



Evidence and Other Legislation Amendment Bill 2021



Queensland

Evidence and Other Legislation Amendment Bill 2021

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2021

A Bill

for

An Act to amend the *Bail Act 1980*, the Criminal Code, the *Disability Services Act 2006*, the *Domestic and Family Violence Protection Act 2012*, the *Evidence Act 1977*, the *Justices Act 1886*, the *Magistrates Act 1991*, the *Working with Children (Risk Management and Screening) Act 2000* and the Acts mentioned in schedule 1 for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Evidence and Other Legislation
Amendment Act 2021*. 4
5

Clause 2 Commencement 6

The following provisions commence on a day to be fixed by
proclamation— 7
8

(a) part 3, division 3; 9

(b) parts 4 to 7 and 9; 10

(c) schedule 1, part 2. 11

Part 2 Amendment of Bail Act 1980 12

Clause 3 Act amended 13

This part amends the *Bail Act 1980*. 14

Clause 4 Amendment of s 16 (Refusal of bail generally) 15

Section 16(3)(d), note, ‘section 33(6)’— 16

omit, insert— 17

section 33(7) 18

Clause 5	Amendment of s 33 (Failure to appear in accordance with undertaking)	1 2
(1)	Section 33(3)(b)(ii), from ‘the signature’— <i>omit, insert</i> — the following— (A) for a warrant other than a computer warrant—the signature of the person who issued the warrant; (B) that the person who issued the warrant was duly authorised to do so.	3 4 5 6 7 8 9 10
(2)	Section 33(5), ‘Subsection (4)’— <i>omit, insert</i> — Subsection (5)	11 12 13
(3)	Section 33— <i>insert</i> — (7) In this section— <i>computer warrant</i> see the <i>Justices Act 1886</i> , section 67(1).	14 15 16 17 18
(4)	Section 33(3A) to (7)— <i>renumber</i> as section 33(4) to (8).	19 20
Clause 6	Amendment of pt 5, hdg (Transitional provisions) Part 5, heading, after ‘Transitional’— <i>insert</i> — and validation	21 22 23 24
Clause 7	Insertion of new s 49 After section 48— <i>insert</i> —	25 26 27

[s 8]

49	Transitional and validation provision for Evidence and Other Legislation Amendment Act 2021	1 2 3
(1)	Section 33, as in force from the commencement, applies in relation to a proceeding for an offence against section 33(1) started, but not decided, before the commencement.	4 5 6 7
(2)	Subsection (3) applies in relation to a proceeding for an offence against section 33(1) if—	8 9
(a)	the proceeding was decided before the commencement; and	10 11
(b)	the defendant was apprehended under a warrant mentioned in section 33(1)(b) that is a computer warrant.	12 13 14
(3)	The proceeding, and any order made in the proceeding, is not invalid merely because the court hearing the proceeding did not take judicial notice of the signature of the person who issued the warrant in accordance with former section 33(3)(b)(ii).	15 16 17 18 19 20
(4)	In this section—	21
	<i>computer warrant</i> see the <i>Justices Act 1886</i> , section 67(1).	22 23
	<i>former section 33(3)(b)(ii)</i> means section 33(3)(b)(ii) as in force from time to time before the commencement.	24 25 26

Part 3 **Amendment of Criminal Code** 27

Division 1 **Preliminary** 28

Clause 8	Code amended	29
	This part amends the Criminal Code.	30

Division 2	Amendments commencing on assent	1 2
Clause 9	Amendment of s 590AS (Viewing particular evidence)	3
	(1) Section 590AS, heading, ‘evidence’—	4
	<i>omit, insert—</i>	5
	original evidence—generally	6
	(2) Section 590AS(1), ‘evidence and that is not’—	7
	<i>omit, insert—</i>	8
	evidence, and is not the body of a deceased person,	9 10
	(3) Section 590AS(1), ‘statement’—	11
	<i>omit, insert—</i>	12
	statement,	13
	(4) Section 590AS(1), note—	14
	<i>omit, insert—</i>	15
	<i>Notes—</i>	16
	1 For the viewing of original evidence that is the body of a deceased person, see section 590ASA.	17 18
	2 For the viewing of original evidence that is sensitive evidence, see section 590AO(2)(f), (3) and (4).	19 20
	(5) Section 590AS(6)—	21
	<i>insert—</i>	22
	body see the <i>Coroners Act 2003</i> , schedule 2.	23
Clause 10	Insertion of new s 590ASA	24
	After section 590AS—	25
	<i>insert—</i>	26

[s 10]

590ASA Viewing bodies of deceased persons	1
(1) This section applies if the body of a deceased person that is original evidence is disclosed to an accused person under section 590AH(2)(i) or 590AJ.	2 3 4 5
(2) The prosecution is not required to allow the accused person to view or examine the body for the relevant proceeding other than as required under this section.	6 7 8 9
(3) The prosecution may, on request, allow a permitted person to view, or an appropriate person to view or examine, the body for the purposes of the relevant proceeding—	10 11 12 13
(a) under the supervision of the prosecution; and	14 15
(b) subject to any other conditions the prosecution considers appropriate—	16 17
(i) to protect the integrity of the body; and	18
(ii) to ensure the release of the body for burial under the <i>Coroners Act 2003</i> , section 26 is not unnecessarily delayed.	19 20 21
(4) The court may direct that the prosecution allow a permitted person to view, or an appropriate person to view or examine, the body for the purposes of the relevant proceeding subject to the conditions the court considers appropriate—	22 23 24 25 26
(a) to protect the integrity of the body; and	27
(b) to ensure the release of the body for burial under the <i>Coroners Act 2003</i> , section 26 is not unnecessarily delayed.	28 29 30
(5) The court may make the direction only if satisfied the terms of the direction can ensure—	31 32
(a) the integrity of the body is protected; and	33

	(b) the release of the body for burial under the <i>Coroners Act 2003</i> , section 26 is not unnecessarily delayed.	1 2 3
	(6) In this section—	4
	<i>appropriate person</i> means a person engaged by the accused person, other than a lawyer acting for the accused person, if the prosecution or court considers it is appropriate for the person to view or examine the body.	5 6 7 8 9
	<i>Examples of an appropriate person—</i>	10
	• a person appointed as a DNA analyst under the <i>Evidence Act 1977</i> , section 133A	11 12
	• a person employed by an accredited laboratory, as defined under the <i>Police Powers and Responsibilities Act 2000</i> , section 488B, who has appropriate qualifications and experience in DNA analysis	13 14 15 16 17
	<i>body</i> see the <i>Coroners Act 2003</i> , schedule 2.	18
	<i>permitted person</i> means—	19
	(a) if a lawyer is acting for the accused person—the lawyer; or	20 21
	(b) otherwise—the accused person.	22
Clause 11	Amendment of s 590AV (Disclosure directions under particular provisions)	23 24
	Section 590AV(4), definition <i>disclosure direction</i> , ‘or 590AS’—	25 26
	<i>omit, insert—</i>	27
	, 590AS or 590ASA	28
Clause 12	Insertion of new pt 9, ch 105	29
	Part 9—	30
	<i>insert—</i>	31

[s 12]

Chapter 105	Transitional provision	1
	for Evidence and Other	2
	Legislation	3
	Amendment Act 2021	4
755	Existing relevant proceedings	5
(1)	This section applies in relation to a relevant proceeding started, but not finally decided, before the commencement.	6 7 8
(2)	Subsection (3) applies in relation to the relevant proceeding if, before the commencement—	9 10
(a)	a request was made to the prosecution under section 590AS(3) to allow an appropriate person to view or examine original evidence that is the body of a deceased person; or	11 12 13 14
(b)	the court hearing the proceeding made a direction under section 590AS(4) in relation to viewing and examining original evidence that is the body of a deceased person; or	15 16 17 18
(c)	the accused person applied to the court for a direction mentioned in paragraph (b).	19 20
(3)	Section 590AS, as in force from time to time before the commencement, continues to apply in relation to the relevant proceeding as if the <i>Evidence and Other Legislation Amendment Act 2021</i> had not been enacted.	21 22 23 24 25
(4)	If subsection (3) does not apply in relation to the relevant proceeding, section 590ASA applies in relation to the proceeding.	26 27 28
(5)	In this section—	29
	<i>appropriate person</i> see section 590AS(6).	30
	<i>body</i> see the <i>Coroners Act 2003</i> , schedule 2.	31
	<i>original evidence</i> see section 590AD.	32

	<i>relevant proceeding</i> see section 590AD.	1
Division 3	Amendments commencing by proclamation	2 3
Clause 13	Amendment of s 1 (Definitions)	4
	Section 1—	5
	<i>insert</i> —	6
	<i>associate</i> , of a lawyer, for chapter 62, chapter division 3, see section 590AD.	7 8
	<i>end</i> , of the proceedings for a relevant charge, for chapter 62, chapter division 3, see section 590AD.	9 10
	<i>recorded statement</i> , for chapter 62, chapter division 3, see section 590AD.	11 12
	<i>relevant charge</i> , for chapter 62, chapter division 3, see section 590AD.	13 14
Clause 14	Amendment of s 590AA (Pre-trial directions and rulings)	15
	Section 590AA(2)(1), after ‘6’—	16
	<i>insert</i> —	17
	or part 6A	18
Clause 15	Amendment of s 590AD (Definitions for ch div 3)	19
	(1) Section 590AD—	20
	<i>insert</i> —	21
	<i>associate</i> , of a lawyer, means an associate of the law practice of the lawyer as defined under the <i>Legal Profession Act 2007</i> , section 7(1)(a) or (c).	22 23 24
	<i>end</i> , of the proceedings for a relevant charge, means—	25 26

[s 15]

- (a) if a trial that disposes of the charge is not conducted—the discharge, striking out, withdrawal, entry of *nolle prosequi*, quashing, staying or other event by which the proceedings end; or
- (b) if a trial that disposes of the charge ends without a finding of guilt—the end of the trial; or
- (c) if a trial that disposes of the charge ends with a finding of guilt and an appeal against the finding is not started during the period allowed for appeal, including an extension of the period granted by a court—the end of the period; or
- (d) if a trial that disposes of the charge ends with a finding of guilt and an appeal is started against the finding—the end of the appeal and the end of any further proceedings.
- recorded statement** see the *Evidence Act 1977*, section 103A.
- relevant charge** means a charge against the accused person in a relevant proceeding, and includes any replacement or further charge arising out of the proceeding or the same, or same set of, circumstances.
- (2) Section 590AD, definition *prescribed summary trial*—
insert—
- (da) a charge for a domestic violence offence heard in a domestic violence proceeding within the meaning of the *Evidence Act 1977*, sections 103B and 103C; or
- (3) Section 590AD, definition *prescribed summary trial*, paragraphs (da) and (e)—
renumber as paragraphs (e) and (f).

Clause 16	Amendment of s 590AI (When mandatory disclosure must be made)	1 2
	(1) Section 590AI(1)(b), ‘and, apart from section 590AO’—	3
	<i>omit, insert—</i>	4
	, 590AOA(2) or 590AOB(3) and, apart from sections 590AO, 590AOA and 590AOB	5 6
	(2) Section 590AI(1)(c)—	7
	<i>omit.</i>	8
Clause 17	Amendment of s 590AJ (Disclosure that must be made on request)	9 10
	Section 590AJ(2)(f)—	11
	<i>insert—</i>	12
	<i>Example of any other thing—</i>	13
	a transcript of a recorded statement	14
Clause 18	Amendment of s 590AK (When requested disclosure must be made)	15 16
	(1) Section 590AK(1)(b)(ii), ‘and, apart from section 590AO’—	17
	<i>omit, insert—</i>	18
	, 590AOA(2) or 590AOB(3) and, apart from sections 590AO, 590AOA and 590AOB	19 20
	(2) Section 590AK(1)(b)(iii)—	21
	<i>omit.</i>	22
Clause 19	Amendment of s 590AO (Limit on disclosure of sensitive evidence)	23 24
	Section 590AO(1AA), after ‘statement’—	25
	<i>insert—</i>	26
	or a recorded statement	27

[s 20]

Clause 20	Amendment of s 590AOA (Evidence Act section 93A device statement)	1 2
	(1) Section 590AOA(9)—	3
	<i>omit, insert—</i>	4
	(9) For the <i>Evidence Act 1977</i> , section 93AA(2)(a), it is declared that an act done in contravention of a condition imposed by a notice under subsection (3) or a direction under subsection (5) or (7) is not done for a legitimate purpose related to the relevant proceeding.	5 6 7 8 9 10
	(2) Section 590AOA(11), definitions <i>associate, end of proceedings</i> and <i>relevant charge—omit.</i>	11 12 13
Clause 21	Insertion of new s 590AOB	14
	After section 590AOA—	15
	<i>insert—</i>	16
	590AOB Disclosure of recorded statement	17
	(1) The prosecution is not, for a relevant proceeding, required under this chapter division to give the accused person a copy of a recorded statement other than as required under this section.	18 19 20 21
	(2) Subsection (3) applies if—	22
	(a) other than for this section, the prosecution would have to give the accused person a copy of a recorded statement; and	23 24 25
	(b) the prosecution does not give the accused person a copy of the statement.	26 27
	(3) The prosecution must give the accused person a written notice—	28 29
	(a) describing the recorded statement; and	30
	(b) stating that the prosecution—	31

-
- (i) considers the statement to be a recorded statement; and
- (ii) is not required to give the accused person a copy of the statement other than as required under this section; and
- (c) stating the matters mentioned in subsection (4) or (5), whichever is applicable.
- (4) If the accused person has a lawyer acting for the person, the notice must state that the prosecution will give a lawyer acting for the accused person a copy of the recorded statement on the following conditions—
- (a) that the lawyer must not give the copy to the accused person or anyone else other than the following—
- (i) a lawyer acting for the accused person or to whom the copy is referred for particular advice;
- (ii) a person, other than a lawyer, to whom the copy is referred for particular expert advice;
- (iii) an associate of the lawyer to the extent necessary for work to be done for the lawyer in relation to the relevant proceeding or a proceeding for a relevant charge in the ordinary practice of the law;
- (b) that any lawyer acting for the accused person, other than the lawyer to whom the prosecution gives the copy, must not give the copy to the accused person or anyone else other than the persons mentioned in paragraph (a)(ii) or (iii);
- (c) that a person who is given the copy under paragraph (a) or (b), other than a lawyer mentioned in the paragraph, must not give

[s 21]

- the copy to the accused person or anyone else who is not a lawyer acting for the accused person;
- (d) that the copy held by the lawyer to whom it was given by the prosecution, or held by anyone else to whom the copy has been given under this section—
- (i) must not be copied; and
- (ii) must be returned to the prosecution within 14 days after—
- (A) the lawyer or other person stops being someone who may be given the copy under this section; or
- Example—*
- A lawyer may stop acting for the accused person.
- (B) the end of the proceedings for the relevant charge;
- (e) that the copy may only be given to another person in accordance with the conditions mentioned in paragraphs (a) to (d) for a legitimate purpose connected with the relevant proceeding or a proceeding for a relevant charge.
- (5) If the accused person does not have a lawyer acting for the person, the notice must state that—
- (a) the prosecution will not give the recorded statement (whether the original or a copy) to the accused person; and
- (b) the prosecution will, on request, allow an appropriate person to view the statement, either the original or a copy as stated in the notice, for the purposes of the relevant proceeding at a stated place; and

-
- (c) the prosecution must, on request, give the accused person a transcript of the recorded statement that is in the possession of the prosecution.
- (6) If the prosecution refuses to accept a person nominated by the accused person as an appropriate person for subsection (5)(b), the court may direct the prosecution to accept the person as an appropriate person for subsection (5)(b), subject to the conditions the court considers appropriate.
- (7) The court may make the direction under subsection (6) only if the court is satisfied the terms of the direction can ensure—
- (a) the recorded statement will only be viewed for a legitimate purpose connected with the relevant proceeding; and
- (b) an offence against the *Evidence Act 1977*, section 103Q or 103S will not be committed; and
- (c) if the original recorded statement is to be viewed—the integrity of the statement is protected.
- (8) For the *Evidence Act 1977*, section 103Q(2)(a), it is declared that an act done in contravention of a condition imposed by a notice under subsection (4) or a direction under subsection (6) is not done for a legitimate purpose related to the domestic violence proceeding.
- (9) For subsection (4)(d)(i) or (7)(b), it is declared that making a transcript of the contents of the recorded statement is not making a copy of the statement for the *Evidence Act 1977*, section 103Q(1)(c).
- (10) In this section, a reference to a recorded statement includes, if the context permits, a reference to a

[s 22]

	lawfully edited copy of a recorded statement under the <i>Evidence Act 1977</i> , schedule 3.	1 2
(11)	In this section—	3
	appropriate person , to view a recorded statement, means—	4 5
	(a) the accused person; or	6
	(b) a lawyer mentioned in the <i>Evidence Act 1977</i> , section 21O(4) or another lawyer who is providing legal advice or assistance to the accused person; or	7 8 9 10
	(c) another person engaged by the accused person if the prosecution or court considers it is appropriate for the other person to view the recorded statement.	11 12 13 14
	<i>Examples of persons the prosecution may consider appropriate—</i>	15 16
	• an interpreter	17
	• an expert	18
	copy , of a recorded statement, for subsections (4) and (5)—	19 20
	(a) means a copy of the original recorded statement in the form of a videorecording under the <i>Evidence Act 1977</i> ; and	21 22 23
	(b) includes any additional copy of the recorded statement provided by the prosecution for convenience but does not include a transcript of the recorded statement.	24 25 26 27
Clause 22	Amendment of s 590AS (Viewing particular original evidence—generally)	28 29
	Section 590AS(1), ‘or an Evidence Act section 93A device statement’—	30 31
	<i>omit, insert—</i>	32

	, an Evidence Act section 93A device statement or a recorded statement	1 2
Clause 23	Amendment of s 590AV (Disclosure directions under particular provisions)	3 4
	Section 590AV(4), definition <i>disclosure direction</i> , after '590AOA,'—	5 6
	<i>insert</i> —	7
	590AOB,	8
Part 4	Amendment of Disability Services Act 2006	9 10
Clause 24	Act amended	11
	This part amends the <i>Disability Services Act 2006</i> .	12
Clause 25	Amendment of s 138C (Chief executive's request for police information about relevant person)	13 14
	Section 138C(3)(b), after 'transcript'—	15
	<i>insert</i> —	16
	or a transcript of a recorded statement	17
Clause 26	Amendment of s 138M (Obtaining information from director of public prosecutions)	18 19
	Section 138M(6), definition <i>evidentiary material</i> , paragraph (d), after '93A transcript'—	20 21
	<i>insert</i> —	22
	or a transcript of a recorded statement	23

[s 27]

Clause 27	Amendment of s 138ZG (Giving information to chief executive (working with children))	1 2
(1)	Section 138ZG(2)—	3
	<i>insert</i> —	4
	(ca) information related to police information about a person, including a section 93A transcript and a transcript of a recorded statement; and	5 6 7 8
(2)	Section 138ZG(2)(ca) to (e)—	9
	<i>renumber</i> as section 138ZG(2)(d) to (f).	10
Clause 28	Amendment of s 138ZH (Giving information to NDIS worker screening unit or working with children screening unit)	11 12 13
	Section 138ZH(4)—	14
	<i>omit, insert</i> —	15
	(4) However, the chief executive must not give the NDIS worker screening unit or working with children screening unit—	16 17 18
	(a) a section 93A transcript, or information contained in a section 93A transcript; or	19 20
	(b) a transcript of a recorded statement or information contained in a transcript of a recorded statement.	21 22 23
Clause 29	Amendment of sch 8 (Dictionary)	24
(1)	Schedule 8—	25
	<i>insert</i> —	26
	<i>recorded statement</i> see the <i>Evidence Act 1977</i> , section 103A.	27 28
(2)	Schedule 8, definition <i>section 93A transcript</i> , ‘section 93AA(3)’—	29 30

omit, insert— 1
schedule 3 2

Part 5 **Amendment of Domestic and Family Violence Protection Act 2012** 3
4
5

Clause 30 Act amended 6
This part amends the *Domestic and Family Violence Protection Act 2012*. 7
8
Note— 9
See also the amendments in schedule 1. 10

Clause 31 Amendment of s 169J (Limits on information that may be shared) 11
12
(1) Section 169J(d)(iii), ‘section 93AA’— 13
omit, insert— 14
schedule 3 15
(2) Section 169J(d)— 16
insert— 17
(iv) a recorded statement, or a transcript of a 18
recorded statement, within the meaning of 19
the *Evidence Act 1977*, section 103A; or 20

Part 6 **Amendment of Evidence Act 1977** 21
22

Clause 32 Act amended 23
This part amends the *Evidence Act 1977*. 24

[s 33]

Note—

See also the amendments in schedule 1.

		1
		2
Clause 33	Insertion of new pt 2, div 2B	3
	Part 2—	4
	<i>insert</i> —	5
	Division 2B Journalist privilege	6
	Subdivision 1 Preliminary	7
	14Q Application of division	8
	(1) This division applies if—	9
	(a) a person (the <i>informant</i>) gives information (the <i>provided information</i>) to a journalist, in the normal course of the journalist's activities as a journalist, in the expectation the information may be published in a news medium; and	10 11 12 13 14 15
	(b) the journalist promises the informant not to disclose the informant's identity as the source of the information.	16 17 18
	(2) To remove any doubt, it is declared that this division does not prevent a person from disclosing the informant's identity as the source of the provided information.	19 20 21 22
	14R Who is a <i>journalist</i>	23
	(1) A person is a <i>journalist</i> if the person is engaged and active in—	24 25
	(a) gathering and assessing information about matters of public interest; and	26 27

(b)	preparing the information, or providing comment or opinion on or analysis of the information, for publication in a news medium.	1 2 3 4
(2)	In determining whether a person is a journalist, a court may consider the following matters—	5 6
(a)	whether the person is regularly engaged and active in the activities mentioned in subsection (1);	7 8 9
(b)	whether the person complies with a recognised professional standard or code of practice in carrying out the activities;	10 11 12
(c)	whether the publisher of the news medium complies with a recognised professional standard or code of practice in publishing information in the news medium;	13 14 15 16
(d)	any other matter the court considers relevant.	17 18
14S Meaning of <i>relevant proceeding</i>		19
(1)	In this division, a proceeding is a <i>relevant proceeding</i> if the court hearing the proceeding is a court of record.	20 21 22
(2)	However, a proceeding under the <i>Crime and Corruption Act 2001</i> is not a relevant proceeding.	23 24
(3)	To remove any doubt, it is declared that a proceeding is a relevant proceeding whether or not the court hearing the proceeding is bound by the rules of evidence for the proceeding.	25 26 27 28
14T Definitions for division		29
	In this division—	30
	<i>authorised officer</i> see section 14ZC.	31

[s 33]

<i>disclosure requirement</i> —	1
(a) means a process or order of a court of record for the disclosure of information or the delivery, inspection or production of a document or thing, including, for example—	2 3 4 5 6
(i) a summons or subpoena; or	7
(ii) a process or order for disclosure or discovery of documents by a party to a proceeding; or	8 9 10
(iii) a process or order for non-party disclosure or discovery; or	11 12
(iv) an interrogatory; or	13
(v) a notice or request to a party to a proceeding to produce a document; but	14 15
(b) does not include an obligation or requirement for disclosure by the prosecution in a criminal proceeding.	16 17 18
<i>informant</i> see section 14Q(1)(a).	19
<i>journalist</i> see section 14R(1).	20
<i>news medium</i> means a medium for the dissemination of news and observations on news to the public or a section of the public.	21 22 23
<i>provided information</i> see section 14Q(1)(a).	24
<i>relevant person</i> , for a journalist, means—	25
(a) a current or previous employer of the journalist; or	26 27
(b) a person who has engaged the journalist on a contract for services; or	28 29
(c) a person who—	30
(i) is or has been involved in the publication of a news medium; and	31 32

-
- (ii) works or has worked with the journalist 1
in relation to publishing information in 2
the news medium. 3

relevant proceeding see section 14S(1). 4

Subdivision 2 Relevant proceedings 5

14U Application of subdivision 6

This subdivision applies in relation to a relevant 7
proceeding. 8

14V Journalist privilege relating to identity of informants 9 10

- (1) Despite any other Act, the journalist or a relevant 11
person for the journalist can not be compelled, in 12
relation to the relevant proceeding, to give 13
evidence or comply with a disclosure requirement 14
if giving the evidence or complying with the 15
requirement would— 16
- (a) disclose the identity of the informant as the 17
source of the provided information; or 18
- (b) enable the identity of the informant as the 19
source of the provided information to be 20
ascertained. 21
- (2) However, this section applies in relation to a 22
relevant person for the journalist only if the 23
relevant person became aware of the identity of 24
the informant as the source of the provided 25
information— 26
- (a) in the normal course of the relevant person's 27
work with the journalist; or 28
- (b) in the course of, or as a result of, a relevant 29
proceeding. 30

[s 33]

14W Claims of journalist privilege at hearings of relevant proceedings	1 2
(1) This section applies if—	3
(a) the journalist or a relevant person for the journalist is called to give evidence at a hearing of the relevant proceeding; and	4 5 6
(b) the journalist or relevant person for the journalist claims that section 14V applies in relation to the giving of particular evidence by the journalist or relevant person at the hearing.	7 8 9 10 11
(2) The court hearing the relevant proceeding must decide whether the claim is established.	12 13
(3) The journalist or relevant person for the journalist has the onus of proving the claim is established on the balance of probabilities.	14 15 16
(4) If the relevant proceeding is a trial by jury, the court must hear and decide the claim in the absence of the jury.	17 18 19
(5) In hearing the claim, the court may order that all persons other than those specified by the court be excluded from the room in which the court is sitting.	20 21 22 23
(6) However, if the relevant proceeding is a criminal proceeding, the court must not exclude the accused person from the room.	24 25 26
14X Applications for orders requiring giving of evidence despite journalist privilege	27 28
(1) If the court decides, under section 14W, the claim is established, a party to the relevant proceeding may apply to the court for an order that the journalist or relevant person for the journalist must give the evidence despite section 14V.	29 30 31 32 33
(2) The applicant has the onus of proving each of the	34

-
- grounds of the application on the balance of probabilities. 1
2
- (3) If the relevant proceeding is a trial by jury, the court must hear and decide the application in the absence of the jury. 3
4
5
- (4) In hearing the application, the court may order that all persons other than those specified by the court be excluded from the room in which the court is sitting. 6
7
8
9
- (5) However, if the relevant proceeding is a criminal proceeding, the court must not exclude the accused person from the room. 10
11
12

14Y Deciding applications under s 14X 13

- (1) If an application is made under section 14X(1), the court may make the order if satisfied that, having regard to the issues to be determined in the relevant proceeding, the public interest in disclosing the informant's identity outweighs— 14
15
16
17
18
- (a) any likely adverse effect of the disclosure on the informant or another person; and 19
20
- (b) the public interest in— 21
- (i) the communication of facts and opinion to the public by the news media; and 22
23
24
- (ii) the ability of the news media to access sources of facts. 25
26
- (2) In deciding whether to make the order, the court may have regard to the following matters— 27
28
- (a) whether the provided information is a matter of public interest; 29
30
- (b) the nature and subject matter of the relevant proceeding; 31
32

[s 33]

- (c) the importance of the provided information 1
and the informant's identity to the relevant 2
proceeding and the availability of other 3
evidence in relation to the provided 4
information; 5
- (d) if the relevant proceeding is a criminal 6
proceeding—the accused person's right to a 7
fair hearing; 8
- (e) any likely adverse effect of disclosing the 9
informant's identity on the informant or 10
another person and whether the effect can be 11
mitigated; 12
- (f) whether the informant's identity as the 13
source of the provided information is 14
already in the public domain; 15
- (g) any decision previously made by a court 16
under this division about a claim, objection 17
or application in relation to the provided 18
information; 19
- (h) the way in which the provided information 20
has been used or kept by the journalist, 21
including whether the journalist— 22
 - (i) verified the information; or 23
 - (ii) used the information in a way that is 24
fair and accurate and minimised any 25
likely adverse effect on another person; 26
- (i) whether the journalist complied with a 27
recognised professional standard or code of 28
practice in obtaining, using or receiving the 29
provided information; 30
- (j) whether obtaining, using, giving or 31
receiving the provided information— 32
 - (i) involved an offence or misconduct by 33
the informant or journalist; or 34

(ii) poses a risk to national security or the security of the State;	1 2
(k) the extent to which making the order is likely to deter other persons from giving information to journalists;	3 4 5
(l) any other matter the court considers relevant.	6 7
(3) Also, the court may consider a written or oral statement made by the informant to the court about the matter mentioned in subsection (1)(a).	8 9 10
(4) The court must state its reasons for making or refusing to make the order.	11 12
(5) The order may be subject to the terms and conditions the court considers appropriate.	13 14
14Z Objections to disclosure requirements on grounds of journalist privilege	15 16
(1) This section applies if—	17
(a) the journalist or a relevant person for the journalist is subject to a disclosure requirement in relation to the relevant proceeding; and	18 19 20 21
(b) the journalist or relevant person for the journalist objects to complying with the disclosure requirement on the grounds that section 14V applies; and	22 23 24 25
(c) the court hearing the relevant proceeding is required to make a decision in relation to the objection.	26 27 28
(2) The court may decide the objection is established only if satisfied that—	29 30
(a) section 14V applies in relation to compliance with the disclosure requirement	31 32

[s 33]

- by the journalist or relevant person for the 1
journalist; and 2
- (b) having regard to the issues to be determined 3
in the relevant proceeding, the public 4
interest in disclosing the informant's 5
identity does not outweigh the matters 6
mentioned in section 14Y(1)(a) and (b). 7
- (3) In considering the matter mentioned in subsection 8
(2)(b), the court may— 9
- (a) have regard to the matters mentioned in 10
section 14Y(2); and 11
- (b) consider a written or oral statement made by 12
the informant to the court about the matter 13
mentioned in section 14Y(1)(a). 14
- (4) In hearing the objection, the court may order that 15
all persons other than those specified by the court 16
be excluded from the room in which the court is 17
sitting. 18
- (5) However, if the relevant proceeding is a criminal 19
proceeding, the court must not exclude the 20
accused person from the room. 21
- (6) If the court decides the objection is not 22
established, the journalist or relevant person for 23
the journalist must comply with the disclosure 24
requirement. 25
- 14ZA Other orders court may make 26**
- (1) This section applies in relation to a relevant 27
proceeding if— 28
- (a) an application is made under section 14X(1) 29
to the court hearing the proceeding; or 30
- (b) the court hearing the proceeding is required 31
to make a decision in relation to an 32
objection mentioned in section 14Z(1)(b). 33

-
- (2) The court may make the following orders in relation to the relevant proceeding, application or objection—
- (a) an order restricting access to a document in relation to the relevant proceeding, application or objection if—
 - (i) the document would disclose the identity of the informant as the source of the provided information or enable the identity of the informant as the source of the provided information to be ascertained; or
 - (ii) the court considers it is in the public interest to restrict access to the document;
 - (b) any other order the court considers appropriate in the circumstances.
- (3) Without limiting subsection (2)(b), the court may make an order that information or a document provided to the court in relation to the application or objection is not required to be disclosed to any other party to the relevant proceeding, and is not to be publicly accessible, if the court considers it appropriate in the circumstances, including, for example, because disclosure of the information or document would—
- (a) prejudice a proceeding, or an investigation or intelligence operation of a law enforcement agency within the meaning of section 21C; or
 - (b) cause harm or detriment to a person.

14ZB Court to inform of particular rights

- (1) This section applies if it appears to the court hearing a relevant proceeding that a person may

[s 33]

- have grounds for— 1
- (a) claiming that section 14V applies in relation 2
to the giving of evidence by the person; or 3
- (b) applying for an order under section 14X(1). 4
- (2) The court must satisfy itself that the person is 5
aware of the relevant provisions of this 6
subdivision and has had an opportunity to seek 7
legal advice. 8
- (3) If the proceeding is a trial by jury, the court must 9
satisfy itself of the matter under subsection (2) in 10
the absence of the jury. 11

Subdivision 3 Search warrants 12

14ZC Application of subdivision 13

This subdivision applies if a warrant is issued that 14
authorises a person (an *authorised officer*) to 15
enter and search a place or search another person 16
and, during the search— 17

- (a) the authorised officer wishes to deal with a 18
document or thing in a way authorised under 19
the warrant; and 20
- (b) the journalist or a relevant person for the 21
journalist tells the authorised officer that the 22
journalist or relevant person objects to the 23
dealing on the grounds that the document or 24
thing contains information that would— 25
- (i) disclose the identity of the informant as 26
the source of the provided information; 27
or 28
- (ii) enable the identity of the informant as 29
the source of the provided information 30
to be ascertained; and 31

-
- (c) the authorised officer tells the journalist or relevant person for the journalist the officer still wishes to deal with the document or thing despite the objection.

14ZD Procedures if objections made

- (1) The authorised officer may ask the journalist or relevant person for the journalist to agree to the document or thing being immediately sealed in a container, or stored in another secure way, specified by the officer and held by the officer for safekeeping.
- (2) If the authorised officer makes a request under subsection (1), the officer must tell the journalist or relevant person for the journalist—
- (a) about the effect of subsection (3); and
- (b) that if the journalist or relevant person agrees as mentioned in subsection (1), the journalist or relevant person may make an application to the Supreme Court under section 14ZE(2) in relation to the document or thing.
- (3) If the journalist or relevant person for the journalist does not agree as mentioned in subsection (1), the authorised officer may deal with the document or thing in a way authorised under the warrant.
- (4) Subsections (5) and (6) apply if the journalist or relevant person for the journalist agrees as mentioned in subsection (1).
- (5) If an application is made to the Supreme Court under section 14ZE(2) in relation to the sealed or stored document or thing, the authorised officer must ensure the sealed or stored document or thing is given to the registrar of the Supreme Court for safekeeping until the application is

[s 33]

- decided. 1
- (6) If an application is not made to the Supreme Court 2
under section 14ZE(2) in relation to the sealed or 3
stored document or thing— 4
- (a) the authorised officer must ensure the sealed 5
or stored document or thing is kept in safe 6
custody until the end of the period 7
mentioned in section 14ZE(3); and 8
- (b) the sealed or stored document or thing may, 9
after the period has ended, be dealt with in a 10
way authorised under the warrant. 11
- 14ZE Applications to Supreme Court in relation to 12
objections 13**
- (1) This section applies if the journalist or relevant 14
person for the journalist agrees as mentioned in 15
section 14ZD(1). 16
- (2) The following persons may apply to the Supreme 17
Court to decide whether the sealed or stored 18
document or thing may be dealt with in a way 19
authorised under the warrant— 20
- (a) the journalist or relevant person for the 21
journalist; 22
- (b) the authorised officer; 23
- (c) the chief executive, however described, of 24
the entity that appointed the authorised 25
officer or a delegate of the chief executive; 26
- (d) another person prescribed by regulation. 27
- (3) The application must be made within 7 days after 28
the day the request under section 14ZD(1) is 29
made. 30
- (4) In hearing the application, the court may order 31
that all persons other than those specified by the 32
court be excluded from the room in which the 33

court is sitting. 1

14ZF Decisions on applications 2

- (1) If an application is made under section 14ZE(2)— 3
 - (a) the court must first decide whether the 4
grounds for the objection mentioned in 5
section 14ZC(b) are established; and 6
 - (b) the journalist or relevant person for the 7
journalist has the onus of proving the 8
grounds for the objection on the balance of 9
probabilities. 10
- (2) Subsection (3) applies if the court decides the 11
grounds for the objection are established. 12
- (3) The court may decide the sealed or stored 13
document or thing may be dealt with in a way 14
authorised under the warrant despite the objection 15
if satisfied the public interest in disclosing the 16
informant's identity outweighs the matters 17
mentioned in section 14Y(1)(a) and (b). 18
- (4) In making the decision, the court may have regard 19
to the following matters— 20
 - (a) the matters mentioned in section 14Y(2)(a) 21
and (e) to (l); 22
 - (b) the nature of the investigation to which the 23
warrant relates; 24
 - (c) the importance of the provided information 25
and the informant's identity to the 26
investigation to which the warrant relates 27
and the availability of other evidence in 28
relation to the provided information; 29
 - (d) the purposes for which the provided 30
information and the informant's identity are 31
intended to be used. 32
- (5) Also, the court may consider a written or oral 33

[s 33]

statement made by the informant to the court 1
about the matter mentioned in section 14Y(1)(a). 2

(6) The court must state the reasons for its decision 3
under subsection (3). 4

14ZG Other orders court may make 5

(1) The court may make the following orders in 6
relation to the application— 7

(a) an order restricting access to a document in 8
relation to the application if— 9

(i) the document would disclose the 10
identity of the informant as the source 11
of the provided information or enable 12
the identity of the informant as the 13
source of the provided information to 14
be ascertained; or 15

(ii) the court considers it is in the public 16
interest to restrict access to the 17
document; 18

(b) any other order the court considers 19
appropriate in the circumstances. 20

(2) Without limiting subsection (1)(b)— 21

(a) the court may make an order that 22
information or a document provided to the 23
court in relation to the application is not 24
required to be disclosed to any other party to 25
the application, and is not to be publicly 26
accessible, if the court considers it 27
appropriate in the circumstances, including, 28
for example, because disclosure of the 29
information or document would— 30

(i) prejudice a proceeding, or an 31
investigation or intelligence operation 32
of a law enforcement agency within the 33
meaning of section 21C; or 34

	(ii) cause harm or detriment to a person; and	1 2
	(b) if the court decides the sealed or stored document or thing may be dealt with in a way authorised under the warrant—the court may make an order about how the sealed or stored document or thing may be dealt with under the warrant.	3 4 5 6 7 8
Clause 34	Amendment of s 21AAA (Exclusion of particular persons while particular evidence is presented)	9 10
	Section 21AAA(1)—	11
	<i>insert—</i>	12
	(d) a recorded statement, or a lawfully edited copy of the recorded statement, that is admissible as evidence in the proceeding.	13 14 15
Clause 35	Amendment of s 93A (Statement made before proceeding by child or person with an impairment of the mind)	16 17
	Section 93A—	18
	<i>insert—</i>	19
	(3B) This section does not affect the application of the <i>Justices Act 1886</i> , sections 110A to 110C to a committal proceeding.	20 21 22
Clause 36	Replacement of s 93AA (Unauthorised possession of, or dealing in, s 93A criminal statements)	23 24
	Section 93AA—	25
	<i>omit, insert—</i>	26
	93AA Unauthorised possession of, or dealing in, s 93A criminal statements or section 93A transcripts	27 28 29
	(1) A person commits an offence if the person—	30

[s 36]

- | | | |
|-----|--|----------------------|
| (a) | possesses a section 93A criminal statement or section 93A transcript; or | 1
2 |
| (b) | supplies, or offers to supply, a section 93A criminal statement or section 93A transcript to another person; or | 3
4
5 |
| (c) | copies, or permits another person to copy, a section 93A criminal statement or section 93A transcript. | 6
7
8 |
| | Maximum penalty— | 9 |
| (a) | for an individual—100 penalty units or 2 years imprisonment; or | 10
11 |
| (b) | for a corporation—1,000 penalty units. | 12 |
| (2) | However, a person may do something mentioned in subsection (1)— | 13
14 |
| (a) | for a legitimate purpose related to the proceeding for which the section 93A criminal statement or section 93A transcript was made or another proceeding; or | 15
16
17
18 |
| (b) | if the person is required or permitted to do the thing under an employment-screening Act, other than to the extent stated in subsection (3); or | 19
20
21
22 |
| (c) | if the person is permitted to do the thing under section 93AB. | 23
24 |
| (3) | For subsection (2)(b), a person, for the purpose of making an employment-screening decision— | 25
26 |
| (a) | must not supply, or offer to supply, a section 93A transcript to the employment-screening applicant for the decision; but | 27
28
29 |
| (b) | may supply, or offer to supply, a summary of a section 93A transcript to the employment-screening applicant for the decision. | 30
31
32
33 |

93AB Permitted use of section 93A transcript by employment-screening applicant or applicant’s lawyer	1
	2
	3
(1) This section applies if an employment-screening applicant is given a written summary of a section 93A transcript because an employment-screening decision has been, or is proposed to be, made about the person.	4 5 6 7 8
(2) The employment-screening applicant may—	9
(a) possess the summary; or	10
(b) supply, or offer to supply, the summary to an Australian lawyer to obtain legal advice in relation to the employment-screening decision; or	11 12 13 14
(c) copy, or permit another person to copy, the summary for the purpose mentioned in paragraph (b).	15 16 17
(3) The lawyer may possess or copy the summary for the purpose of providing legal advice to the employment-screening applicant in relation to the employment-screening decision.	18 19 20 21
93AC Publishing section 93A criminal statements or section 93A transcripts prohibited	22 23
(1) A person must not publish all or part of a section 93 criminal statement or a section 93A transcript unless the publication—	24 25 26
(a) is approved by the court presiding at the proceeding at which the section 93A criminal statement is presented; and	27 28 29
(b) complies with the conditions of the court’s approval.	30 31
Maximum penalty—	32

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	(a) for an individual—100 penalty units or 2 years imprisonment; or	1 2	
	(b) for a corporation—1,000 penalty units.	3	
	(2) The court may approve the publication only in exceptional circumstances.	4 5	
	(3) In this section—	6	
	<i>publish</i> means disseminate or provide access to the public or a section of the public by any means, including, for example, by television, radio, the internet, newspaper, magazine or notice.	7 8 9 10	
Clause 37	Insertion of new pt 6A	11	
	After part 6—	12	
	<i>insert</i> —	13	
	Part 6A	Recorded statements	14
	Division 1	Preliminary	15
	103A Definitions for part	16	
	In this part—	17	
	<i>complainant</i> means an adult victim of an alleged domestic violence offence.	18 19	
	<i>recorded statement</i> means a videorecording or audio recording of a statement made by a complainant in relation to an alleged domestic violence offence.	20 21 22 23	
	103B Meaning of <i>domestic violence offence</i>	24	
	<i>A domestic violence offence</i> is—	25	
	(a) an offence against the <i>Domestic and Family Violence Protection Act 2012</i> , part 7; and	26 27	

-
- (b) an offence against another Act committed by a person where the act or omission that constitutes the offence is also—
- (i) domestic violence or associated domestic violence under the *Domestic and Family Violence Protection Act 2012* committed by the person; or
 - (ii) a contravention of the *Domestic and Family Violence Protection Act 2012*, section 177(2).

Note—

Under the *Domestic and Family Violence Protection Act 2012*, section 177(2), a respondent against whom a domestic violence order has been made under that Act must not contravene the order.

103C Meaning of *domestic violence proceeding*

A *domestic violence proceeding* is a criminal proceeding—

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

Division 2 Use of recorded statements

103D Use of recorded statement as complainant's evidence-in-chief

- (1) The evidence-in-chief of a complainant in a

[s 37]

domestic violence proceeding may be given, 1
wholly or partly, as a recorded statement under 2
this part. 3

- (2) In determining whether to present all or part of a 4
complainant's evidence-in-chief as a recorded 5
statement, the prosecution must consider— 6
- (a) the wishes of the complainant; and 7
 - (b) any evidence of intimidation of the 8
complainant by the defendant; and 9
 - (c) if relevant to the proceeding—the main 10
objects of the *Domestic and Family Violence* 11
Protection Act 2012 as set out in section 3 of 12
that Act. 13

**103E Requirements for making recorded 14
statements 15**

- (1) A recorded statement must— 16
- (a) be made as soon as practicable after the 17
events happen that constitute the alleged 18
domestic violence offence to which the 19
recorded statement relates; and 20
 - (b) be taken by a trained police officer. 21
- (2) However, failure to comply with subsection (1) 22
does not prevent a complainant's evidence being 23
taken or recorded under this part or affect the 24
admissibility of the evidence. 25
- (3) Also, a recorded statement must— 26
- (a) be made with the complainant's informed 27
consent under section 103F; and 28
 - (b) include the complainant's 29
acknowledgement, or declaration under the 30
Oaths Act 1867, that— 31

-
- (i) the recorded statement is true to the best of the complainant’s knowledge and belief; and
 - (ii) the complainant made the recorded statement knowing the complainant may be prosecuted for stating in the statement anything the complainant knows is false; and
 - (c) contain an oral translation in English of any part of the recorded statement that is in a language other than English.
- (4) In this section—
- trained police officer* means a police officer who has successfully completed a training course, approved by the police commissioner, for the purpose of taking recorded statements.

103F When recorded statement is made with informed consent

- (1) A recorded statement is made with the informed consent of a complainant if the making of the recorded statement complies with this section.
- (2) A police officer taking the recorded statement must, before taking the recorded statement, inform the complainant that—
 - (a) the recorded statement may be presented as the complainant’s evidence-in-chief in a court; and
 - (b) regardless of whether the recorded statement is presented as the complainant’s evidence-in-chief, the recorded statement can be disclosed to, and used by, the accused person and other persons; and

[s 37]

(c)	if the recorded statement is presented as the complainant's evidence-in-chief in a court, the complainant may be required—	1 2 3
(i)	to attest to the truthfulness of the contents of the recorded statement in the court; and	4 5 6
(ii)	to give further evidence in the court; and	7 8
(d)	the complainant may refuse to consent to the making of the recorded statement.	9 10
(3)	After being informed of the matters mentioned in subsection (2), the complainant must indicate in the recorded statement that the complainant—	11 12 13
(a)	understands the matters; and	14
(b)	consents to the making of the recorded statement.	15 16
Division 3	Admissibility of recorded statements	17 18
	<i>Note—</i>	19
	See also the Criminal Code, section 590AOB in relation to the disclosure of recorded statements by the prosecution.	20 21 22
103G	References to recorded statement	23
	In this division, a reference to a recorded statement includes, if the context permits, a reference to a lawfully edited copy of a recorded statement.	24 25 26 27

103H Admissibility of recorded statements generally	1
	2
(1) A recorded statement is admissible in a domestic violence proceeding as a complainant's evidence-in-chief if—	3
	4
	5
(a) the recorded statement complies with section 103E(3); and	6
	7
(b) the recorded statement is a videorecording; and	8
	9
(c) the Criminal Code, section 590AOB has been complied with for the recorded statement; and	10
	11
	12
(d) at the hearing of the proceeding, the complainant—	13
	14
(i) attests to the truthfulness of the contents of the recorded statement; and	15
	16
(ii) is available for cross-examination and re-examination.	17
	18
(2) However, a court may—	19
(a) rule all or any part of the contents of a recorded statement inadmissible; and	20
	21
(b) if part of the recorded statement is ruled inadmissible—direct that the recorded statement be edited or otherwise altered to delete the inadmissible part.	22
	23
	24
	25
(3) Despite subsection (1), the court hearing a domestic violence proceeding may admit a recorded statement as the complainant's evidence-in-chief if the court is satisfied—	26
	27
	28
	29
(a) for a recorded statement that does not comply with section 103E(3)—	30
	31
(i) the recorded statement substantially complies with section 103E(3); and	32
	33

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- (ii) it would be in the interests of justice for the recorded statement to be admitted; or
 - (b) for a recorded statement that is an audio recording—
 - (i) there are exceptional circumstances for the audio recording of the recorded statement to be admitted; and
 - (ii) the defendant would not be unfairly prejudiced.
 - (4) Also, despite subsection (1), if the parties to a domestic violence proceeding consent, the court hearing the proceeding may admit a recorded statement as the complainant’s evidence-in-chief without—
 - (a) the Criminal Code, section 590AOB having been complied with for the recorded statement; or
 - (b) the complainant having to comply with subsection (1)(d).
 - (5) If a defendant is not represented by a lawyer, the defendant may give the consent mentioned in subsection (4) only if the court is satisfied the defendant understands the consequences of giving the consent.
- Note—*
- For a domestic violence proceeding that is a committal proceeding, see section 103I.

103I Admissibility of recorded statements in particular committal proceedings

- (1) This section applies in relation to a domestic violence proceeding that is a committal proceeding.
- (2) A recorded statement is admissible in the

-
- proceeding as a complainant's evidence-in-chief 1
only if— 2
- (a) the recorded statement is admissible under 3
section 103H; and 4
- (b) a magistrate has given a direction under the 5
Justices Act 1886, section 83A requiring the 6
complainant to attend before the court as a 7
witness to give oral evidence. 8
- (3) A transcript of a recorded statement is admissible 9
in the proceeding as the complainant's 10
evidence-in-chief only if the recorded statement is 11
admitted as a written statement under the *Justices* 12
Act 1886, section 110A. 13
- (4) For subsection (3), the *Justices Act 1886*, section 14
110A applies with all necessary changes and as 15
though— 16
- (a) a reference in that section to a written 17
statement included a reference to a 18
statement contained in a document as 19
defined under schedule 3; and 20
- (b) subsection (6C)(c) of that section were 21
omitted. 22

**103J Application of particular provisions to 23
recorded statements 24**

- Sections 94, 98, 99, 101 and 102 apply in relation 25
to a recorded statement that is admissible in a 26
domestic violence proceeding under section 103H 27
or 103I with all necessary changes and as 28
though— 29
- (a) a reference to a statement included a 30
reference to a recorded statement or 31
transcript of a recorded statement; and 32
- (b) a reference to a person who made a 33
statement or supplied the information 34

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recorded in a statement were a reference to 1
the complainant who made a recorded 2
statement. 3

103K Relationship with other Acts 4

- (1) This section applies in relation to a recorded 5
statement that is admissible in a domestic 6
violence proceeding under section 103H or 103L. 7
- (2) The *Justices Act 1886*, section 111, applies with 8
all necessary changes and as though, in subsection 9
(1), the words ‘read as evidence’ were omitted 10
and the words ‘received as evidence’ were 11
inserted in their place. 12
- (3) The *Criminal Law Amendment Act 1892*, section 13
4, applies with all necessary changes and as 14
though— 15
- (a) a reference to a deposition included a 16
reference to a transcript of a recorded 17
statement; and 18
- (b) a reference to the reading of a deposition 19
included a reference to the showing of a 20
recorded statement. 21

**103L Limitation on cross-examination under 22
Justices Act 1886 not affected** 23

This part does not affect the application of the 24
Justices Act 1886, section 110C to a domestic 25
violence proceeding. 26

103M Powers to close court not limited 27

- (1) This section applies in relation to a court hearing 28
a domestic violence proceeding. 29
- (2) This part does not limit or otherwise affect the 30
operation of a provision of this or another Act 31

under which the court may be closed while 1
particular evidence is presented in the court. 2

Example of a provision of another Act— 3

the *Justices Act 1886*, section 70 4

**103N Orders, directions and rulings in relation to 5
complainants 6**

(1) A court hearing a domestic violence proceeding 7
may make the orders or give the directions or 8
rulings it considers appropriate for this part on the 9
court's own initiative or on an application made 10
by a party to the proceeding. 11

(2) Subsection (1) does not limit section 21A, the 12
Criminal Code, section 590AA or the *Justices Act* 13
1886, section 83A. 14

**Division 4 Editing or otherwise 15
altering recorded 16
statements 17**

**103O Editing or otherwise altering recorded 18
statements 19**

(1) A recorded statement may be edited or otherwise 20
altered only— 21

(a) with the consent of the parties to the 22
domestic violence proceeding in which the 23
recorded statement is, or is to be, presented; 24
or 25

(b) if the editing or alteration is required— 26

(i) to avoid disclosing material that is not 27
required or permitted to be disclosed to 28
the defendant; or 29

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<i>Examples—</i>	1
• to avoid disclosing sensitive evidence under the Criminal Code, section 590AF to the defendant	2 3 4
• to avoid disclosing witness contact details to the defendant that are not required to be disclosed under the Criminal Code, section 590AP	5 6 7 8
• to avoid disclosing a thing to the defendant that is not required to be disclosed under the Criminal Code, section 590AQ	9 10 11 12
(ii) to comply with a direction or order of the court.	13 14
<i>Example—</i>	15
a direction under section 103H(2) that a recorded statement be edited or otherwise altered to delete an inadmissible part	16 17 18
(2) If a defendant is not represented by a lawyer, the defendant may give the consent mentioned in subsection (1)(a) only if—	19 20 21
(a) the Criminal Code, section 590AOB has been complied with for the recorded statement; and	22 23 24
(b) the court is satisfied the defendant understands the consequences of giving the consent.	25 26 27
Division 5	28
Offences relating to recorded statements	29
103P References to recorded statement, transcript of recorded statement or summary of transcript	30 31 32
(1) In this division—	33

-
- (a) a reference to a recorded statement includes a reference to a copy of a recorded statement; and
- (b) a reference to a transcript of a recorded statement includes, if the context permits, a reference to—
- (i) a copy of a transcript of a recorded statement; or
- (ii) a summary, or a copy of a summary, of a transcript of a recorded statement; and
- (c) a reference to a summary of a transcript of a recorded statement includes, if the context permits, a reference to a copy of a summary of a recorded statement.
- (2) However, a reference to a copy of a recorded statement in this division does not include a copy that is part of a record, or a transcript of a record, of a legal proceeding under the *Recording of Evidence Act 1962*.
- (3) Also, section 4 does not apply to a reference to a copy of a recorded statement in this division.

103Q Unauthorised possession of, or dealing in, recorded statements or transcripts of recorded statements

- (1) A person commits an offence if the person—
- (a) possesses a recorded statement or a transcript of a recorded statement; or
- (b) supplies, or offers to supply, a recorded statement, or a transcript of a recorded statement, to another person; or
- (c) copies, or permits another person to copy, a recorded statement or a transcript of a recorded statement.

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Maximum penalty—	1
(a) for an individual—100 penalty units or 2 years imprisonment; or	2 3
(b) for a corporation—1,000 penalty units.	4
(2) However, a person may do something mentioned in subsection (1)—	5 6
(a) for a legitimate purpose related to a domestic violence proceeding or another proceeding; or	7 8 9
(b) if the person is required or permitted to do the thing under an employment-screening Act, other than to the extent stated in subsection (3); or	10 11 12 13
(c) if the person is permitted to do the thing under section 103R.	14 15
(3) For subsection (2)(b), a person, for the purpose of making an employment-screening decision—	16 17
(a) must not supply, or offer to supply, a transcript of a recorded statement to the employment-screening applicant for the decision; but	18 19 20 21
(b) may supply, or offer to supply, a summary of a transcript of a recorded statement to the employment-screening applicant for the decision.	22 23 24 25
103R Permitted use of transcript of recorded statement by employment-screening applicant or applicant’s lawyer	26 27 28
(1) This section applies if an employment-screening applicant is given a written summary of a transcript of a recorded statement because an employment-screening decision has been, or is proposed to be, made about the person.	29 30 31 32 33

-
- (2) The employment-screening applicant may— 1
- (a) possess the summary; or 2
- (b) supply, or offer to supply, the summary to an 3
Australian lawyer to obtain legal advice in 4
relation to the employment-screening 5
decision; or 6
- (c) copy, or permit another person to copy, the 7
summary for the purpose mentioned in 8
paragraph (b). 9
- (3) The lawyer may possess or copy the summary for 10
the purpose of providing legal advice to the 11
employment-screening applicant in relation to the 12
employment-screening decision. 13

**103S Publishing recorded statements or 14
transcripts of recorded statements prohibited 15**

- (1) A person must not publish all or part of a recorded 16
statement, or a transcript of a recorded statement, 17
unless the publication— 18
- (a) is approved by the court presiding at the 19
domestic violence proceeding at which the 20
recorded statement is presented; and 21
- (b) complies with the conditions of the court’s 22
approval. 23
- Maximum penalty— 24
- (a) for an individual—100 penalty units or 2 25
years imprisonment; or 26
- (b) for a corporation—1,000 penalty units. 27
- (2) The court may approve the publication only in 28
exceptional circumstances. 29
- (3) In this section— 30
- publish* means disseminate or provide access to 31
the public or a section of the public by any means, 32

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	including, for example, by television, radio, the internet, newspaper, magazine or notice.	1 2
Clause 38	Insertion of new pt 9, div 12	3
	Part 9—	4
	<i>insert—</i>	5
	Division 12 Evidence and Other Legislation Amendment Act 2021	6 7 8
	157 Journalist privilege	9
	(1) Part 2, division 2B applies in relation to information given to a journalist by another person whether the information was given to the journalist before or after the commencement.	10 11 12 13
	(2) Part 2, division 2B, subdivision 2 applies in relation to a relevant proceeding only if the proceeding starts on or after the commencement.	14 15 16
	(3) Part 2, division 2B, subdivision 3 applies in relation to a warrant mentioned in section 14ZC only if the warrant is issued on or after the commencement.	17 18 19 20
	(4) In this section—	21
	<i>journalist</i> see section 14R(1).	22
	<i>relevant proceeding</i> see section 14S(1).	23
	158 Domestic violence proceedings	24
	(1) Part 6A applies in relation to a domestic violence proceeding only if an originating step for the proceeding is taken on or after the commencement.	25 26 27 28
	(2) Subsection (1) applies even if—	29

(a)	the act or omission constituting the domestic violence offence the subject of the domestic violence proceeding happened before the commencement; or	1 2 3 4
(b)	a recorded statement that may be admitted in the proceeding was made before the commencement.	5 6 7
(3)	In this section—	8
	<i>originating step</i> , for a domestic violence proceeding, means—	9 10
(a)	the arrest of the defendant in the proceeding; or	11 12
(b)	the making of a complaint under the <i>Justices Act 1886</i> , section 42 in relation to the defendant in the proceeding; or	13 14 15
(c)	the serving of a notice to appear on the defendant in the proceeding under the <i>Police Powers and Responsibilities Act 2000</i> , section 382.	16 17 18 19
Clause 39	Amendment of sch 3 (Dictionary)	20
(1)	Schedule 3—	21
	<i>insert—</i>	22
	<i>Australian lawyer</i> see the <i>Legal Profession Act 2007</i> , section 5(1).	23 24
	<i>authorised officer</i> , for part 2, division 2B, see section 14ZC.	25 26
	<i>civil proceeding arising from the commission of a relevant offence</i> , for part 2, division 4A, see section 21AC.	27 28 29
	<i>complainant</i> , for part 6A, see section 103A.	30
	<i>disclosure requirement</i> , for part 2, division 2B, see section 14T.	31 32

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<i>domestic violence offence</i> see section 103B.	1
<i>domestic violence proceeding</i> see section 103C.	2
<i>employment-screening Act</i> means—	3
(a) the <i>Disability Services Act 2006</i> ; or	4
(b) the <i>Working with Children (Risk Management and Screening) Act 2000</i> .	5 6
<i>employment-screening applicant</i> , in relation to a section 93A transcript or a transcript of a recorded statement, means a person—	7 8 9
(a) who allegedly committed the alleged offence to which the transcript relates; and	10 11
(b) about whom an employment-screening decision has been, or is proposed to be, made.	12 13 14
<i>employment-screening decision</i> means—	15
(a) a decision under the <i>Disability Services Act 2006</i> about—	16 17
(i) whether a clearance or exclusion should be issued to a person; or	18 19
(ii) whether a clearance or exclusion issued to a person should be cancelled; or	20 21
(b) an employment-screening decision under the <i>Working with Children (Risk Management and Screening) Act 2000</i> ; or	22 23 24
(c) a decision on a review of a decision mentioned in paragraph (a) or (b); or	25 26
(d) a decision on a review of, or appeal against, a decision mentioned in paragraph (c).	27 28
<i>informant</i> , for part 2, division 2B, see section 14Q(1)(a).	29 30
<i>journalist</i> , for part 2, division 2B, see section 14R(1).	31 32

<i>jurisdiction</i> , for part 2, division 5, see section 21C.	1 2
<i>news medium</i> , for part 2, division 2B, see section 14T.	3 4
<i>parentage order relationship</i> , for part 2, division 4A, see section 21AC.	5 6
<i>prescribed relationship</i> , between a child who is a witness in a proceeding and a defendant in the proceeding, for part 2, division 4A, see section 21AC.	7 8 9 10
<i>provided information</i> , for part 2, division 2B, see section 14Q(1)(a).	11 12
<i>recorded statement</i> see section 103A.	13
<i>relevant person</i> , for a journalist, for part 2, division 2B, see section 14T.	14 15
<i>section 93A criminal statement</i> —	16
(a) means a statement—	17
(i) made to a person investigating an alleged offence; and	18 19
(ii) given in, or in anticipation of, a criminal proceeding about the alleged offence; and	20 21 22
(iii) that is potentially admissible under section 93A; and	23 24
(b) includes a copy of a statement mentioned in paragraph (a), other than a copy—	25 26
(i) to the extent it is a transcript mentioned in section 4(a) or (c); and	27 28
(ii) that is part of a record, or a transcript of a record, of a legal proceeding under the <i>Recording of Evidence Act 1962</i> .	29 30 31
<i>section 93A transcript</i> —	32

[s 40]

- (a) means a transcript of a section 93A criminal statement; and 1
2
- (b) includes, if the context permits— 3
- (i) a copy of a transcript of a section 93A criminal statement; and 4
5
- (ii) a summary or copy of a summary of a transcript of a section 93A criminal statement. 6
7
8
- step relationship*, for part 2, division 4A, see section 21AC. 9
10
- (2) Schedule 3, definition *lawfully edited copy*— 11
insert— 12
- (c) of a recorded statement under part 6A—means a copy of the recorded statement that has been edited or otherwise altered in compliance with section 103O. 13
14
15
16
- (3) Schedule 3, definition *relevant proceeding*, before paragraph (a)— 17
18
insert— 19
- (aa) for part 2, division 2B—see section 14S(1); or 20
21
- (4) Schedule 3, definition *relevant proceeding*, paragraphs (aa) to (b)— 22
23
renumber as paragraphs (a) to (c). 24

Part 7 **Amendment of Justices Act 1886** 25
26

Clause 40 **Act amended** 27
This part amends the *Justices Act 1886*. 28

Note—

See also the amendments in schedule 1.

		1
		2
Clause 41	Amendment of s 83A (Direction hearing)	3
	Section 83A(5)—	4
	<i>insert—</i>	5
	(i) matters relating to the <i>Evidence Act 1977</i> ,	6
	part 6A.	7
Clause 42	Amendment of s 154 (Copies of record)	8
	(1) Section 154(3)(b), ‘section 93AA’—	9
	<i>omit, insert—</i>	10
	schedule 3	11
	(2) Section 154(3)—	12
	<i>insert—</i>	13
	(d) a recorded statement as defined under the	14
	<i>Evidence Act 1977</i> , section 103A.	15
Part 8	Amendment of Magistrates Act	16
	1991	17
Clause 43	Act amended	18
	This part amends the <i>Magistrates Act 1991</i> .	19
Clause 44	Amendment of s 21 (Transfer policy)	20
	Section 21(6), definition <i>regional Queensland</i> , ‘, Redcliffe	21
	and Toowoomba’—	22
	<i>omit, insert—</i>	23
	and Redcliffe	24

[s 45]

Clause 45	Insertion of new pt 10, div 10	1
	Part 10—	2
	<i>insert—</i>	3
	Division 10	4
	Transitional provision for Evidence and Other Legislation Amendment Act 2021	5 6 7
	73 Prescribed regional experience before commencement	8 9
	For section 21, each period before the commencement during which a magistrate constituted a Magistrates Court in the Toowoomba Magistrates Court district is taken to be a period during which the magistrate constituted a Magistrates Court at a place in regional Queensland.	10 11 12 13 14 15 16
Part 9	Amendment of Working with Children (Risk Management and Screening) Act 2000	17 18 19
Clause 46	Act amended	20
	This part amends the <i>Working with Children (Risk Management and Screening) Act 2000</i> .	21 22
Clause 47	Amendment of s 311 (Chief executive may ask police commissioner for information)	23 24
	Section 311(3)—	25
	<i>insert—</i>	26

	(c) a transcript of a recorded statement relating to an offence mentioned in the police information.	1 2 3
Clause 48	Amendment of s 318 (Obtaining information from director of public prosecutions)	4 5
	Section 318(9), definition <i>evidentiary material</i> , paragraph (d), after ‘93A transcript’—	6 7
	<i>insert</i> —	8
	and a transcript of a recorded statement	9
Clause 49	Amendment of s 344 (Giving information to chief executive (disability services))	10 11
	(1) Section 344(3)—	12
	<i>insert</i> —	13
	(ca) information related to police information about a person including a section 93A transcript and a transcript of a recorded statement; and	14 15 16 17
	(2) Section 344(3)(ca) and (d)—	18
	<i>renumber</i> as section 344(3)(d) and (e).	19
Clause 50	Amendment of s 384 (Confidentiality of protected information)	20 21
	Section 384(4)(b), before ‘is’—	22
	<i>insert</i> —	23
	for protected information other than a section 93A transcript or a transcript of a recorded statement—	24 25
Clause 51	Amendment of sch 7 (Dictionary)	26
	(1) Schedule 7—	27

[s 52]

insert— 1

recorded statement see the *Evidence Act 1977*,
section 103A. 2
3

(2) Schedule 7, definition *section 93A transcript*, ‘section
93AA’— 4
5

omit, insert— 6

schedule 3 7

Part 10 Acts amended 8

Clause 52 Acts amended 9

Schedule 1 amends the Acts it mentions. 10

Schedule 1	Acts amended	1
	section 52	2
Part 1	Amendments commencing on assent	3
		4
	Domestic and Family Violence Protection Act 2012	5
1	Section 27(a), ‘44(a)’—	6
	<i>omit, insert—</i>	7
	44(1)(a)	8
	Evidence Act 1977	9
1	Section 21AZX(2) and (4), ‘commissioner of the police service’—	10
	<i>omit, insert—</i>	11
	police commissioner	12
		13
2	Section 21C, definition <i>chief executive officer</i>, paragraph (b), ‘commissioner of the police service’—	14
	<i>omit, insert—</i>	15
	police commissioner	16
		17

Schedule 1

3	Section 21KE(2), (4) and (5), ‘commissioner of the police service’—	1
	<i>omit, insert—</i>	2
	police commissioner	3
		4
4	Section 95A(14), definition <i>responsible person</i>, paragraph (a), ‘commissioner of the police service’—	5
	<i>omit, insert—</i>	6
	police commissioner	7
		8
5	Section 115(4)(a)(ii), ‘section 108,’—	9
	<i>omit, insert—</i>	10
	section 108	11
6	Section 133A(3), ‘commissioner of the police service’—	12
	<i>omit, insert—</i>	13
	police commissioner	14
7	Schedule 1, item 6—	15
	<i>omit.</i>	16
8	Schedule 1—	17
	<i>insert—</i>	18
	11A Police commissioner	19
9	Schedule 1, items 7 to 11A—	20
	<i>renumber</i> as schedule 1, items 6 to 11.	21
10	Schedule 3—	22
	<i>insert—</i>	23

	<i>police commissioner</i> means the commissioner of the police service.	1 2
	Justices Act 1886	3
1	Section 65(2), ‘Editor’s note—’— <i>omit, insert—</i> <i>Note—</i>	4 5 6
2	Section 126(2), ‘Editor’s note—’— <i>omit, insert—</i> <i>Note—</i>	7 8 9
3	Section 151(3), ‘Editor’s note—’— <i>omit, insert—</i> <i>Note—</i>	10 11 12
Part 2	Amendments commencing by proclamation	13 14
	Domestic and Family Violence Protection Act 2012	15
1	Section 169O(4)(d), ‘and 93AA’— <i>omit, insert—</i> , 93AA and 103Q	16 17 18

Youth Justice Act 1992

1

1 Section 297H(2)(d), ‘and 93AA’—

2

omit, insert—

3

, 93AA and 103Q

4

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