

# Evidence and Other Legislation Amendment Bill 2021

## Explanatory Notes

### FOR

### Amendments to be moved during consideration in detail by The Honourable Shannon Fentiman MP Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence

#### Title of the Bill

Evidence and Other Legislation Amendment Bill 2021

#### Objectives of the Amendments

The objectives of the amendments to the Evidence and Other Legislation Amendment Bill 2021 (the Bill) to be moved during consideration in detail are to:

- address concerns raised by submitters during the Legal Affairs and Community Safety Committee (the Committee) consideration of the Bill with regards to:
  - clarifying who bears the onus of proof and the standard of proof that must be satisfied when court is deciding whether a sealed or stored document or thing sought under a search warrant, may be dealt with in a way authorised under the warrant despite an established objection relating to journalist privilege;
  - clarifying the application of the definition of ‘domestic violence offence’ for the purposes of the video recorded evidence pilot provisions;
  - further specifying the nature of the training that a police officer must complete in order to meet the requirements for making recorded statements; and
- clarify a provision; and
- correct a minor technical error.

#### Achievement of the objectives

##### Amendments to shield laws

Two amendments relate to the framework for shield laws to ensure journalists can more effectively fulfill their role as facilitators of free communication and report on matters of legitimate concern.

Clause 33 of the Bill is amended to expressly provide in new section 14ZF of the *Evidence Act 1977* (Evidence Act) that the person seeking to deal with the sealed or stored document or thing in a way authorised under the warrant (that is, the authorised officer; chief executive, however described, of the entity that appointed the authorised officer or a delegate of the chief executive;

or another person prescribed by regulation) has the onus of satisfying the court that the public interest in disclosing the informant's identity outweighs the matters mentioned in section 14Y(1)(a) (any likely adverse effect of the disclosure on the informant or another person) and (b) (the public interest in the communication of facts and opinion to the public by the news media and the ability of the news media to access sources of facts) on the balance of probabilities.

Clause 33 is further amended to clarify that the 'decision' referred to in new section 14ZF(4) of the Evidence Act is the decision under section 14ZF(3).

## **Amendments to video recorded evidence**

The remaining amendments relate to the provisions in the Bill establishing a legislative framework to support a pilot for the giving of video recorded evidence-in-chief by adult victims in domestic and family violence related criminal proceedings. The amendments achieve the policy objectives by:

- amending Clause 37 to:
  - clarify that both limbs of the definition of 'domestic violence offence' under paragraphs (a) and (b) in new section 103B of the Evidence Act can be applied disjunctively in order to satisfy the definition. The amendment achieves this by replacing the word 'and' between paragraphs (a) and (b) with the word 'or';
  - specify in new section 103E(4) of the Evidence Act that the definition of 'trained police officer' means a police officer who has successfully completed a domestic and family violence training course, approved by the commissioner, for the purpose of taking recorded statements; and
- amending Clause 36 (new section 93AC of the Evidence Act) to correct a technical error. The amendment achieves this by replacing the incorrect reference to 'section 93' criminal statement in subsection (1) of new section 93AC with the correct reference to 'section 93A' criminal statement.

## **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 are not expected to present any significant costs for government. Any implementation costs will be absorbed from existing agency resources.

## **Consistency with fundamental legislative principles**

The amendments have been drafted having regard to the fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992*.

No potential breaches of FLPs have been identified in relation to the amendments.

## **Consultation**

The amendments address issues raised by submitters to the Legal Affairs and Safety Committee's inquiry into the Bill and a technical drafting error.

## **Consistency with legislation of other jurisdictions**

See the Explanatory Notes to the Bill.

The amendments to the Bill are specific to the State of Queensland

## Notes on provisions

### **Amendment 1 – Clause 33 (Insertion of new pt 2, div 2B )**

*Amendment 1* amends new section 14ZF of the Evidence Act in Clause 33 to provide that a person mentioned in section 14ZE(2)(b), (c) or (d) (the authorised officer, chief executive however described, of the entity that appointed the authorised officer or a delegate of the chief executive, or another person prescribed by regulation, seeking to deal with the sealed or stored document or thing in a way authorised under the warrant), who is party to the application, has the onus of proving that the public interest in disclosing the informant's identity outweighs the matters mentioned in section 14Y(1)(a) and (b) on the balance of probabilities.

### **Amendment 2 – Clause 33 (Insertion of new pt 2, div 2B)**

*Amendment 2* amends new section 14ZF of the Evidence Act in Clause 33 to clarify that the 'decision' referred to in new section 14ZF(4) is reference to the decision under section 14ZF(3).

### **Amendment 3 – Clause 36 (Replacement of s 93AA (Unauthorised possession of, or dealing in, s 93A criminal statements))**

*Amendment 3* amends new section 93AC of the Evidence Act in Clause 36 by replacing the incorrect reference to 'section 93' criminal statement in subsection (1) with the correct reference to 'section 93A' criminal statement.

### **Amendment 4 – Clause 37 (Insertion of new pt 6A)**

*Amendment 4* amends the definition of 'domestic violence offence' in new section 103B of the Evidence Act (Clause 37) by replacing the word 'and' between paragraphs (a) and (b) with the word 'or', to clarify that both limbs of the definition under paragraphs (a) and (b) of the definition can be applied disjunctively in order to satisfy the definition.

### **Amendment 5 – Clause 37 (Insertion of new pt 6A)**

*Amendment 5* amends the definition of 'trained police officer' in new section 103E(4) of the Evidence Act (Clause 37) to provide that a trained police officer means a police officer who has successfully completed a domestic and family violence training course, approved by the commissioner, for the purpose of taking recorded statements.