistent with existing section 13A of the Oaths Act which allows a court or tribunal to make, give, issue or approve rules of court or practice directions about acceptable methods for electronically signing affidavits or declarations that may be filed or admitted into evidence in a court or tribunal proceeding.

Public Guardian Act

The Bill retains a specific ground of termination for community visitors which enables the public guardian to terminate the appointment of a community visitor if the community visitor has been convicted of an offence the public guardian considers makes the person unsuitable to perform the duties of a community visitor. This is further supported by changes to chapter 5, part 5 of the Public Guardian Act which ensure there is a suitability regime that enables the public guardian to undertake investigations to decide whether a person is suitable to be, or continue to be, a community visitor.

These amendments may be a departure from FLPs in relation to the rights and liberties of individuals. However, having regard to the important role that community visitors serve and the significant position of trust they hold in supporting and advocating for some of Queensland's most vulnerable, a regime that ensures they are held to the highest possible standards is considered justified.

SCQ Act

The proposed amendment to remove the requirement for the Attorney-General to notify the making of admission guidelines raises an FLP issue in relation to the institution of parliament. This is because the notice constitutes subordinate legislation and as such attracts the provisions of the *Statutory Instruments Act 1992* including the ability for it to be tabled and subject to a parliamentary disallowance motion.

However, the notification of the making of new or updated admission guidelines is a process which is primarily machinery in nature, with responsibility for making the guidelines ultimately resting with the Chief Justice pursuant to section 86 of the SCQ Act.

When issuing the guidelines, rule 9AA(2) of the *Supreme Court (Admission) Rules 2004* provides that the Chief Justice is required to have regard to any relevant recommendations of the Law Admissions Consultative Committee (LACC). The guidelines currently approved in Queensland are those policies developed and approved by the LACC and applying in other jurisdictions.

Further, it is not anticipated that this change will have the effect of lowering standards in relation to those applicants granted admission into the legal profession in Queensland, as both the Chief Justice and LACC are invested in ensuring that applicants for admission are suitably qualified for their roles.

Finally, transparency surrounding this process will be maintained by requiring that any new or updated guidelines come into effect on publication on the Queensland Courts website, or a later day fixed in the guideline.

Trust Accounts Act

The amendments to the Trust Accounts Act so that the Act no longer captures public accountants may potentially limit a person's existing rights in relation to the supervision of trust accounts. The amendments are justified on the basis that Queensland is currently the only state that regulates accountants' trust accounts, with all other States self-regulated through the oversight of the various professional accounting bodies. The low level of complaints and queries in this area, together with other existing regulation, mean that the amendments are likely to have little or no impact.

Section 4(4)(a) of the LSA allows for the delegation of legislative power only in appropriate cases and to appropriate persons. The amendments to the Trust Accounts Act also include a new transitional regulation making power in relation to assisting the return of security lodged with the chief executive. The new power is required to allow appropriate arrangements to be made for the removal of public accountants from the scope of the Act. The power is consistent with the policy objectives of the Bill.

Better recognition of the deaths of unborn children as a result of criminal conduct

Information in indictments

The Bill provides that the name, or description, of an unborn child may be stated in an indictment for an offence committed in relation to a pregnant person that allegedly resulted in the destruction of the life of the unborn child. The inclusion of this information in the indictment, which is read to the court, may be a departure from FLPs in relation to privacy and confidentiality. Any departure is justified as the amendment allows for the independent recognition of the alleged destruction of the life of an unborn child as a result of offending behaviour. The effect of any departure is also mitigated by the discretionary nature of the provision; the inclusion of the information in the indictment is not mandatory but may be included considering the individual circumstances of the case.

Statutory aggravating factor

The Bill provides that the court must, in determining the appropriate sentence for an offender or child convicted of a relevant serious offence committed in relation to a pregnant person that resulted in destroying the life of the person's unborn child, treat the destruction of the unborn child's life as an aggravating factor unless the court considers it is not reasonable because of the exceptional circumstances of the case.

Requiring the court to treat the destruction of the unborn child's life as an aggravating factor in determining the appropriate sentence for a person convicted of a relevant serious offence may impact on the rights and liberties of individuals and may interfere with the principle of judicial independence.

Rights and liberties

Whether a penalty is proportionate to the offence, as well as procedures for dealing with children under the criminal law, are relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals. There is generally an expectation that sentences and other procedures relating to children in the criminal justice system should acknowledge that children are entitled to more favourable treatment.

While the new statutory aggravating factor does not increase the applicable maximum penalty it does render a person, including a child, convicted of a relevant serious offence liable to a higher sentence. However, the introduction of the statutory aggravating factor is considered justified on the basis that continued advocacy for reforms indicates that the unique harm caused by the destruction of the life of an unborn child as a result of criminal conduct is not adequately reflected in the criminal justice system. The impact of the aggravating factor on the rights and liberties of individuals is also mitigated by the fact that the court may currently consider the destruction of the life of the unborn child in its consideration of the nature and seriousness of offences and the harm caused, by the limited offences defined as relevant serious offences for the purpose of the aggravating factor, and by the inclusion of an exception permitting the court to not treat the destruction of the unborn child's life as an aggravating factor in exceptional circumstances.

The new statutory aggravating factor is also not intended to restrict the court's ability to take into account any of the other matters listed in section 9 of the PS Act or section 150 of the YJ Act, including mitigating factors and other aggravating factors, and for the YJ Act the prescribed special considerations.

Requiring the court to treat the destruction of an unborn child's life as an aggravating factor unless there are exceptional circumstances, while retaining the requirement for the court to have regard to the other matters prescribed in section 150 of the YJ Act, allows the court to appropriately balance the rights of a child convicted of a relevant serious offence against the rights of victims of a relevant serious offence and community security.

Independence of the judiciary

Whether legislation potentially interferes with the principle of judicial independence is relevant to the consideration of FLPs. The effect of any departure from the FLP is mitigated through the inclusion of the exception permitting the court to not treat the destruction of the unborn child's life as an aggravating factor in exceptional circumstances, thereby retaining judicial discretion. The new statutory aggravating factor is also not intended to restrict the court's ability to take into account any of the other matters listed in section 9 of the PS Act or section 150 of the YJ Act, including mitigating factors and other aggravating factors, and for the YJ Act the prescribed special considerations.

The new aggravating factor is intended to support the courts' treatment of relevant serious offences that result in destruction the life of an unborn child as more serious and therefore deserving of a higher sentence, while retaining judicial discretion in sentencing decisions.

Consultation

The amendments in the Bill to enable better recognition of the deaths of unborn children as a result of criminal conduct were informed by targeted consultation with a range of stakeholders including legal stakeholders, the judiciary, human rights organisations, and families impacted by the death of an unborn child as a result of criminal conduct.

The amendments to remove restrictions which prohibit identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceedings, were informed by targeted consultation with media, legal and sexual violence support sector stakeholders.

Additionally, numerous stakeholders were consulted during the drafting of the Bill on other proposed amendments which were expected to be of relevance/interest to them, including heads of jurisdiction; the Rules Committee; relevant statutory bodies and office holders; legal stakeholders; the Admissions Board, the Appeals Costs Board; the Parole Board; JP Associations; the Australasian Cemeteries and Crematoria Association; the Queensland Branch of the Australian Medical Association; the Rural Doctors Association of Queensland; Victim Assist Queensland; Youth Advocacy Centre; and PeakCare Queensland.

Consultation was also undertaken with domestic and family violence stakeholders in relation to the amendments to the Oaths Act in the Bill.

Consistency with legislation of other jurisdictions

The amendments in the Bill are specific to the State of Queensland and are not uniform with or complementary to legislation of the Commonwealth or another state, except in relation to the amendments identified below.

Criminal Law (Sexual Offences) Act

The amendments to the CLSO Act remove existing provisions which prohibit identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceedings. This is consistent with the approach in all other Australian jurisdictions, beside the Northern Territory, with these jurisdictions allowing identification of a defendant whose matter is before the Magistrates Court. The amendments create a legislative scheme for the Magistrates Court to make non-publication orders in relation to prescribed sexual offences, with the grounds upon which an order can be made being consistent with those articulated in South Australia (Evidence Act 1929), New South Wales (Court Suppression and Non-Publication Orders Act) and Victoria (Open Courts Act 2013). Like in Victoria, the applicant is required to notify eligible persons (being defence, prosecution and the complainant) about their intention to make an application, with Queensland adopting a requirement for the prosecution to notify the complainant rather than risk the defendant doing so personally. The requirement for interim orders to be determined urgently and where practicable, within 72 hours is consistent with New South Wales and South Australia. This ensures that the principle of open justice remains paramount, given an interim order may be made without considering the merits of the application, and any restriction should be subject to full determination as a matter of urgency. The right of review is consistent with South Australia, New South Wales and Victoria.

Legal Profession Act

Disclosure of legal costs

The amendments to section 311 of the Legal Profession Act increase the amount for which disclosure of legal costs is not required under sections 308 or 309(1) of that Act to \$3,000, excluding disbursements (costs disclosure threshold); and introduce abbreviated cost disclosure obligations for costs (over \$750) not likely to exceed the costs disclosure threshold. The costs disclosure threshold and abbreviated costs disclosure obligations more closely align with cost disclosure obligations under legal profession laws in New South Wales, Victoria and Western Australia.

Eligibility requirements

Other Australian jurisdictions adopt English proficiency requirements for people seeking admission to the legal profession. The amendments will promote a consistent approach among Australian admitting authorities.

Oaths Act

Information requirements for witnesses

The amendments to section 13E of the Oaths Act in the Bill are broadly consistent with the approach in other jurisdictions (except Western Australia and Tasmania) which require affidavits and statutory declarations to include some form of additional information about the witness other than their full name (either their personal address, professional address or telephone number). New South Wales requires the witness to include such additional information on affidavits, but not statutory declarations. Queensland is the only jurisdiction which requires “place of employment” (i.e. name of employer).

Notes on provisions

Part 1 Preliminary

Clause 1 provides that this Act may be cited as the *Justice and Other Legislation Amendment Act 2023*.

Clause 2 provides for the various commencements of provisions under the Bill.

Part 2 Amendment of Acts Interpretation Act 1954

Clause 3 provides that this part amends the *Acts Interpretation Act 1954*.

Clause 4 inserts a new section 14CA (Other changes that do not affect general law) which supports the simplification of provisions of an Act, when they are being amended or replaced, by enabling the omission of legally unnecessary references to procedural fairness or reasonableness.

New section 14CA(1) states that, if a provision of an Act expressly provides for an obligation to comply with natural justice, and the provision is replaced by a corresponding provision that does not expressly provide for the obligation, the absence of an express provision for the obligation in the corresponding provision does not limit or otherwise affect an obligation under the corresponding provision to comply with procedural fairness implied under the general law.

New section 14CA(2) states that, if a provision of an Act expressly provides for a function to be performed or a power to be exercised reasonably, and the provision is replaced by a corresponding provision that does not expressly provide for the function to be performed or the power to be exercised reasonably, the absence of an express provision for the matter in the corresponding provision does not limit or otherwise affect an obligation under the corresponding provision to perform the function or exercise the power reasonably implied under the general law.

New section 14CA(3) states that for this section, a provision of an Act (a *former provision*) is replaced by a corresponding provision if:

- (a) an amendment of the Act omits the former provision and inserts a corresponding provision, whether in the same or a different location;
- (b) the former provision is amended and the amended provision is a corresponding provision; or
- (c) the Act is repealed by an Act that includes a corresponding provision to the former provision.

New section 14CA(4) states that, for this section, *corresponding provision* means a provision that is substantially the same as, or substantially equivalent to, the other provision.

Clause 5 amends section 15C (Commencement of citation and commencement provisions on date of assent etc.) by inserting a new subsection (4), which provides that a reference in this section to the provisions of an Act providing for its citation includes a reference to the Act's long title. This amendment clarifies that an Act's long title, as well as the provisions providing for its citation and commencement, commence automatically on the date of assent.

Clause 6 amends section 24B (Acting appointments) to clarify that, where an appointee is acting in an office because of a vacancy in the office, the initial term of appointment may not be more

than one year, but the appointee may be reappointed for further terms of not more than one year each.

Clause 7 amends section 33 (References to Ministers, departments and chief executives) to amend the section heading, relocate content to new section 33AA (References to departments), section 33AB (References to chief executives) and section 33AC (Provisions administered by 2 or more Ministers), and make consequential amendments to cross-references.

Clause 8 inserts headings for new sections 33AA - 33AC.

Clause 9 amends section 37 (Measurement of distance) to provide that, in applying a provision of an Act, distance is to be measured in a straight line on a horizontal plane. This will bring section 37 into line with equivalent provisions in all other Australian jurisdictions. The new method for measuring distance will only apply to provisions enacted after the commencement of the amendment.

Clause 10 amends schedule 1 (Meaning of commonly used words and expressions) to replace the definition of *document*, to insert new definitions of *electronic document*, *insolvent under administration*, *police commissioner* and *spent conviction*, and to amend definitions of *chief executive* and *department* to correct cross-references.

Part 3 Amendment of Appeal Costs Fund Act 1973

Division 1 Amendments commencing on assent

Clause 11 provides that this part amends the *Appeal Costs Fund Act 1973*.

Clause 12 amends section 5 (Appeal Costs Fund) to omit references to sections 16 and 18 in section 5(5).

Clause 13 inserts a new section 14A (Time limit for applying to board for payment) to provide that the Board must not issue a certificate for payment from the Fund unless the application for payment is made within one year after the day an indemnity certificate for payment is granted, or one year after the day the applicant's entitlement to payment from the Fund arises (if the applicant is entitled to payment without an indemnity certificate).

New section 14A(3) provides the Board may accept an application made after the time required, if it is satisfied it would be reasonable to do so, having regard to: the length of the delay; the reasons for the delay; the likely financial and other consequences for the person if the certificate is not granted; and any other relevant matter.

Clause 14 replaces the heading, part 4 (Indemnity certificates) with the heading, part 4 (Guideline proceedings).

Clause 15 omits part 4, division 1 (Generally).

Clause 16 omits the heading for part 4, division 2 (Guideline proceeding).

Clause 17 amends section 20A (Definitions for div 2) by replacing 'div 2' with 'part' in the heading and replacing 'division' with 'part'.

Clause 18 omits the heading at part 4, division 3 (Discretion).

Clause 19 inserts a new section 24A (No payments to Legal Aid Queensland or service providers) to provide that the Board must not make payment from the Fund to Legal Aid Queensland or to a Legal aid service provider, in relation to a proceeding to which the Legal Aid service provider gave legal assistance under the *Legal Aid Queensland Act 1997*.

Clause 20 inserts a new part 6, division 1 heading (Transitional provision for Court and Civil Legislation Amendment Act 2017).

Clause 21 omits sections 28 and 30.

Clause 22 inserts a new part 6, division 2 (Transitional provisions for Justice and Other Legislation Amendment Act 2023) containing new sections 32 to 35.

New section 32 (Definitions for division) provides that, in this division, *amending Act* means the *Justice and Other Legislation Amendment Act 2023*, and *former*, for a provision of this Act, mean the provision as in force immediately before the commencement of the amending Act.

New section 33 (Application of former pt 4, div 1 to current appeals and certificates) provides that former part 4, division 1 continues to apply in relation to an appeal started before the commencement and an indemnity certificate granted before the commencement.

New section 34 (Time limit for claiming payments for finalised proceedings) extends the application period under new section 21A from 1 year to 2 years, where the proceedings to which the application relates have been finally dealt with before the commencement and the applicant has not applied to the Board before the commencement.

New section 35 (Payments to Legal Aid Queensland or service providers) provides that new section 24A does not prevent a payment from the Fund to Legal Aid Queensland or a legal aid service provider in accordance with a certificate of the Board issued before the commencement.

Division 2 Amendments commencing on proclamation

Clause 23 amends section 5 (Appeal Costs Fund) to omit section 5(4) and insert a new section 5(4) which provides that the amounts received for the fund are the amounts paid to the department as part of its vote under the *Financial Accountability Act 2009* and made available by the department for use under this Act.

Clause 24 replaces the heading, part 3 (Finance) with the heading, part 3 (Payments).

Clause 25 omits sections 10 to 13.

Clause 26 inserts a new section 36 (Payment of fees into the fund). New section 36 provides for former section 12 to continue to apply in relation to amounts paid to the proper officer of a court before commencement, and former section 13 to continue to apply to an amount received by the Minister under former section 12.

Part 4 Amendment of Attorney-General Act 1999

Clause 27 provides that this part amends the *Attorney-General Act 1999*.

Clause 28 amends section 5 (Principal functions) to omit an editor's note.

Clause 29 amends section 7 (Specific powers). Section 7(1)(a), (b) and (l) are amended to remove editor's notes. Section 7(1)(g) is amended to provide for the Attorney-General to grant fiats to enable entities to continue, as well as start, proceedings in the Attorney-General's name to enforce charitable and public trusts, and to enforce and protect public rights.

Clause 30 amends section 10 (Refusal of relator application). Section 10(1)(a) is amended to provide that this section applies if an application is made for the Attorney-General to grant an entity a fiat to continue, as well as start, a proceeding in the Attorney-General's name to enforce or protect a public right, and the application is refused or the fiat is not granted within 60 days after the application was made.

Part 5 Amendment of Civil Liability Act 2003

Clause 31 provides that this part amends the *Civil Liability Act 2003*.

Clause 32 amends section 58 (Damages for loss of consortium or loss of servitium) to change the reference to the amount 'prescribed under a regulation' at section 58(1)(b) to the amount 'fixed by the Minister, by written notice under section 75'. The note at section 58(1)(b) is omitted.

Clause 33 replaces section 62 (Calculation of general damages) to provide that general damages are to be calculated by reference to the amounts fixed by the Minister, by written notice, instead of the amounts prescribed by regulation.

Clause 34 amends section 64 (Court required to inform parties of proposed award) to change the reference to the amount 'prescribed under a regulation' at subsection (2) to the amount 'fixed by the Minister, by written notice under section 75'. The note at section 64(2) is omitted.

Clause 35 replaces section 75 (Indexation of particular amounts) to provide for the annual indexation of amounts to be fixed by Ministerial notice instead of prescribed by regulation. New section 75(1) provides that the Minister must, before each financial year starts, make a notice for the financial year fixing amounts for or under sections 58(1)(b), 62(2)(a) and (b) and 64(2).

New section 75(2) provides that the amount fixed for or under a provision mentioned in subsection (1) for a purpose is to be the amount last fixed by the Minister for the purpose adjusted by the percentage change in average weekly earnings between the current financial year and the last financial year and rounded to the nearest 10 dollars (rounding one-half upwards).

New section 75(3) and (4) provide that, if the percentage change in average weekly earnings between the current financial year and the last financial year: (a) would reduce or would not change the amount fixed for a purpose; or (b) is not available from the Australian Statistician; the Minister must fix an amount for the purpose that is not less than the amount for the purpose last fixed by the Minister.

New section 75(5) provides that the Minister's notice is subordinate legislation.

New section 75(6) provides that, despite subsection (1), the Minister may make a notice for a financial year, after 1 July in the financial year, that has retrospective operation to 1 July in the financial year. New section 75(7) provides that subsection (6) applies despite the *Statutory Instruments Act 1992*, section 34.

New section 75(8) provides that, in this section: *current financial year*, for a notice, means the financial year immediately before the financial year for which the notice is made; and *last financial year*, for a notice, means the financial year immediately before the current financial year.

Clause 36 inserts a new chapter 5, part 9 (Transitional provisions for Justice and Other Legislation Amendment Act 2023). New section 87 (Definitions for part) provides that, in this part, a *former* provision means the provision as in force immediately before the commencement, and a *new* provision means the provision in force from the commencement.

New section 88 (First notice made by Minister) provides that, in relation to the first notice made by the Minister under new section 75(1), for new section 75(2) and (4), a reference to the amount last fixed by the Minister for a purpose is taken to be a reference to the amount prescribed for the purpose by a regulation, made under former section 75, as in force immediately before the commencement.

New section 89(1) (Existing prescribed amounts) provides that this section applies in relation to each amount that, immediately before the commencement, was prescribed by regulation for or under former section 58(1)(b), 62(2) or 64(2) for a period.

New section 89(2) provides that the amount continues to have effect as if it had been fixed under new section 75(1). New section 89(3) provides that the Minister may, for information only, include the amount in the notice made by the Minister under new section 75(1) as the amount fixed for or under section 58(1)(b), 62(2) or 64(2) for the period.

Clause 37 amends schedule 2 (Dictionary) to correct a provision reference in the definition of *food donor*, and to update the title of a remade regulation in the definition of *motor vehicle*.

Part 6 Amendment of Civil Proceedings Act 2011

Clause 38 provides that this part amends the *Civil Proceedings Act 2011*.

Clause 39 replaces section 59 (Interest after money order) to clarify its operation with respect to the payment of interest on a money order debt. New section 59(1) provides that this section applies in relation to a money order except to the extent the court otherwise orders. New section 59(2) provides that interest is payable from the date of the money order on the money order debt. New section 59(3) provides that the interest is payable at the rate prescribed under a practice direction made under the *Supreme Court of Queensland Act 1991*.

New section 59(4) provides that: (a) if the money order is for payment of a stated amount for damages or costs, and the amount is paid within 21 days after the date of the order, interest on the damages or costs is not payable; and (b) if the money order is or includes an order for the payment of costs in an amount to be ascertained under the rules or otherwise after the order is made, and the amount for costs is paid in full within 21 days after the day the amount has been ascertained and becomes payable under the rules or otherwise, interest on the costs is not payable.

New section 59(5) provides that this section does not apply in relation to a proceeding for a cause of action arising before 21 December 1972.

New section 59(6) provides that in this section, *money order*: (a) includes an order for the payment of costs in an amount to be ascertained under the rules or otherwise, after the order is made; and (b) does not include an order of the registrar, made under the rules, about the amount payable for costs under a money order. *Money order debt*, for a money order for the payment of costs in an

amount to be ascertained after the order is made, means the amount ascertained under the rules or otherwise.

Clause 40 inserts a new part 11A (Court funds).

New section 75A (Definitions for part) defines *interest*, *money in court*, *registrar*, *securities* and *securities in court*.

New section 75B (Court suitors fund) provides that the Court Suitors Fund (CS Fund) established under the repealed *Court Funds Act 1973* is continued in existence under this Act. The section also provides that: the CS Fund is to be administered by the chief executive; the CS Fund does not form part of the consolidated fund; accounts for the CS Fund must be kept as part of the departmental accounts of the department; amounts received for the CS Fund must be deposited in a departmental financial institution account of the department used only for amounts received for the CS Fund; and an amount paid into court as money in court must be paid into the CS Fund at the time, and in the way, prescribed by regulation. The section provides that, in this section: *departmental accounts*, of the department, means the accounts of the department under the *Financial Accountability Act 2009*, section 69; and *departmental financial institution account*, of the department, means an account of the department under the *Financial Accountability Act 2009*, section 83.

New section 75C (Dealing with money and securities in court) provides that money in court and securities in court may be dealt with only in accordance with this Act, the rules of court and any court order about the money or securities. The section provides that, in this section, *dealt with* means paid, delivered, transferred, invested or sold.

New section 75D (Vesting of money and securities in court) provides that an amount paid into court as money in court, and securities deposited into court as securities in court, vest in the chief executive on behalf of the court without any conveyance, transfer or assignment.

Clause 41 amends section 107 (Regulation-making power) to insert new subsection (4) which provides that a regulation under part 11A may make provision about money in court or securities in court, including provision about any of the following: the procedure for paying money into court or depositing securities into court; the affidavits or other documents that must be completed or given in relation to the payment of money into court or deposit of securities into court; the keeping of records relating to money in court or securities in court; the remittance of money or securities by the registrar of the court to the chief executive; the investment of money in court or securities in court; how the chief executive or the registrar of a court may or must deal with money in court or securities in court; interest on money in court, including provision about the rate or calculation of interest and the way in which, and times at which, interest must be paid; and the payment or transfer of money or securities out of court.

Clause 42 inserts a new part 18 (Transitional provision for Justice and Other Legislation Amendment Act 2023).

New section 113 (Vesting of money and securities in court) provides that this section applies to money and securities that, immediately before the commencement, were vested in the Minister under the repealed *Court Funds Act 1973*, section 8. On the commencement, the money or securities vest in the chief executive under new section 79D.

Clause 43 amends schedule 1 (Dictionary) to insert definitions of *interest*, *money in court*, *registrar*, *securities* and *securities in court*.

Part 7 Amendment of Cremations Act 2003

Clause 44 provides that this part amends the *Cremations Act 2003*.

Clause 45 inserts new section 5A (Permission to cremate given by interstate coroner).

New subsection (1) provides that the section applies if an interstate coroner for another State gives permission, under a law of that State, to cremate human remains.

New subsection (2) provides that a person who cremates the human remains in Queensland does not commit an offence against section 5 (Permission required for cremation) if a doctor has examined the remains and made any necessary inquiries; and issued a certificate that the doctor is satisfied the remains do not pose a cremation risk. This subsection effectively recognises a permission to cremate issued for the human remains by an interstate coroner as a permission to cremate issued by the Coroner in Queensland, provided certain requirements are met to safeguard against cremation risk .

New subsection (3) inserts a definition of ‘*interstate coroner*’.

Clause 46 amends section 14 (Record keeping – person in charge of crematorium).

Subclause (1) inserts new subsection (3A) to introduce new record keeping requirements for a person in charge of a crematorium to keep a copy of the interstate permission to cremate and certificate in relation to cremation risk for 15 years after the cremation. A maximum penalty of 80 penalty units applies.

Subclause (2) renumbers sections 14(3A) to (5) as sections 14(4) to (6).

Clause 47 amends section 15 (Record keeping – former owner of crematorium) to replace the reference to ‘section 14(3)’ in section 15(1) with a reference to section 14(3) or (4) as a consequence of the new record-keeping requirements in clause 43.

Part 8 Amendment of Criminal Code

Clause 48 provides that this part amends the Criminal Code.

Clause 49 amends section 319A (Termination of pregnancy performed by unqualified person) by amending the definition of *assisting* in the performance of a termination on a woman in subsection (3):

- new subparagraph (ii) provides that assisting includes supplying a termination drug for use in the termination;
- new subparagraph (iii) provides that assisting includes procuring the supply of a termination drug from an unqualified person for use in the termination.
- new subparagraph (iv) provides that assisting includes administering a termination drug.

Clause 50 amends section 564 (Form of indictment) by inserting a new subsection (3B), which provides that an indictment for an offence committed in relation to a pregnant person that allegedly resulted in destroying the life of the person’s unborn child may state the name, or a description, of the unborn child.

Part 9 Amendment of Criminal Law (Sexual Offences) Act 1978

Clause 51 that this part amends the *Criminal Law (Sexual Offences) Act 1978* (CLSO Act).

Clause 52 adds a number of definitions to section 3 of the CLSO Act which are relevant to the substantive amendments. The new definitions are for *accredited media entity*, *eligible person*, *identifying matter*, *interim order*, *non-publication order*, *sentenced*, and *Supreme Court's media accreditation policy*.

Clause 53 omits the existing section 7 (Publication prematurely of defendant's identity prohibited) from the CLSO Act and replaces it with a number of new sections.

New section 7 applies, if a defendant is charged with a prescribed sexual offence (section 7(1)). New section 7(2) provides that an eligible person may apply for a non-publication order while the matter is before a Magistrates Court, either before the matter is committed for trial or sentence, or if the matter proceeds to sentence in a Magistrates Court, prior to that sentence (section 7(2)). Section 7(3) requires the applicant to give three business days' notice of their intention to make an application for a non-publication order to the court and other eligible persons. Section 7(4) provides that a Magistrates Court may dispense with the notice requirement in section 7(3) provided there is a good reason for notice not having been given or where it would be in the interests of justice that the court hear the application, without notice having been given. It is intended that this will allow that an urgent application for a non-publication order that meets this requirement may be heard at a mention or other court event in circumstances where there was insufficient time to formally file and give notice of the application. A court may make an interim order in such circumstances without having to consider the merits of the application (section 7D). Section 7(5)(a) provides that a defendant is not to personally serve a complainant.

New section 7(5)(b) requires the prosecution to provide notice of the application for non-publication to a complainant, or another person nominated to receive correspondence on the complainant's behalf in relation to the matter. Section 7(6) provides that this notice may be given electronically.

New section 7A (Notifications to accredited media entities) requires the court to take reasonable steps to ensure accredited media entities are notified of an application for non-publication, and provides that this notification may be by electronic communication or in any other way the court considers appropriate.

New section 7B (Grounds for non-publication order) outlines three grounds upon which a non-publication order may be made: the order is necessary to prevent prejudice to the proper administration of justice (section 7B(a)); the order is necessary to prevent undue hardship or distress to a complainant or witness in relation to the charge (section 7B(b)); or the order is necessary to protect the safety of any person (section 7B(c)).

New section 7C (Procedure for making non-publication order) outlines the procedure for making a non-publication order. Section 7C(1) provides that all relevant persons have a right to appear and be heard on an application, being the applicant and other eligible persons, an accredited media entity and any other person whom the court considers has sufficient interest in the question of whether the order should be made. New section 7C(2) provides that the application for a non-publication order may be heard in a closed court.

New section 7C(3)(a) provides that the court may take into account evidence of any kind that it considers credible or trustworthy in the circumstances.

New section 7C(3)(b) lists the matters the court must consider when determining an application for non-publication, being: the primacy of the principle of open justice; the public interest; any submissions made or views expressed by or on behalf of the complainant about the application; any special vulnerabilities of the complainant or the defendant; any cultural considerations relating to the complainant or the defendant; the potential effect of publication in a rural or remote community; the potential to prejudice any future court proceedings; the history and context of any relationship between the complainant and the defendant (including, for example, any domestic violence history); and any other matter the court considers relevant.

New section 7C(4) provides for what a court must state in a non-publication order. The court is required to state the grounds on which the order is made, any identifying matter that is not covered by the order, the extent to which publication of identifying matter is prohibited and that the order ceases when the defendant is committed for trial or sentence, or sentenced on the charge or when the charge is withdrawn, whichever happens first.

New section 7D (Interim orders) allows the court to make an interim order, prohibiting publication of identifying matter related to the defendant, without determining the merits of the application (section 7D(1)). An interim order has effect until it is revoked by the court or the court finally decides the application. New section 7D(3) provides that if the court makes an interim order, the court must hear and decide the application as a matter of urgency, and where practicable, within 72 hours after making the interim order.

New section 7E (Review of non-publication order) provides the Court with a power to review a non-publication order, either on its own motion, or if an application to review is made by an eligible person, an accredited media entity or another person who the court considers has sufficient interest in the question of whether an order should be made. Each of those persons is entitled to appear and be heard by the court on the review (section 7E(2)) and on the review the court may confirm, vary or revoke the order (section 7E(3)).

New section 7F (Contravention of interim order or non-publication order) makes it an offence to contravene an interim order or a non-publication order, punishable by 100 penalty units or 2 years imprisonment for an individual, or 1,000 penalty units for a corporation. New section 7F(2) provides that no offence is committed when publication is in an exempted report or for an authorised purpose.

Clause 54 omits section 8(2) from the CLSO Act, and amends section 8(1) to replace a reference to an existing offence provision with a reference to the new offence provision in section 7F(1).

Clause 55 amends section 9 by replacing a reference to an existing offence provision pertaining to pre-committal identification of a defendant (section 7) with the new offence provision (new section 7F).

Clause 56 amends existing section 10 of the CLSO Act (When other publication of complainant's or defendant's identity is prohibited) to remove reference to the defendant in the title, and to remove the offence (at section 10(1)(b)) which created a prohibition on identifying a defendant prior to committal proceedings.

Clause 57 amends existing section 10A (Provisions do not affect other laws) to replace the reference to section 7 with a reference to the new offence provision in section 7F.

Clause 58 amends existing section 11 (Authorised purposes) to insert a reference to the new section 7F(2) to provide that the authorised purposes provision applies to the new offence.

Clause 59 amends section 12(4) (Executive officer may be taken to have committed offence) to replace the reference to section 7(3) and 7(4) with the new offence provision in section 7F.

Clause 60 inserts a new division 1 heading (Transitional provisions for Criminal Law Amendment Act 2000 and Evidence (Protection of Children) Amendment Act 2003), being for the existing CLSO Act transitional provisions.

Clause 61 inserts a new division 2 that provides for transitional provisions for these amendments. New section 16 (Existing proceedings) provides that upon commencement of the Act, a proceeding against a person for identifying a defendant pre-committal in breach of the former section 7 or section 10(1)(b) cannot be started or continued, and that any proceeding of that type which is still on foot at the time of commencement is taken to be withdrawn. New section 17 (Application of an amended Act) provides that the amendments will apply from the time of commencement, irrespective of whether the defendant was charged before or after commencement.

Part 10 Amendment of District Court of Queensland Act 1967

Clause 62 provides that this part amends the *District Court of Queensland Act 1967*.

Clause 63 inserts a new section 69A (Preliminary disclosure orders) to allow the District Court to make a preliminary disclosure order for the purpose of enabling the applicant to: (a) ascertain the identity or whereabouts of a prospective defendant; or (b) make a decision about starting a proceeding against a prospective defendant.

Part 11 Amendment of Electoral Act 1992

Clause 64 provides that this part amends the *Electoral Act 1992*.

Clause 65 amends section 7 (Functions and powers of commission) to remove from section 7(1)(g) the duplicate reference to the word ‘to’.

Clause 66 amends section 51 (Making electoral redistribution) to remove reference to the 60-day timeframe associated with the Queensland Redistribution Commission’s finalising an electoral redistribution and instead insert reference to ‘as soon as practicable’.

Clause 67 amends section 59 (Preparation of electoral rolls) to insert reference to ‘6pm on’. This will enable the commission to prepare the electoral rolls as soon as practicable after 6pm on the cut-off day for the electoral rolls for an election or referendum.

Clause 68 amends section 65 (Enrolment and transfer of enrolment) of the Act. Subclause (1) amends subsection (5) to omit reference to ‘from the end of’ and insert ‘from 6pm on’ to reflect the 6pm cut-off time for the close of the electoral rolls. Subclause (2) amends subsection (7)(b)(i) to insert reference to ‘6pm on’.

Clause 69 amends section 101A (Supply of electoral rolls and ballot papers) to insert reference to ‘6pm on’ in subsection (1)(a) to require the commission to ensure a sufficient number of certified

copies of the electoral roll for each electoral district as at 6pm on the cut-off day for electoral rolls are available at each polling place.

Clause 70 amends section 106 (Who may vote) to insert reference to ‘6pm on’ in subsection (1)(d)(ii) to refer to the cut-off time for the close of electoral rolls.

Clause 71 amends section 114 (Who may make declaration vote) to omit reference to section 184A(2)(d) (of the *Commonwealth Electoral Act 1918*) in section 114(2)(a)(iii) and insert reference to section 184(2)(b). The effect of this change is that the definition of *special postal voter* will be broadened to capture general postal voters registered under sections 184A(2)(b), (c) and (ca) of the *Commonwealth Electoral Act 1918*.

Clause 72 amends section 121C (Audit of electronically assisted voting for an election) to insert a new subsection (2A) which provides that an audit does not need to be conducted in relation to a by-election unless the commissioner considers that there has been a significant change in the information technology used under the procedures for electronically assisted voting since the last audit was conducted.

Clause 73 inserts new section 125A (Saving of ballot papers not in declaration envelopes). Subsection (1) provides that the section applies if the commission or the returning officer for an electoral district receives an envelope (an outer envelope) containing a ballot paper and a declaration envelope but the ballot paper is not in the declaration envelope. Subsection (2) states that members of the commission staff must examine the contents of the outer envelope under section 125 to determine whether the ballot paper in the outer envelope is to be accepted for counting and deal with the ballot paper in the outer envelope under section 125 as if the ballot paper had been in the declaration envelope.

Clause 74 amends section 305 (Definitions for division) to insert the lead in words ‘In this division’ consistent with drafting practice.

Part 12 Amendment of Funeral Benefit Business Act 1982

Clause 75 provides that this part amends the *Funeral Benefit Business Act 1982*.

Clause 76 amends section 5 (Definitions) to update the definition *authorised accountant* and include a note relating to commencement.

Clause 77 amends section 8 (Application of pt 3) to include a note relating to commencement.

Clause 78 amends section 24 (Application of pt 4) to include a note relating to commencement.

Clause 79 amends section 25 (Meaning of nominated property) to include a note relating to commencement.

Clause 80 amends section 58 (Application of pt 6) to include a note relating to commencement.

Clause 81 amends section 73 (Application of pt 7) to include a note relating to commencement.

Clause 82 amends section 79 (Application of Trust Acts 1973) to correct a minor drafting error.

Clause 83 amends section 80 (Application of Trust Accounts Acts 1973) to reflect the new limited scope of the *Trust Accounts Act 1973* which will apply to funeral benefit businesses only.

Part 13 Amendment of Human Rights Act 2019

Clause 84 provides that this part amends the *Human Rights Act 2019*.

Clause 85 amends section 52 (Notice to Attorney-General and Commission) by inserting the words ‘Supreme Court, District Court, Land Court of Land Appeal Court’ at the beginning of subsection (1)(a), which expands the requirement to give notice to the Attorney-General and commission under this section to matters before the Land Court and Land Appeal Court.

Part 14 Amendment of Justices of the Peace and Commissioners for Declarations Act 1991

Clause 86 provides that this part amends the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Clause 87 amends section 3 (Definitions) to replace the definition of *criminal history*, and to insert new definitions of *appointee*, *appointment*, *approved training course*, *code of conduct*, *conviction*, *disqualifying conviction*, *ground for revoking an appointment*, *information notice* and *investigator’s report*.

Clause 88 omits section 15(5) which provides for applications for appointment as a JP or Cdec to be made in the manner prescribed in the regulations as a consequence of new section 15A.

Clause 89 inserts new section 15A (Application for appointment) which provides for the manner of application to the chief executive for appointment as a JP or Cdec. It includes: the process for a person who has a disqualifying conviction to apply for exemption from disqualification; and the process for the chief executive seeking further information. If the chief executive decides that a person is qualified to be appointed, the chief executive must notify the Minister and the Minister must recommend to the Governor in Council that the person be appointed. If the chief executive decides that a person is not qualified for appointment, the chief executive must give the person an information notice and the person may apply to QCAT for a review of the decision.

Clause 90 replaces sections 16 and 17 and inserts new sections 17A and 17B.

New section 16 (Qualification for appointment) provides that a person is qualified for appointment as a JP or Cdec if: the chief executive is satisfied the person is suitable for appointment under new section 17; the person is an adult Australian citizen; for a person other than an Australian lawyer, the person has completed a pre-appointment training course; and the person either ordinarily resides in Queensland, or works or proposes to work in Queensland and cannot perform the work unless they are a JP or Cdec. A person is not qualified for appointment as a JP or Cdec if the person is an insolvent under administration; has a disqualifying conviction; or has had their appointment as a JP or Cdec revoked within the previous five years.

New section 17 (Suitability for appointment) lists matters that the chief executive may consider in deciding whether a person is suitable to be appointed, or continue to hold office, as a JP or Cdec, including: the person’s character and standing in the community; anything that may affect the person’s ability to competently fulfil the duties of a JP or Cdec; whether the person has been disqualified from holding an occupational licence or has had an occupational licence suspended or revoked; whether the person has been convicted of an offence and the circumstances surrounding the offending; and whether the person has ever contravened the code of conduct without reasonable excuse.

New section 17A (Disqualifying convictions) defines a *disqualifying conviction* as: a conviction, including a spent conviction, for an indictable offence; an offence involving dishonesty or a breach of confidentiality; or an offence against the Act; or a conviction, including a spent conviction, for an offence for which a sentence of imprisonment was imposed, even if the sentence was suspended. A conviction of a person is not a *disqualifying conviction* if the chief executive has granted the person an exemption under section 17B.

New section 17B (Exemptions for disqualifying convictions) provides for the manner of application to the chief executive for exemption in relation to a disqualifying conviction under section 17A(1). The chief executive may grant the exemption if satisfied that it would be appropriate to grant the exemption, having regard to the matters mentioned in section 17(1)(d); and because of special circumstances, it would be in the public interest to appoint the person as a JP or Cdec or allow the person to continue to hold that office. The chief executive cannot grant an exemption for a conviction of an offence under the Act. The section includes a process for the chief executive seeking further information. If the chief executive decides to grant the exemption, the chief executive must give the person a written notice. If the chief executive decides not to grant the exemption, the chief executive must give the person an information notice and the person may apply to QCAT for a review of the decision.

Clause 91 omits section 18 (Cessation of office on disqualification) as a consequence of new section 22A.

Clause 92 inserts new section 22A (End of appointment) which provides that a person ceases to hold office as a JP or Cdec if: the person resigns under section 23; the Governor in Council revokes the person's appointment under section 24; the person stops holding office under section 25; or the person stops being an Australian citizen or becomes an insolvent under administration.

Clause 93 amends section 24 (Revocation of appointment) by omitting the words 'for such reason as the Governor in Council thinks fit' and inserting a note cross-referencing part 3A (Suspension and revocation of appointments) in subsection (1).

Clause 94 amends section 26 (Notification of cessation of office) as a consequence of the insertion of new section 22A.

Clause 95 amends section 27 (Return of certificate of registration and seal of office) as a consequence of the insertion of new section 22A and to correct a cross reference.

Clause 96 inserts new part 3A (Suspension and revocation of appointments).

New section 31A (Definitions for part) defines *appointee*, *appointment*, *approved training course*, *ground for revoking an appointment* and *investigator's report*.

New section 31B (Grounds for revoking appointment) provides for when the Minister may recommend to the Governor in Council that an appointee's appointment be revoked if the chief executive is satisfied of certain matters stated in the section.

New section 31C (Suspension of appointment) provides for: when the chief executive may suspend an appointment; the requirement for the chief executive to request an investigation under section 31D before or as soon as practicable after suspending an appointment; and notice to be given on the ending of a suspension.

New section 31D (Investigation) provides that the chief executive may ask an appropriately qualified officer of the department (an *investigator*) to carry out an investigation as to whether a ground exists for revoking an appointment. The section provides for: notice to be given to the appointee; the investigator to consider representations by the appointee; the investigator to give the chief executive a written report of the investigator's findings, with a copy to the appointee; and if the investigator does not consider there are grounds for revocation, the making of recommendations the investigator considers appropriate (such as an apology by the appointee or the completion of particular training).

New section 31E (Chief executive must notify Minister) provides for the chief executive to give the Minister notice if: the chief executive believes a ground exists for revoking an appointment and does not consider an investigation under section 31D is warranted; or an investigation under section 31D is conducted and, after receiving the investigator's report, the chief executive believes a ground exists for revoking an appointment. After considering the notice, the Minister must: give the appointee a show cause notice under section 31F; or notify the chief executive that the Minister has decided not to give the appointee a show cause notice under section 31F.

New section 31F (Show cause notice before recommending revocation) provides that, before making a recommendation to the Governor in Council that an appointment be revoked, the Minister must give the appointee a show cause notice and consider submissions received from the appointee.

Clause 97 inserts new section 31G (Code of conduct) which provides that the chief executive may make a code of conduct for JPs and Cdecs which takes effect when approved by regulation. A copy of the code is to accompany the regulation when it is tabled in the Legislative Assembly and the code is to be published on the whole of government website.

Clause 98 amends section 32 (Approved training courses) to provide for their approval by the chief executive rather than the Minister, and to provide that the chief executive may, by notice, require an appointed JP or Cdec to complete an approved training course by a stated day.

Clause 99 amends section 33 (Inquiries about person's appropriateness to hold office) to allow the commissioner of the police service to notify the chief executive if an appointed JP or Cdec is charged with or convicted of an offence, including by an arrangement for the electronic communication of information.

Clause 100 inserts new section 33A (Confidentiality) to protect personal information of a person acquired or accessed by a person in performing functions under or relating to the administration of the Act from unauthorised disclosure (maximum penalty – 20 penalty units).

Clause 101 amends section 34 (Wrongfully acting as justice of the peace or commissioner for declarations) to provide a reasonable excuse defence for persons who inadvertently breach the offence of acting as a JP or Cdec without holding such office because they did not know, and could not reasonably be expected to have known, that they did not hold the office.

Clause 102 inserts new section 34A (Validity of particular acts) which provides that anything done by a person in the person's purported capacity as an appointed JP or Cdec is not invalid only because, at the time the thing was done: the person was not validly appointed under section 15; or the person's appointment had lapsed under section 21, had ended as mentioned in section 22A, or was suspended under section 31C.

Clause 103 amends section 39 (Evidentiary provisions) to update a reference as a consequence of amendments to section 17.

Clause 104 inserts new section 41A (Citizenship requirement for continuing justices) which provides that section 16(1)(d) (which requires Australian citizenship as a qualification for appointment of a JP or Cdec) does not apply to a person who, on the commencement of this Act, continued in office as a justice of the peace under section 41(a) and has continuously held that office since that time.

Part 15 Amendment of Justices Regulation 2014

Clause 105 provides that this part amends the *Justices Regulation 2014*.

Clause 106 amends schedule 3 (Fees) to update the fee in the second column of item 1. The increase in the fee unit corresponds with a fee omitted under the *Appeal Costs Fund Act 1973* in the Bill.

Part 16 Amendment of Legal Profession Act 2007

Clause 107 provides that this part amends the *Legal Profession Act 2007*.

Clause 108 amends section 30 (Eligibility for admission to the legal profession under this Act) by inserting a new subsection (1)(d) to provide that sufficient knowledge of written and spoken English to engage in legal practice is a requirement for eligibility for admission to the legal profession under the Act.

Clause 109 amends section 300 (Definitions for pt 3.4) to insert a new definition of *detailed disclosure threshold amount* and *disclosure threshold amount* and to amend the definition of 'sophisticated client'. The term *detailed disclosure threshold amount* means the amount prescribed by regulation for this definition or, if no amount is prescribed, \$3,000. The term *disclosure threshold amount* is the amount prescribed by regulation for the definition; or, if no amount is prescribed - \$750. The amended definition of *sophisticated client* is a client to whom disclosure under section 307A, 308 or 309(1) is not or was not required.

Clause 110 inserts a new section 307A (When disclosure is not required) and 307B (Abbreviated disclosure of costs to client).

New section 307A provides that a law practice is not required to make a disclosure of costs, under the division, if the total amount of the legal costs in the matter, excluding disbursements and exclusive of GST, is not likely to exceed the disclosure threshold amount.

New section 307B provides that a law practice may make a disclosure of costs if the total amount of the legal costs in the matter, excluding disbursements and exclusive of GST, is not likely to exceed the detailed disclosure threshold amount. Information which must be disclosed includes: in general terms, the legal services that will be provided to the client; the basis on which legal costs will be calculated; an estimate of the total amount of the legal costs and disbursements; and the client's right to – negotiate a costs agreement, receive a bill from the law practice, request an itemised bill (after receipt of a lump sum bill, and be notified under section 315 of any substantial change to the matters disclosed under the section.

Clause 111 amends section 308 (Disclosure of costs to clients) to change the heading to ‘Detailed disclosure of costs to clients’; to insert a new subsection (1AA) to (1CC); and to make various consequential amendments.

New subsection 308(1AA) provides that this section applies in relation to a matter if the total amount of the legal costs in the matter, excluding disbursements and exclusive of GST, is likely to exceed the detailed disclosure threshold amount.

New subsection 308(1AB) provides that the section also applies in relation to a matter if the total amount of the legal costs in the matter, excluding disbursements and exclusive of GST, is likely to exceed the disclosure threshold amount; and the law practice does not make a disclosure to the client about the matter under section 307B.

New subsection 308(1AC) provides the section may apply to a matter under subsection (1) even if the law practice has previously made a disclosure to the client about the matter under section 307B.

Clause 112 amends section 309 (Disclosure if another law practice is to be retained) to omit subsection (1) and replace it with a provision which provides for what a law practice must disclose under the new section 307B and 308 if the law practice intends to retain another law practice (for example, a barrister) on behalf of a client. New subsection (1A) then provides that a disclosure under subsection (1) is in addition to the disclosure required under sections 307B and 308. There is also a consequential amendment to section 309(2).

Clause 113 replaces the existing section 310 (How and when must disclosure be made to a client) with new sections 310 (When disclosure must be made) and 310A (How disclosure must be made).

Section 310(1) provides that disclosure under 307B and 308 must be made before, or soon as practicable, after the law practices is retained in a matter. Section 310(2) provides scenarios where timeframes for disclosure might vary. Section 310(3) provides for when disclosure under section 309(1) must be made.

Section 310A(1) outlines how disclosure must be made under sections 307B, 308 and 309(1).

Clause 114 amends section 311 (Exceptions to requirement for disclosure) to make consequential changes to section references.

Clause 115 amends section 581B (Reference to document includes reference to reproductions from electronic document) to omit subsection (2) which defines *electronic document* and will be unnecessary following the insertion of the definition *electronic document* in schedule 1 of the *Acts Interpretation Act 1954*.

Clause 116 amends section 581D (Powers of special investigators) to omit subsection (5) which defines *electronic document* and will be unnecessary following the insertion of the definition *electronic document* in schedule 1 of the *Acts Interpretation Act 1954*.

Clause 117 amends section 598 (Constitution of tribunal) to provide that, for a proceeding on an application under section 328 to set aside a costs agreement, the tribunal is to be constituted by a judicial member.

Clause 118 inserts a new section 713A (Destruction of client documents) to allow a law practice to destroy a client document relating to a matter if:

- it is at least seven years since the completion of the matter;
- the law practice has been unable, despite making reasonable efforts, to obtain instructions from the client about the destruction of the document; and
- it is reasonable in the circumstances, having regard to the nature and content of the document, to destroy the document.

New section 713A(2) provides that the destruction of a client document by a law practice, other than as provided for under the new section 713A(1), is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any Australian legal practitioner involved in the destruction; and, if an associate of the law practice involved in the destruction is not a principal of the law practice – a principal of the law practice.

New section 713A(3) allows the QLS to destroy a client document relating to a matter if:

- the QLS holds the document because of the appointment of a receiver (under chapter 5, part 5.5) for the law practice that was engaged by the client to provide legal services for the matter;
- it is at least seven years since the completion of the matter;
- the QLS has been unable, despite making reasonable efforts, to obtain instructions from the client about the destruction of the document; and
- it is reasonable in the circumstances, having regard to the nature and content of the document, to destroy the document.

New section 713A(4) provides that, in the section: *client document* means a document to which a client is entitled; and *law practice* includes a CLC.

Clause 119 amends schedule 2 (Dictionary) to insert definitions of *detailed disclosure threshold amount* and *disclosure threshold amount*.

Part 17 Amendment of the Legal Profession Regulation 2017

Clause 120 provides that this part amends the *Legal Profession Regulation 2017*.

Clause 121 amends section 70 (Exceptions to requirement for disclosure) to omit subsection (1) and update section references in subsection (2).

Part 18 Amendment of Limitation of Actions Act 1974

Clause 122 provides that this part amends the *Limitation of Actions Act 1974*.

Clause 123 amends section 18 (Accrual of right of action in cases of certain tenancies) to replace ‘the tenancy’ in section 18(2A) with ‘a tenancy to which subsection (2) applies’.

Part 19 Amendment of Magistrates Act 1991

Clause 124 provides that this part amends the *Magistrates Act 1991*.

Clause 125 amends section 12 (Functions of Chief Magistrate) to replace the term ‘supervising magistrate’ in section 12(2)(f) with ‘regional coordinating magistrate’. Section 12(5) (which provides that the Chief Magistrate is not authorised to promote a magistrate) is also omitted. As there are no longer divisions of magistrates attracting different salaries, the promotion of magistrates is no longer possible and section 12(5) is therefore redundant.

Clause 126 amends section 19 (Presiding at meetings) to replace the term ‘deputy’ in section 19(1) with ‘chairperson’.

Clause 127 amends section 47 (Terms and conditions of employment—full-time and part-time magistrates) to omit section 47(3), which provides that a magistrate may be promoted only in accordance with a decision of the Governor in Council. As there are no longer divisions of magistrates attracting different salaries, the promotion of magistrates is no longer possible and section 47(3) is therefore redundant.

Part 20 Amendment of Magistrates Courts Act 1921

Clause 128 provides that this part amends the *Magistrates Courts Act 1921*.

Clause 129 inserts a new section 4AB (Preliminary disclosure orders) to allow a Magistrates Court to make a preliminary disclosure order for the purpose of enabling the applicant to (a) ascertain the identity or whereabouts of a prospective defendant; or (b) make a decision about starting a proceeding against a prospective defendant.

Part 21 Amendment of Motor Accident Insurance Act 1994

Clause 130 provides that this part amends the *Motor Accident Insurance Act 1994*.

Clause 131 amends section 4 (Definitions) to replace definitions *declared cost limit*, *lower offer limit* and *upper offer limit* as a consequence of the changed indexation arrangements under section 100A and, in a technical drafting amendment, replaces an editor’s note in the definition *industry deed* with a note.

Clause 132 amends section 30 (Transfer of CTP business), in a technical drafting amendment, to omit an editor’s note in subsection (4).

Clause 133 amends section 33 (Nominal Defendant as the insurer), in a technical drafting amendment, to omit an editor’s note in subsection (6).

Clause 134 replaces section 100A (Indexation of particular amounts) to provide for the annual indexation of amounts to be fixed by Ministerial notice instead of prescribed by regulation. New section 100A(1) provides that the Minister must, before each financial year starts, make a notice for the financial year fixing amounts as the declared costs limit, lower offer limit and upper offer limit.

New section 100A(2) provides that the amount fixed for a limit is to be the amount last fixed by the Minister for the limit adjusted by the percentage change in average weekly earnings between the current financial year and the last financial year and rounded to the nearest 10 dollars (rounding one-half upwards).

New section 100A(3) and (4) provide that if the percentage change in average weekly earnings between the current financial year and the last financial year: (a) would reduce or would not change the amount fixed as the limit; or (b) is not available from the Australian Statistician; the Minister must fix an amount for each limit that is not less than the amount for the limit last fixed by the Minister.

New section 100A(5) provides that the Minister’s notice is subordinate legislation.

New section 100A(6) provides that despite subsection (1), the Minister may make a notice for a financial year, after 1 July in the financial year, that has retrospective operation to 1 July in the financial year. New section 100A(7) provides that subsection (6) applies despite the *Statutory Instruments Act 1992*, section 34.

New section 100A(8) provides for the definitions of *current financial year* and *last financial year* for the section.

Clause 135 inserts a new part 7, division 8 (Transitional provisions for Justice and Other Legislation Amendment Act 2023).

New section 117 (Definitions for division) provides that *new section 100A* means the section 100A as in force from the commencement.

New section 118 (First notice made by Minister) provides that, in relation to the first notice made by the Minister under new section 100A, for new section 100A(2) and (4), a reference to the amount last fixed by the Minister is taken to be a reference to the amount last prescribed by regulation for the limit.

New section 119(1) (Existing prescribed limits for particular definitions) provides that this section applies in relation to each amount that, immediately before the commencement, was prescribed by regulation as the declared costs limit, the lower offer limit or the upper offer limit for a period.

New section 119(2) provides that the amount continues to have effect as if it had been fixed under new section 100A. New section 119(3) provides that the Minister may, for information only, include the amount in the notice made by the Minister under new section 100A.

Clause 136 amends the schedule (Policy of insurance), at section 1(3)(a), to replace an editor's note with a note.

Part 22 Amendment of Oaths Act 1867

Clause 137 provides that this part amends the *Oaths Act 1867*.

Clause 138 amends section 1B (Definitions) to omit the definitions of *confirm*, *document* and *electronic document* and *physical document*. New definitions for the terms *document* and *electronic document* will be inserted into the *Acts Interpretation Act 1954* (see part 2 above). The definition of *confirm* is relocated from part 6A into section 1B (Definitions) of the *Oaths Act 1867*, as the term is now also used in part 4 of the Act. The definition of *physical document* has been amended as a consequence of the omission of the terms *document* and *electronic document*.

Clause 139 amends section 12 (Special witnesses) to make a minor drafting amendment.

Clause 140 amends the heading of part 4, division 2 of the *Oaths Act 1867* to "General requirements for affidavits and declarations".

Clause 141 inserts two new sections into part 4, division 2 of the *Oaths Act 1867* – section 13AA (Application of division) and section 13AB (Execution requirements).

New section 13AA (Application of division) provides that the division applies in relation to an affidavit or declaration, whether the signatory, substitute signatory or witness is present in person or by audio visual link, and whether the affidavit or statutory declaration is physically signed or

electronically signed. This effectively means that the division applies to all affidavits and statutory declarations, regardless of how they are made or signed. The clause also inserts a note referring to part 6A which contains additional requirements for an affidavit or declaration made by audio visual link.

New section 13AB (Execution requirements) sets out the execution requirements for affidavits and declarations. Subsection (1) provides that an affidavit or declaration must be in writing. Subsection (2) provides that an affidavit or declaration is executed only if it is witnessed under part 4 and, if applicable, part 6A, is signed by the signatory or a substitute signatory and is confirmed by the witness for the document. Subsection (3) provides that if the affidavit or declaration is to be filed or admitted into evidence in a proceeding, then the requirements in subsection (2) apply subject to any rule of court or practice direction that may apply to the document. For example, rule 433 of the *Uniform Civil Procedure Rules 1999* provides for a certificate of reading or signature for the person making an affidavit. Subsection (4) provides that subsection (2) does not limit a requirement relating to an affidavit or declaration under another Act or law.

Clause 142 amends the heading of section 13A of the *Oaths Act 1867* to “Accepted method for electronically signing affidavit or declaration”.

Clause 143 amends section 13B (Jurat of affidavit) of the *Oaths Act 1867* to replace existing subparagraph (2)(e) to better reflect the relevant offences in the Criminal Code that apply to knowingly making a false affidavit (see, for example, section 193 (False verified statements) and section 194 (False declarations) of the Criminal Code). New subparagraph (2)(e) requires the signatory to ensure that the affidavit’s jurat states “that the signatory understands that a person who makes an affidavit that the person knows is false in a material particular commits an offence”. The clause also removes the example which references the offence of perjury.

Clause 144 amends section 13C (Statement in declaration) of the *Oaths Act 1867* to replace existing subparagraph (2)(e) to better reflect the relevant offences in the Criminal Code that apply to knowingly making a false declaration (see, for example, section 193 (False verified statements) and section 194 (False declarations) of the Criminal Code). New subparagraph (2)(e) requires the signatory to ensure that the declaration states “that the signatory understands that a person who makes a declaration that the person knows is false in a material particular commits an offence”. The clause also removes the example which references the offence of perjury.

Clause 145 replaces sections 13D and 13E of the *Oaths Act 1867*.

New section 13D (General requirements for witnessing affidavit or declaration) provides the general witnessing requirements that apply to all affidavits and declarations, regardless of how they are made. The section provides that a witness for an affidavit or declaration must not confirm the document unless they take reasonable steps to verify the identity of the signatory and that the name of the signatory matches the name of the signatory written on or in the document. The section also provides that the witness must not confirm the document unless the witness is satisfied that the signatory is freely and voluntarily signing the document or freely and voluntarily directing a substitute signatory to sign the document. The clause inserts a note referencing section 31T which contains additional requirements for witnessing a document by audio visual link.

New section 13D consolidates existing similar requirements that apply in parts 4 and 6A of the *Oaths Act 1867* and sections 2A (Persons excluded from signing as substitute signatory in physical presence of signatory and witness) and 2B (Requirements for witnessing signature of substitute

signatory in physical presence of signatory and substitute signatory) of the *Oaths Regulation 2022* to provide a consistent approach for all affidavits and statutory declarations, however made.

New section 13E (Information to be included about witness) specifies the information that a witness for an affidavit or declaration must include on the document.

Subsection (1) specifies the information that a special witness must include on the document if the document is electronically signed or witnessed by audio visual link. Subparagraph 13E(1)(e) requires special witnesses, except for JPs and Cdec's approved by the chief executive under section 12(1)(c) of the *Oaths Act 1867* and special witnesses mentioned in subparagraph 13E(1)(d), to include either: the name of their place of employment; their employment address or home address; their telephone number; or their email address. This replaces the existing requirement in section 13E(b)(iv) of the *Oaths Act* for all special witnesses to include their place of employment, to give these special witnesses the flexibility to choose the least problematic, and least revealing, information relevant to the circumstances.

If a special witness witnesses a document that is signed on paper and in person, they do not need to provide the information specified in subsection (1), but instead must include the information that is specified in subsection (2).

Subsection (2) sets out the information that a witness (including a special witness) must include on the document if the document is made on paper and witnessed in person. Subparagraph 13E(2)(c) requires these witnesses, except for JPs or Cdec's in any State or Territory, to include either: the name of their place of employment; their employment address or home address; their telephone number; or their email address. This replaces the existing requirement in section 13E(c)(ii) of the *Oaths Act 1867* for a witness to include their place of employment, if applicable, to give these witnesses the flexibility to choose the least problematic, and least revealing, information relevant to the circumstances.

Subsection (3) specifies the information that must be included in an affidavit or declaration that is witnessed by a person prescribed by regulation as witness for the purposes of sections 16A(1)(e), 16B(1)(d), 31Q(2) or 31S(1) of the *Oaths Act 1867*.

Where a JP or Cdec witnesses an affidavit or declaration, the JP or Cdec must also comply with section 31 of the *Justices of the Peace and Commissioners for Declarations Act 1991* unless otherwise provided under the *Oaths Act 1867*.

Clause 146 inserts two new sections into the *Oaths Act 1867* – section 13G (Substitute signatories) and section 13H (Witnessing signature of substitute signatory).

New section 13G (Substitute signatories) provides a clear framework for the use of substitute signatories that applies to all affidavits and statutory declarations, regardless of whether they are made in person or by audio visual link, and regardless of whether they are physically or electronically signed. The new section consolidates the substitute signatory provisions from parts 4 and 6A of the *Oaths Act 1867* and the *Oaths Regulation 2022*.

Subsection (1) provides that the signatory for an affidavit or declaration may direct another person (a substitute signatory) to sign the document for them.

Subsection (2) limits who can be a substitute signatory. This subsection effectively replaces and consolidates existing section 31P(2) (Persons who may be directed to sign) of the *Oaths Act 1867* and section 2B(2) of the *Oaths Regulation 2022*. The clause also inserts a note referencing section

31P (Persons who may be directed to sign) which places further limits on who may be a substitute signatory if the direction to sign is given by audio visual link. A person may also be excluded under another Act or law from signing a document as a substitute signatory.

Subsection (3) provides a definition for *relation*.

New section 13H (Witnessing signature of substitute signatory) sets out the witnessing requirements that apply when a substitute signatory is directed by a signatory to sign the document for them. Subsection (2) provides that the witness must observe the signatory direct the substitute signatory to sign the document and be satisfied that the substitute signatory is not excluded from signing the document under section 13G (Substitute signatories) or 31P (Persons who may be directed to sign) of the *Oaths Act 1867*. This subsection effectively replaces the requirements under section 31R (Witness must observe the direction and verify particular matters) of the *Oaths Act 1867* and section 2B (Requirements for witnessing signature of substitute signatory in physical presence of signatory and substitute signatory) of the *Oaths Regulation 2022*.

Clause 147 makes a minor correction to section 16A (Who may witness affidavits) by amending subparagraph 16A(1)(e) of the *Oaths Act 1867* to replace the word ‘section’ with ‘subsection’.

Clause 148 makes a minor correction to section 16B (Who may witness declarations) by amending subparagraph 16B(1)(d) of the *Oaths Act 1867* to replace the word ‘section’ with ‘subsection’.

Clause 149 amends section 16C (Affidavit or declaration electronically signed in physical presence of witness) of the *Oaths Act 1867* to omit the note to subsection (1) and to make minor corrections to subsections (2) and (3) by replacing the word ‘section’ with ‘subsection’ in each of those provisions.

Clause 150 amends section 31B (Definitions for part) of the *Oaths Act 1867* to omit the definition of *confirm*, which has been relocated to the general definitions section in section 1B (Definitions) of the *Oaths Act 1867*.

Clause 151 amends section 31E (Presence by audio visual link) of the *Oaths Act 1867* to insert a reference to section 31Q(2). This amendment is consequential to the amendment to section 31Q in this part.

Clause 152 amends section 31J (Presence by audio visual link) of the *Oaths Act 1867* to insert a reference to section 31Q(2). This amendment is consequential to the amendment to section 31Q in this part.

Clause 153 replaces section 31P (Persons who may be directed to sign) of the *Oaths Act 1867* with new section 31P (Who may be a substitute signatory). The new section provides that only the following persons can act as a substitute signatory when the substitute signatory is directed by audio visual link to sign a document:

- an Australian legal practitioner;
- a government legal officer under the *Legal Profession Act 2007* who is an Australian lawyer and who witnesses documents in the course of the government work engaged in by the officer; or
- an employee of the public trustee.

Existing subsection (2) of section 31P (Persons who may be directed to sign), which sets out who is excluded from acting as a substitute signatory, is effectively relocated into new section 13G

(Substitute signatories) by this part so that the limitations on who can be a substitute signatory apply universally to all affidavits and declarations, regardless of how they are made.

Clause 154 amends section 31Q (Substitute signatory signing in physical presence of witness requires special witness) of the *Oaths Act 1867* to allow persons to be prescribed by regulation for witnessing a document that is signed by a substitute signatory in the physical presence of the witness, when the direction to sign is given by audio visual link. The heading to the section has been consequentially expanded to include another prescribed person. This ensures a consistent approach across sections 16C, 31S and 31Q of the *Oaths Act 1867* so that, in all circumstances where a special witness is required, the list can be expanded by prescription. The regulation may provide that prescribed persons can witness affidavits or declarations only of a prescribed type and subject to conditions, or the regulation may specify the types of affidavits or declarations that a prescribed person may not witness.

Clause 155 omits section 31R (Witness must observe direction and verify particular matters) of the *Oaths Act 1867*, which requires the witness to observe and verify particular matters when a substitute signatory is directed by audio visual link to sign a document. The requirements in subsections (2)(a) and (2)(b) of section 31R (Witness must observe direction and verify particular matters) are consolidated into new section 13H (Witnessing signature of substitute signatory) by this part, while the requirement in subsection 2(c) is consolidated into new section 13D (General requirements for witnessing affidavit or declaration) by this part.

Clause 156 amends section 31S (Witness must be a special witness or another prescribed person) of the *Oaths Act 1867* to make minor technical amendments.

Clause 157 replaces section 31T of the *Oaths Act 1867* with new section 31T (General requirements for witnessing documents) to provide that a document may be witnessed by audio visual link only if the audio visual link enables the witness to be satisfied, by the sounds and images made by the link, that the signatory or substitute signatory is signing the document; and the witness forms the satisfaction in real time. The requirements of subparagraph (a) are consolidated into new 13G (Substitute signatories) by this part.

Part 23 Amendment of Oaths Regulation 2022

Clause 158 provides that this part amends the *Oaths Regulation 2022*.

Clause 159 omits sections 2A (Persons excluded from signing as substitute signatory in physical presence of signatory and witness) and 2B (Requirements for witnessing signature of substitute signatory in physical presence of signatory and substitute signatory) of the *Oaths Regulation 2022*. These sections are consolidated into new sections 13D (General requirements for witnessing affidavit or declaration), 13G (Substitute signatories), 13H (Witnessing signature of substitute signatory) of the *Oaths Act 1867* by the previous part.

Clause 160 makes a consequential amendment to section 3 (Information witness must include on affidavit) of the *Oaths Regulation 2022* arising from the amendments to section 13E (Information to be included about witness) of the *Oaths Act 1867* by the previous part.

Clause 161 amends section 4 (Prescribed persons for witnessing affidavits) in the *Oaths Regulation 2022* to make a minor technical amendment.

Part 24 Amendment of Ombudsman Act 2001

Clause 162 provides that this part amends the *Ombudsman Act 2001*.

Clause 163 amends section 31 (Power of court if noncompliance with investigation requirement) to simplify the note under section 31(3) in line with current drafting practice.

Part 25 Amendment of Penalties and Sentences Act 1992

Clause 164 provides that this part amends the *Penalties and Sentences Act 1992*.

Clause 165 amends section 9 (Sentencing guidelines) by inserting a new subsection (9C) and inserting a new definition of *relevant serious offence* in subsection (12).

New subsection (9C) provides that in determining the appropriate sentence for an offender convicted of a relevant serious offence committed in relation to a pregnant person that resulted in destroying the life of the person's unborn child, the court must treat the destruction of the unborn child's life as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.

Amended subsection (12) provides that the definition of a *relevant serious offence* is an offence against section 302 and 305, 303 and 310, 320, 323, 328A, and 339 of the Criminal Code and section 83 of the *Transport Operations (Road Use Management) Act 1995*.

Clause 166 amends the definition of *victim* under section 179I (Definitions for part) to reflect the expanded definition of *victim* under section 5 of the *Victims of Crime Assistance Act 2009*.

Part 26 Amendment of Personal Injuries Proceedings Act 2002

Clause 167 provides that this part amends the *Personal Injuries Proceedings Act 2002*.

Clause 168 replaces section 75A (Indexation of particular amounts) to provide for the annual indexation of amounts to be fixed by Ministerial notice instead of prescribed by regulation. New section 75A(1) provides that the Minister must, before each financial year starts, make a notice for the financial year fixing amounts as the declared costs limit, lower offer limit and upper offer limit.

New section 75A(2) provides that the amount fixed for a limit is to be the amount last fixed by the Minister for the limit adjusted by the percentage change in average weekly earnings between the current financial year and the last financial year and rounded to the nearest 10 dollars (rounding one-half upwards).

New section 75A(3) and (4) provide that, if the percentage change in average weekly earnings between the current financial year and the last financial year: (a) would reduce or would not change the amount fixed as the limit; or (b) is not available from the Australian Statistician; the Minister must fix an amount for the limit that is not less than the amount for the limit last fixed by the Minister.

New section 75A(5) provides that the Minister's notice is subordinate legislation.

New section 75A(6) provides that despite subsection (1), the Minister may make a notice for a financial year, after 1 July in the financial year, that has retrospective operation to 1 July in the

financial year. New section 75A(7) provides that subsection (6) applies despite the *Statutory Instruments Act 1992*, section 34.

New section 75A(8) provides definitions of *current financial year* and *last financial year* for the section.

Clause 169 inserts a new chapter 4, part 10 (Transitional provisions for Justice and Other Legislation Amendment Act 2023). New section 89 (Definition for part) inserts a definition of *new section 75A* for the part.

New section 90 (First notice made by Minister) provides that, in relation to the first notice made by the Minister under new section 75A, a reference to the amount last fixed by the Minister is taken to be a reference to the amount last prescribed by regulation for the limit.

New section 91(1) (Existing prescribed limits for particular definitions) provides that this section applies in relation to each amount that, immediately before the commencement, was prescribed by regulation as the declared costs limit, the lower offer limit or the upper offer limit for a period.

New section 91(2) provides that the amount continues to have effect as if it had been fixed under new section 75A. New section 91(3) provides that the Minister may, for information only, include the amount in the notice made by the Minister under new section 75A.

Clause 170 amends schedule 1 (Dictionary) to replace the definitions *declared costs limit*, *lower offer limit* and *upper offer limit* to refer to the amount fixed by the Minister under section 75A instead of the amount prescribed by regulation.

Part 27 Amendment of Public Guardian Act 2014

Clause 171 provides that this part amends the *Public Guardian Act 2014*.

Clause 172 amends section 26 (Power of court if noncompliance with attendance notice) to simplify the note under section 26(3) in line with current drafting practice.

Clause 173 replaces section 113 (Resignation, suspension and termination of community visitor) with new sections 113 and 113A. With the commencement of the *Public Sector Act 2022* on 1 March 2023, community visitors are now treated as ‘public sector employees’ and the Bill will clarify the employment arrangements applying to community visitors.

New section 113 (Vacancy in office) sets out the circumstances in which a community visitor’s appointment ends and the office becomes vacant. This includes if:

- the community visitor completes a fixed term and is not reappointed;
- the community visitor resigns by notice of resignation; and
- the community visitor becomes ineligible to hold office (section 110(2) in relation to a community visitor (adult) and section 111(2) in relation to a community visitor (child) set out the criteria for when a person may not hold office as a community visitor, including for example, if the person is an employee of the NDIS agency).

New section 113A (Termination of community visitor) replicates and modifies former section 113(2)(d) to provide that the appointment of a community visitor may be terminated if the person has been convicted of an offence, whether or not a conviction is recorded, and the public guardian

considers the person is unsuitable to perform the duties of a community visitor. Termination would take place under the *Public Sector Act 2022*, section 99.

Clause 174 amends the chapter 5, part 5 heading (Assessing suitability of persons to be engaged in particular employment) to better reflect the content of the part following amendment by the Bill.

Clause 175 inserts a new division heading into part 5. The part has been restructured and amended to generally remove its application to child advocacy officers, to whom relevant provisions in the *Public Sector Act 2022* apply. Division 1 provides for the suitability of persons engaged as community visitors.

Clause 176 replaces section 119 and inserts new section 119A. New section 119 (Application of division) provides that division 1 applies despite the *Public Sector Act 2022*, chapter 3, part 5, in relation to assessing the suitability of a person to be appointed as a community visitor. Retaining these provisions in the *Public Guardian Act 2014* reflects the unique and sensitive role community visitors undertake in the community.

New section 119A (Disclosure of criminal history) continues the requirement that a person seeking to be engaged as a community visitor must disclose to the public guardian whether or not the person has a criminal history and, if they do, disclose that complete criminal history.

Clause 177 amends section 120 (Investigations about the suitability of applicant to be community visitor or child advocacy officer) to remove references to a child advocacy officer and to provide that the public guardian may also make investigations into whether a person is suitable to continue to be a community visitor.

Clause 178 replaces section 121 (Community visitor or child advocacy officer to disclose change in criminal history) to remove references to a child advocacy officer. New section 121 requires a community visitor to immediately disclose a change in their criminal history to the public guardian.

Clause 179 amends section 122 (Failing to make a disclosure or making a false, misleading or incomplete disclosure) to remove references to a child advocacy officer.

Clause 180 amends section 123 (Person to be advised of information obtained from commissioner of the police service) to remove references to a child advocacy officer.

Clause 181 amends section 124 (Use of information obtained under this part) to remove a reference to a child advocacy officer and to provide that the public guardian must not use information obtained under the part for any purpose other than assessing a person's suitability to be or to continue to be a community visitor.

Clause 182 replaces section 125 (Guidelines for dealing with information obtained under this part). New section 125 allows the public guardian to make a guideline to ensure decisions made about the suitability of persons to be, or continue to be, community visitors are made consistently and fairly. If the public guardian makes a guideline, a copy must be given to a person seeking to be engaged as a community visitor or a community visitor, on request.

Clause 183 inserts new chapter 5, part 5, division 2 (Suitability of persons to be engaged as child advocacy officers). The division continues the existing requirement that a person seeking to be engaged as a child advocacy officer must disclose to the public guardian whether or not the person has a criminal history and, if they do, the requirement to disclose that complete criminal history.

Clause 184 inserts new chapter 7, part 4 (Transitional provisions for Justice and Other Legislation Amendment Act 2023).

New section 197 (Definition for part) includes a definition of *former* for the purposes of the transitional provisions.

New section 198 (Existing suspensions) provides that if a community visitor received a written notice of suspension under former section 113(4) and, before the commencement, the suspension had not ended under former section 113(5), the community visitor's suspension continues under the *Public Sector Act 2022*, section 101.

New section 199 (Termination notices given before commencement) provides that former section 113 continues to apply to a termination if the community visitor was given a notice of termination under that section and, on commencement, it had not yet taken effect.

New section 200 (Particular community visitors go out of office) provides that if, immediately before commencement, a community visitor is a person who may not hold office under section 110(2) or 111(2), on commencement the person's appointment as a community visitor ends and they go out of office. A community visitor who, following commencement, becomes a person who may not hold office under section 110(2) or 111(2) is dealt with under new section 113(1)(c) and (d), as inserted by the Bill.

Clause 185 amends the definition of *criminal history* to replace a reference to a person's 'criminal record' within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986* with a reference to a person's *criminal history* which is the term used in that Act.

Part 28 Amendment of Queensland Civil and Administrative Tribunal Act 2009

Clause 186 provides that this part amends the *Queensland Civil and Administrative Tribunal Act 2009*.

Clause 187 amends section 188 (Removal from office) to remove reference to 'as defined under the Corporations Act' from subsection (1)(c).

Clause 188 amends section 191 (Acting senior members) to replace subsections 191(5) to (9) with new subsections 191(5) to (12) to allow the Minister and the President to appoint a person to act as a senior member of the tribunal in certain circumstances.

New subsection (5) provides that the Minister may appoint a person to act as a senior member.

New subsection (6) provides that the President may appoint a person from the senior members pool to act as a senior member. The Minister is required to establish the senior members pool under section 191(1).

New subsection (7) provides that an appointment may be made under subsection (5) or (6) if there is a vacancy in the office of a senior member, or a senior member is absent or for any other reason is unable to perform the functions of the office, or the appointment is required for the proper functioning of the tribunal.

New subsection (8) provides that a person appointed to act as a senior member has all the functions and powers of a senior member and is taken to be a senior member for all purposes relating to this Act or an enabling Act.

New subsection (9) provides that without limiting subsection (8), section 187 applies to a person acting as senior member as if the person were a senior member.

New subsection (10) provides that an appointment to act as a senior member may be for a period of not more than six months (whether appointed by the Minister or the President).

New subsection (11) provides that a person appointed to act as a senior member may be appointed to act as a senior member for a further period if the term of the appointment does not immediately follow the person's previous appointment as acting senior member or the appointment is continuous on one or more of the person's previous appointments as acting senior member and the total period of the continuous appointments is not more than six months.

New subsection (12) provides that the Minister or president may at any time cancel the appointment of a person to act as a senior member.

Clause 189 replaces section 191A (Acting ordinary members) to enable the President to make acting appointments for ordinary members for up to six months from a pool of people who the Minister has approved as a member of the ordinary member pool.

New subsection (1) provides that the Minister must establish a pool of persons to act as ordinary members (the ordinary members pool).

New subsection (2) provides that the Minister may approve a person as a member of the ordinary members pool only if the person is eligible to be appointed to the office of ordinary member under section 183(4).

New subsection (3) provides that the Minister may approve a person as a member of the ordinary members pool for a specified time and cancel the approval of a person as a member of the ordinary members pool at any time.

New subsection (4) provides that the Minister may approve a person as a member of the ordinary members pool only after consultation with the president.

New subsection (5) provides that the Minister may appoint a person to act as an ordinary member.

New subsection (6) provides that the president may appoint a person from the ordinary members pool to act as an ordinary member.

New subsection (7) provides that an appointment may be made under subsection (5) or (6) if there is a vacancy in the office of an ordinary member, or an ordinary member is absent or for any other reason is unable to perform the functions of the office, or the appointment is required for the proper functioning of the tribunal.

New subsection (8) provides that a person appointed to act as an ordinary member has all the functions and powers of an ordinary member and is taken to be an ordinary member for all purposes relating to this Act or an enabling Act.

New subsection (9) provides that without limiting subsection (8), section 187 applies to a person acting as ordinary member as if the person were an ordinary member.

New subsection (10) provides that an appointment to act as an ordinary member may be for a period of not more than six months (whether appointed by the Minister or president).

New subsection (11) provides that a person appointed to act as an ordinary member may be appointed to act as an ordinary member for a further period if the term of the appointment does not immediately follow the person's previous appointments as acting ordinary member, or the appointment is continuous on 1 or more of the person's previous appointments as acting ordinary member and the total period of the continuous appointments is not more than 6 months.

New subsection (12) provides that the Minister or president may at any time cancel the appointment of a person to act as an ordinary member.

Clause 190 amends section 192 (Appointment of supplementary members) to provide for members of the Land Court to be appointed as supplementary members of the tribunal.

Subclause (1) amends subsection 192(2) to provide that a member of the Land Court may be appointed as a supplementary member.

Subclause (2) inserts new subparagraph 192(3)(d) to provide that, before appointing a member of the Land Court as a supplementary member, the Minister must consult with the President of the Land Court.

Subclause (3) insert new subparagraph 192(4)(d) to provide that the president of the tribunal may enter into an arrangement with the President of the Land Court about using members of the Land Court appointed as supplementary members to perform their functions under this Act.

Subclause (4) replaces subsections 192(5) and (6) to provide that the arrangement may provide for the following for a member of the Land Court: the matters the member may hear and decide; the time the member may allocate to performing functions as a supplementary member; and the places at which the member may constitute the tribunal. Also, a member of the Land Court may perform a function as a supplementary member only as authorised, and in the way provided, under the arrangement.

Subclause (5) replaces subsection 192(9) to provide that the appointment of a member of the Land Court as a supplementary member does not affect: the member's tenure of office or status as a member of the Land Court; the payment of the member's salary or allowances as a member of the Land Court; or any other right or privilege the member has as a member of the Land Court.

Subclause (6) amends subsections 192(10) and (11) to provide that service by a member of the Land Court in the office of supplementary member is taken, for all purposes, to be service as a member of the Land Court. Also, nothing in this Act prevents a person who holds office as a supplementary member from doing anything in the person's capacity as a member of the Land Court.

Clause 191 amends section 193 (Vacancy of office) to insert subparagraph 193(a)(iv) to provide that the office of a supplementary member becomes vacant if, for a supplementary member who is a member of the Land Court, the member ceases to be a member of the Land Court.

Clause 192 amends section 198 (Appointment of adjudicators) to remove the requirement for the Minister to advertise for applications for appropriately qualified persons to be appointed as adjudicators at QCAT.

Subclause (1) omits subsection (5).

Subclause (2) amends subsection (8) to omit the words “whether or not the vacancy in the adjudicator’s office has been advertised”.

Clause 193 amends section 203 (Removal from office) to remove reference to “as defined under the Corporations Act’ from subsection (1)(c).

Clause 194 replaces section 206 (Acting adjudicators) to enable the President to make acting appointments for adjudicators for up to six months from a pool of people who the Minister has approved as a member of the adjudicator pool.

New subsection (1) provides that the Minister must establish a pool of persons to act as adjudicators (the adjudicators pool).

New subsection (2) provides that the Minister may approve a person as a member of the adjudicators pool only if the person is eligible to be appointed to the office of adjudicator under section 198(6).

New subsection (3) provides that the Minister may approve a person as a member of the adjudicators pool for a specified time and cancel the approval of a person as a member of the adjudicators pool at any time.

New subsection (4) provides that the Minister may approve a person as a member of the adjudicators pool only after consultation with the president.

New subsection (5) provides that the Minister may appoint a person to act as an adjudicator.

New subsection (6) provides that the president may appoint a person from the adjudicators pool to act as an adjudicator.

New subsection (7) provides that an appointment may be made under subsection (5) or (6) if there is a vacancy in the office of an adjudicator, or an adjudicator is absent or for any other reason is unable to perform the functions of the office, or the appointment is required for the proper functioning of the tribunal.

New subsection (8) provides that a person appointed to act as an adjudicator has all the functions and powers of an adjudicator and is taken to be an adjudicator for all purposes relating to this Act or an enabling Act.

New subsection (9) provides that without limiting subsection (8), section 202 applies to a person acting as an adjudicator as if the person were an adjudicator.

New subsection (10) provides that an appointment to act as an adjudicator may be for a period of not more than 6 months (whether appointed by the president or the Minister).

New subsection (11) provides that a person appointed to act as adjudicator may be appointed to act as adjudicator for a further period if the term of the appointment does not immediately follow

the person's previous appointment as acting adjudicator or the term of the appointment is continuous on 1 or more of the person's previous appointments as acting adjudicator and the total period of the continuous appointment is not more than 6 months.

New subsection (12) provides that the Minister or president may at any time cancel the appointment of a person to act as an adjudicator.

Clause 195 amends section 206O (Appointment) to remove the requirement for the Minister to advertise for applications for appropriately qualified persons to be appointed as QCAT justices of the peace.

Subclause (1) omits subsection (5).

Subclause (2) amends subsection (8) to omit the words "whether or not the vacancy in the office of the QCAT justice of the peace has been advertised".

Clause 196 amends section 206T (Removal from office) to remove reference to 'as defined under the Corporations Act' from subsection (1)(c).

Clause 197 amends chapter 4, part 5, heading (The Queensland Civil and Administrative Tribunal Registry) to include 'and associates' after 'Registry'.

Clause 198 inserts new section 212A (Associates to senior members) which provides for the president of QCAT to appoint a person as an associate to a senior member on the recommendation of that member. The associate is appointed under the QCAT Act on terms and conditions decided by the Governor in Council.

Clause 199 amends section 228 (Oath of office) to allow the Deputy President to administer oaths of office to senior members, ordinary members and adjudicators.

Clause 200 inserts a new chapter 10, part 3 (Transitional provision for Justice and Other Legislation Amendment Act 2023). New section 290 (Existing associates to senior members) provides that a person holding an appointment as an associate to a senior member continues to hold that appointment on the same terms and be treated as a public service employee under the *Public Sector Act 2022* from commencement.

Clause 201 amends schedule 3 (Dictionary) to amend the definition *former judge* to exclude a former judge of the Federal Circuit and Family Court of Australia (Division 2), and to amend the definition *judicial member* to include a supplementary member who is a member of the Land Court.

Part 29 Amendment of Referendums Act 1997

Clause 202 provides that this part amends the *Referendums Act 1997*.

Clause 203 amends section 17A (Supply of electoral rolls and ballot papers) to insert reference in subsection (1)(a) to '6pm on' to reflect the new 6pm cut-off time for the close of the electoral rolls, consistent with the amendments to *Electoral Act 1992* in a previous part.

Clause 204 amends section 21 (Who may vote) to insert reference to '6pm on' in subsection (1)(d)(ii).

Clause 205 inserts new section 36A (Saving of ballot papers not in declaration envelopes). Subsection (1) provides that the section applies if the commission or the returning officer for an electoral district receives an envelope (an outer envelope) containing a ballot paper and a declaration envelope but the ballot paper is not in the declaration envelope. Subsection (2) states that members of the commission staff must examine the contents of the outer envelope under section 36 to determine whether the ballot paper in the outer envelope is to be accepted for counting and deal with the ballot paper in the outer envelope under section 36 as if the ballot paper had been in the declaration envelope.

Part 30 Amendment of Statutory Instruments Act 1992

Clause 206 provides that this part amends the *Statutory Instruments Act 1992*.

Clause 207 replaces section 30B (Statutory instrument may exempt from fee). New section 30B(1) provides that if a power is conferred under a law for a statutory instrument to prescribe a fee, the power includes a power to: (a) exempt any person or matter from payment of all or part of the fee; (b) waive payment of all or part of the fee for any person or matter; (c) refund all or part of an amount of the fee paid by a person; or (d) provide for a stated person to grant an exemption, or make a waiver or refund, mentioned in paragraphs (a), (b) or (c).

New section 30B(2) provides that, if a law requires payment of a fee prescribed under a statutory instrument by a person or for a matter, and either: (i) the person or matter is exempted under the statutory instrument from payment of all or part of the fee; or (ii) all or part of the fee is waived for the person or matter under the statutory instrument; the requirement to pay the fee is taken to have been satisfied to the extent of the exemption or waiver.

New section 30B(3) provides that a provision of a statutory instrument under which a fee is refunded, or a person may refund a fee, does not authorise the payment of an amount from the consolidated fund.

Part 31 Amendment of Supreme Court of Queensland Act 1991

Clause 208 provides that this part amends the *Supreme Court of Queensland Act 1991*.

Clause 209 amends section 86 (Admission guidelines). Subclause (1) omits existing subsections (2)-(4) and inserts new subsections (2) and (3). Subsection (2) provides that a guideline takes effect on the first day it is published under subsection (3)(a) or if a later day is fixed in the guideline – on that day. Subsection (3) then provides that the registrar must ensure each guideline, while it is in effect is published on the court’s website; and available for public inspection, without charge, at the regional registries at Brisbane, Rockhampton, Townsville and Cairns. Subclause (2) omits the reference to ‘internet’ in the definition of *court’s internet website* in line with current drafting practice.

Part 32 Amendment of Trust Accounts Act 1973

Clause 210 provides that this part amends the *Trust Accounts Act 1973*.

Clause 211 inserts a new heading ‘Part 1 Preliminary’.

Clause 212 amends section 4 (Definitions) to omit the definitions for *trustee* and *trust moneys* and insert new definitions for *contributor*, *funeral benefit agreement*, *trustee* and *trust moneys*.

Clause 213 inserts new section 4AA (Meaning of trustee) which inserts a new definition for *trustee* which reflects the new limited scope of the Act which will apply to funeral benefit businesses only.

Clause 214 omits section 4C (Act continues to apply to particular persons after they stop being trustees) which is no longer required as a result of the removal of public accountants from the scope of the Act.

Clause 215 inserts a new heading ‘Part 2 Trust accounts’.

Clause 216 omits section 8 (Purposes for which money may be withdrawn from trust account) which is no longer required as a result of the removal of public accountants from the scope of the Act.

Clause 217 omits section 11 (Claims and liens not affected) which is no longer required as a result of the removal of public accountants from the scope of the Act.

Clause 218 inserts a new heading ‘Part 3 Audits and auditors’.

Clause 219 amends section 15 (Qualifications, resignation, termination of appointment of auditor) to correct references to the professional accounting bodies.

Clause 220 amends section 17 (Duties of auditor) to remove a reference to section 8 (Purposes for which money may be withdrawn from trust account) which is being omitted.

Clause 221 amends section 21 (Power of Minister to appoint an independent auditor) to remove the option to appoint the auditor-general or an officer of the auditor-general as the independent auditor.

Clause 222 amends section 22 (Power of Minister to appoint an independent auditor on application of client) to remove the option to appoint the auditor-general or an officer of the auditor-general as the independent auditor.

Clause 223 inserts a new heading ‘Part 4 Miscellaneous’.

Clause 224 omits section 28A (Supervising entity to report annually to Minister) which is no longer required as a result of the removal of public accountants from the scope of the Act.

Clause 225 omits sections 31 and 32 which are no longer required as a result of the removal of public accountants from the scope of the Act.

Clause 226 omits sections 34-36 which are no longer required as a result of the removal of public accountants from the scope of the Act.

Clause 227 amends section 41 (Regulations) to amend the heading to ‘Regulation-making power’ and correct a minor drafting error.

Clause 228 inserts a new section 42 (Transitional regulation-making power) to allow a transitional regulation to be made to assist in returning security lodged with the chief executive.

Clause 229 inserts a new part 5 (Transitional provisions for Justice and Other Legislation Amendment Act 2023). New part 5 contains transitional provisions relating to the removal of public accountants from the scope of the Act in relation to offences committed before the

commencement, provisions of the Act to continue to apply to a former trustee during a transition period of two years after the commencement, records made before the commencement, notice requirements not complied with by a former trustee before the commencement, the continued operation of sections 12 and 13 in relation to demands received by the former trustee before the commencement, requirements in relation to unannounced examinations that were not complied with before the commencement, and existing appeals.

Part 33 Amendment of Uniform Civil Procedure (Fees) Regulation 2019

Clause 230 provides that this part amends the *Uniform Civil Procedure (Fees) Regulation 2019*.

Clause 231 amends schedule 1 (Supreme Court and District Court fees) to prescribe new fees in the second column of item 1(1)(a) and item 1(1)(b); item 1(2)(a) and item 1(2)(b); item 1(3)(a) and item 1(3)(b); item 1(4)(a) and item 1(4)(b); and, the third column of item 1(3)(a) and item 1(3)(b); and, item 1(4)(a) and item 1(4)(b). The increases in the fee units correspond with the fees omitted under the *Appeal Costs Fund Act 1973* in the Bill.

Clause 232 amends schedule 2 (Magistrates Courts fees) to prescribe new fees in the second column of item 1(a); item 1(b); item 1(c); item 1(d)(i); item 1(d)(ii); item 1(e)(i); and item 1(e)(ii). The increases in the fee units correspond with the fees omitted under the *Appeal Costs Fund Act 1973* in the Bill.

Part 34 Amendment of Victims of Crime Assistance Act 2009

Clause 233 provides that this part amends the *Victims of Crime Assistance Act 2009*.

Clause 234 amends section 5 (Meaning of victim) to insert new subsections, amend subsections (2) and (3), and renumber the subsections.

New subsections (1A) and (1B) provide that, if a victim mentioned in subsection (1)(a) is a pregnant person when the crime is committed, and as a result of the commission of the crime the person sustains a bodily injury that results in the destruction of the life of the person's unborn child or the person dies, resulting in the destruction of the life of the person's unborn child, then for sections 18 to 20 and schedule 1AA, part 1, *victim* includes a person who has suffered harm because the person would, if the unborn child had been born alive, have been a family member of the child.

Subsection (2) is amended to provide that a person who commits a crime against a person mentioned in subsection (1)(a) is not a victim of the crime under new subsection (1B).

Subsection (3) is amended to exclude a person mentioned under new subsection (1B) from subsection (3).

Clause 235 amends section 21 (Scheme for financial assistance). The amendment to subsection (1)(b) provides that the chapter establishes a scheme for the payment of financial assistance to a person who incurs, or is reasonably likely to incur, funeral expenses for a primary victim of an act of violence or a primary victim's unborn child.

Clause 236 amends section 23 (Assistance for victim available only in 1 capacity) to replace subsection (3). New subsection (3) provides that the section does not prevent:

- a primary victim of an act of violence being granted assistance for funeral expenses for the destruction of the life of an unborn child of the primary victim in addition to victim assistance;
- a witness secondary victim or related victim of an act of violence being granted assistance for funeral expenses for a primary victim of the act of violence or an unborn child of a primary victim of the act of violence in addition to victim assistance.

Clause 237 replaces existing chapter 3, part 8 (Person who incurs funeral expenses for primary victim's funeral) with new part 8 (Funeral expense assistance).

New section 50 (Eligibility and assistance) provides that a person is eligible for funeral expense assistance if they incur, or are reasonably likely to incur, funeral expenses for:

- the funeral of a primary victim of an act of violence who dies as a direct result of the act;
- the funeral of an unborn child of a primary victim of an act of violence if as a direct result of the act the life of the unborn child is destroyed.

Subsection (2) of new section 50 provides that, if the person committed the act of violence mentioned in subsection (1), the person is not eligible for funeral expense assistance.

Subsection (3) of new section 50 provides that a person eligible for funeral expense assistance may be granted up to \$8,000 for each primary victim and unborn child of a primary victim for funeral expenses incurred, or reasonably likely to be incurred, by the person.

Subsection (4) of new section 50 provides that if more than one person is eligible for funeral expense assistance, only a combined total of up to \$8,000 may be granted to the persons for the funeral expenses for each primary victim or unborn child of a primary victim.

Subsection (5) of new section 50 provides that to remove any doubt a person may, in relation to an act of violence, be eligible for funeral expense assistance for:

- a primary victim even though the person is also a witness secondary victim or related victim of the act; and
- an unborn child even though the person is also a primary victim, witness secondary victim, or related victim of the act.

Clause 238 amends section 56 (Who may apply for funeral expense assistance) to provide that a person who may be eligible for assistance under section 50 may apply to the scheme manager for funeral expense assistance.

Clause 239 amends section 58 (Time limit) to provide that an application for funeral expense assistance must be made within three years after the death of the primary victim or the destruction of the life of an unborn child.

Clause 240 inserts new chapter 9 (Transitional provision for Justice and Other Legislation Amendment Act 2023).

New section 220 (Application of s 5 and ch 3) provides that section 5 as amended by the *Justice and Other Legislation Amendment Act 2023* applies in relation to a crime only if the crime is committed after the commencement, and that chapter 3 as amended by the *Justice and Other Legislation Amendment Act 2023* applies in relation to an act of violence only if the act is committed after the commencement.

Clause 241 makes a consequential amendment to schedule 1AA (Charter of victims' rights), part 1, divisions 1 and 3 to reflect the renumbering of section 5(3) to section 5(5) in the *Note* for these divisions.

Clause 242 amends schedule 2 (Amounts and categories for special assistance).

Section 1(3) of schedule 2 is amended to replace the reference to 'a bodily injury that has resulted in the loss of a fetus' in the definition of *very serious injury* with a reference to 'a bodily injury that has resulted in the destruction of the life of an unborn child'.

Section 3(1)(d) of schedule 2 is amended to replace the reference 'maintaining a sexual relationship with a person under the age of 16' with a reference to 'an offence described in the Criminal Code, section 229B'.

Clause 243 amends schedule 3 (Dictionary) to replace the existing definition of *funeral expense assistance* with a new definition.

Part 35 Amendment of Youth Justice Act 1992

Clause 244 provides that this part amends the *Youth Justice Act 1992*.

Clause 245 amends section 150 (Sentencing principles) by inserting a new subsection (3B) and inserting a new definition of *relevant serious offence* in subsection (6).

New subsection (3B) provides that in determining the appropriate sentence for a child convicted of a relevant serious offence committed in relation to a pregnant person that resulted in destroying the life of the person's unborn child, the court must treat the destruction of the unborn child's life as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.

Amended subsection (6) provides that the definition of a *relevant serious offence* is an offence against section 302 and 305, 303 and 310, 320, 323, 328A, and 339 of the Criminal Code and section 83 of the *Transport Operations (Road Use Management) Act 1995*.

Part 36 Repeal

Clause 246 provides that the *Court Funds Act 1973*, No. 73 is repealed.

Part 37 Other amendments

Clause 247 provides that schedule 1 amends the legislation it mentions.

Schedule 1 Other amendments

Schedule 1, part 1 amends various legislation as a result of amendments relating to the *Acts Interpretation Act 1954*, including the insertion of definitions of *electronic document*, *insolvent under administration*, *police commissioner* and *spent conviction* in the *Acts Interpretation Act 1954*, schedule 1.

Schedule 1, part 2 amends the *Uniform Civil Procedure Rules 1999* as a result of the repeal of the *Court Funds Act 1973*.