

Australian Law Reform Commission inquiry into responses to sexual violence

Submission by Legal Aid Queensland

24 May 2024

Introduction

Legal Aid Queensland ('LAQ') welcomes the opportunity to make a submission to the Australian Law Reform Commission in response to the issues paper entitled *Justice Responses to Sexual Violence*.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day-to-day application of the law in courts and tribunals. LAQ believes that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ offers policy options that may enable government to pursue policy objectives in the most effective and efficient way.

Submission

In Queensland, there has been extensive reform as a result of the Women's Safety and Justice Taskforce ('the taskforce'). The taskforce was established in March 2021 to examine:

- coercive control and review the need for a specific offence of domestic violence; and
- the experience of women across the criminal justice system.

This process involved broad community consultation including targeted consultation with relevant stakeholders and the public call out for responses to three discussion papers published at different stages of the lifetime of the taskforce. LAQ participated in the targeted consultation process and made submissions to the taskforce in relation to all three discussion papers. These submissions were published by the taskforce.

The taskforce's first report was released on 2 December 2021 and made 89 recommendations for broad systemic reforms. The Queensland Government response supported or supported-in-principle all of those recommendations. The taskforce released a second report on 1 July 2022 and made 188 recommendations. The Queensland Government supported 103 of those recommendations in full, 71 recommendations in principle and noted 14 recommendations. Many of the recommendations have been implemented, though LAQ notes that some legislative provisions have not yet commenced. The provisions that have commenced are newly implemented and it is difficult to comment on their efficacy at this stage. LAQ notes that many of the recommendations have not yet been implemented but are likely to be introduced in the future.

LAQ maintains its positions as stated in feedback to the taskforce. As is apparent from LAQ's published submissions, in a criminal law context much of that feedback was not reflected in the taskforce's recommendations.

The issues paper," *Justice Responses to Sexual Violence*" raises many questions which in the Queensland context have been ventilated through the taskforce process. A summary of implemented recommendations to date is included at Annexure A.

Having said that, as part of this consultation process, LAQ's Family Law Services have reviewed the issues paper and are able to provide the following responses to the particular questions raised within the paper:

Question 27 - If you are a victim survivor, were the records of your counselling or other therapeutic interventions sought prior to or during trial?

Division 2A of the *Evidence Act 1977 (Qld)* deals with the circumstances in which a complainant's counselling records can be accessed and used in court proceedings for sexual assault matters. These counselling records are afforded Sexual Assault Counselling Privilege ('SACP'). The operation of the SACP means that in either committal proceedings (proceedings leading up to and including) or an application for bail, a party cannot subpoena protected counselling communication records. In other proceedings, SACP still applies, however the court may grant access by leave if legislative requirements are met. This is known as 'qualified privilege' because the court can, in certain circumstances, allow access to communications. This qualified privilege relates to proceedings either at:

- trial or sentencing for a criminal offence – related to sexual assault offences; or
- domestic violence protection order applications (at any stage); or
- civil proceedings, including domestic violence protection order, child protection and personal injury proceedings.

The Queensland model of SACP, which has only been in force since 1 December 2017, is primarily based of the New South Wales model which has been in operation since 1997.

LAQ in partnership with Women's Legal Service Queensland, operates the Counselling Notes Protect Service ('CNP') which provides free legal assistance (including advice and representation) to counselled persons whose records are sought to be disclosed pursuant to Division 2A of the *Evidence Act 1977 (Qld)*.

Question 28 - Are the legislative provisions adequate to protect the disclosure and use of a complainant's personal information obtained during counselling or other therapeutic intervention? How are they working in practice? Should they be harmonised? Is there a need for complainants to be separately legally represented in court when submissions are made about the disclosure of the material and the application of the legislative provisions?

The current legislative scheme in Queensland creates a very high bar for the disclosure and use of records which are protected counselling communications.

Section 14H of the legislation provides that leave will only be granted if the court is satisfied:

1. The notes have a substantial probative value; and

2. Other documents or evidence about matters covered in the counselling notes are not available; and
3. Public interest in letting the notes be made available outweighs the public interest in keeping them confidential and protecting the counselled person from harm.

The current legislative scheme in Queensland does not extend to protections of disclosure of personal information such as medical information that is often unrelated to the matters at trial and arguably has no legitimate forensic purpose in being sought. CNP lawyers experience is that it comes as a shock to complainants to know that their private medical information can be accessed by defendants without their ability to be heard on the topic.

The SACP legislative provisions in Queensland are often described by the judiciary as “unworkable” (see for example, *TRKJ v Director of Public Prosecutions* [2021] QSC 297).

Question 34 - If you are a victim survivor, what were the delays you experienced? What was the impact of those delays upon you and/or your family and friends?

Question 35 - What are the causes of delay in your state or territory? Do you wish to comment on the past recommendations (as outlined above) and whether they have been or should be implemented in your state or territory? What are your ideas for reducing delays? Can there be a national approach to reducing some aspects of the delay?

CNP lawyers observe that delays in court proceedings occur for many reasons, but notably where applications to access protected counselling records are made late in the proceedings (potentially leading to trials being unable to proceed as scheduled) and in circumstances where the procedures in the legislative scheme are not adhered to.

CNP lawyers observe that delays in proceedings can lead to clients discontinuing their complaints.

The taskforce’s second report¹ recommended the establishment of a specialist list for sexual violence cases in the District Court and the establishment and implementation of a plan to improve delays (recommendations 69 and 71). This is a work in progress and is yet to be rolled out.

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¹ Women’s Safety & Justice Taskforce, ‘Hear Her Voice: Women and girls experiences across the criminal justice system’. Report 2, Volume 1.

Annexure A

Legislative Amendments Summary

17 May 2024

This is a summary only of legislative amendments resulting from the Women's Safety and Justice Taskforce recommendations, and other similar contemporaneous recommendations relating to sexual and gendered violence, implemented to date.

Act	Commencement	Amended / Inserted etc.	Notes
<i>Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020</i>	15 September 2020	<p>Longman Directions – inserted 132BA <i>Evidence Act 1977</i></p> <p><u>132BA Delay in prosecuting offence</u></p> <ol style="list-style-type: none"> <u>This section applies in relation to a criminal proceeding in which there is a jury.</u> <u>The judge may, on the judge's own initiative or on the application of a party to the proceeding, give the jury a direction under this section if the judge is satisfied the defendant has suffered a significant forensic disadvantage because of the effects of delay in prosecuting an offence the subject of the proceeding.</u> <u>For subsection (2), a significant forensic disadvantage is not established by the mere fact of delay in prosecuting the offence.</u> <u>In giving the direction, the judge—</u> <ol style="list-style-type: none"> <u>must inform the jury of—</u> <ol style="list-style-type: none"> <u>the nature of the disadvantage; and</u> <u>the need to take the disadvantage into account when considering the evidence; but</u> <u>must not warn or in any way suggest to the jury that—</u> <ol style="list-style-type: none"> <u>it would be dangerous or unsafe to convict the defendant; or</u> <u>the complainant's evidence should be scrutinised with great care.</u> <u>However, the judge need not give the direction if there are good reasons for not doing so.</u> 	<p>This amendment is as a result of the recommendations of the Criminal Justice Report of the Royal Commission into Institutional Responses to Child Sexual Abuse which released its report in 2017.</p> <p>This Act also included a number of other amendments, including the exclusion of good character as a mitigating factor, however the Longman direction change was perhaps the most significant.</p> <p>Longman directions have historically been given where there was a long delay in a complaint being brought before the court – essentially that it would be dangerous to convict on the uncorroborated evidence alone, unless the jury, scrutinising the evidence with great care, were satisfied of its truth and accuracy.</p> <p>Now, a significant forensic disadvantage is not established by the mere fact of delay in prosecuting. A</p>

		<p>6. <u>The judge must not, other than under this section, give the jury a direction about the disadvantages suffered by the defendant because of the effects of delay in prosecuting the offence.</u></p> <p>7. <u>In this section—</u></p> <p><u>delay, in prosecuting an offence, includes delay in reporting the offence.</u></p>	<p>defendant must establish how a delay in prosecuting has caused a forensic disadvantaged before a Longman direction can be given. Without establishing this, a Judge cannot warn that it would be dangerous or unsafe to convict, or that a complainant's evidence should be scrutinised with great care.</p>
<p><i>Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023</i></p>	<p>Assent 28 February 2023</p> <p>(some amendments were by proclamation, but all now in effect)</p>	<p>Amendment to Criminal Code provisions</p> <p>Replacement of s. 6 'Carnal Knowledge' with 'Meaning of engage in penile intercourse'.</p> <p><u>6 Meaning of engage in penile intercourse</u></p> <ol style="list-style-type: none"> 1. <u>Penile intercourse is the penetration, to any extent, of the vagina, vulva or anus of a person by the penis of another person.</u> 2. <u>A person engages in penile intercourse with another person if—</u> <ol style="list-style-type: none"> a. <u>the person penetrates, to any extent, the vagina, vulva or anus of another person with the person's penis; or</u> b. <u>the person's vagina, vulva or anus is penetrated, to any extent, by the penis of another person.</u> 	<p>Updated sexual offence terminology.</p> <p>Associated changes for offences utilising that definition, eg s.215 'Carnal knowledge with or of children under 16' changed to 'Engaging in penile intercourse with child'.</p> <p>s. 229B changed from 'Maintaining a sexual relationship with a child' to 'Repeated sexual conduct with a child'</p>
		<p>Amendments to s. 359B:</p>	<p>The provisions relating to unlawful stalking were amended to 'unlawful stalking, intimidation, harassment or</p>

		<p>359B What is <i>unlawful stalking, intimidation, harassment or abuse</i></p> <p><i>Unlawful stalking, intimidation, harassment or abuse</i> is conduct—</p> <ol style="list-style-type: none"> a) intentionally directed at a person (the <i>stalked person</i>); and b) engaged in on any 1 occasion if the conduct is protracted or on more than 1 occasion; and c) consisting of 1 or more acts of the following, or a similar, type— <ol style="list-style-type: none"> i. following, loitering near, watching or approaching a person; ii. contacting a person in any way, including, for example, <u>using any technology and over any distance</u>; <u>Examples of ways of contacting a person, including using technology—</u> <u>by telephone, mail, fax, SMS message, email, an app on a computer, smart phone or other electronic device, or an online social network</u> iii. loitering near, watching, approaching or entering a place where a person lives, works or visits; iv. <u>monitoring, tracking or surveilling a person's movements, activities or interpersonal associations without the person's consent, including, for example, using technology</u>; <u>Examples of monitoring, tracking or surveilling using technology—</u> <ul style="list-style-type: none"> • <u>using a tracking device or drone to track a person's movements</u> • <u>checking the recorded history in a person's digital device</u> • <u>reading a person's SMS messages</u> • <u>monitoring a person's email account or internet browser history</u> • <u>monitoring a person's account with a social media platform or online social network</u> 	<p>abuse', as well as amendments to acts which may constitute the offence.</p> <p>Stalking amendments relate to Recommendation 52 WSJT Report 1</p>
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		<ul style="list-style-type: none"> v. leaving offensive material where it will be found by, given to or brought to the attention of, a person; vi. <u>publishing offensive material on a website, social media platform or online social network in a way that will be found by, or brought to the attention of, a person;</u> vii. giving offensive material to a person, directly or indirectly, <u>including by using a website, social media platform or online social network;</u> viii. an intimidating, harassing, <u>threatening, humiliating or abusive</u> act against a person, whether or not involving violence or a threat of violence; <u>Example—</u> <u>publishing a person's personal information, including, for example, the person's home address or phone number, on a website</u> ix. an act of violence, or a threat of violence, against, or against property of, anyone, including the defendant; and <p>d) that—</p> <ul style="list-style-type: none"> i. would cause the stalked person apprehension or fear, reasonably arising in all the circumstances, of violence to, or against property of, the stalked person or another person; or ii. causes detriment, reasonably arising in all the circumstances, to the stalked person or another person. 	
		<p>Amendment to s 359E Punishment of unlawful stalking to insert:</p> <p><u>(4) Also, a person is liable to a maximum penalty of imprisonment for 7 years if a domestic relationship exists between the person and the stalked person.</u></p>	

		<p><u>359F Court may restrain unlawful stalking, intimidation, harassment or abuse</u></p> <ol style="list-style-type: none"> 1. This section applies on the hearing before a court of a charge against a person of unlawful stalking, <u>intimidation, harassment or abuse.</u> 2. Whether the person is found guilty or not guilty or the prosecution ends in another way, if the presiding judge or magistrate considers it desirable, the judge or magistrate may constitute the court to consider whether a restraining order should be made against the person. 3. The judge or magistrate may act under subsection (2) on application by the Crown or an interested person or on the judge's or magistrate's own initiative. 4. Also, if the restraining order proceeding is started before the Supreme Court or the District Court, the court may order the proceeding to be transferred to a Magistrates Court. 5. If a court makes an order under subsection (4), the registrar of the court must send to the clerk of the relevant Magistrates Court a copy of the order and the record of proceedings of the hearing of the charge and any application mentioned in subsection (3). 6. The court hearing the restraining order proceeding may make a restraining order against the person in relation to any person or any property if it considers it desirable to do so having regard to the evidence given at the hearing of the charge and any application under subsection (3) and any further evidence the court may admit. 7. <u>A restraining order takes effect on the day it is made and continues in force until—</u> <ol style="list-style-type: none"> a. <u>the day stated by the court in the restraining order; or</u> b. <u>if no day is stated, the day that is 5 years after the day the restraining order is made.</u> 8. <u>The court may order that a restraining order continues in force for a period of less than 5 years only if the court is satisfied that</u> 	<p>Increase in maximum penalty from 40 penalty units or 1yr imprisonment, to 120 penalty units or 3 years imprisonment.</p> <p>Also increase in maximum penalty where convicted of a domestic violence offence in the 5 years before the contravention of a restraining order, they are now liable to a fine of 240 penalty units or 5 years imprisonment (associated amendment to 552B to be heard and decided summarily unless elects for jury trial if liable under 359F(11))</p>
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		<p>S 590AH Disclosure that must always be made – inserted the following:</p>	<p>Disclosure of dv history, including interstate orders, PPN's, etc.</p>

		<p>(3) Also, for a relevant proceeding or a summary proceeding under the <u>Justices Act 1886</u> for an accused person who is charged with a domestic violence offence, the prosecution must give the accused person a copy of the person's domestic violence history in the possession of the prosecution.</p> <p>(4) In this section—</p> <p><u>domestic violence history</u>, of a person, means a document that states—</p> <p>(a)each of the following, within the meaning of the <u>Domestic and Family Violence Protection Act 2012</u>—</p> <p>(i)a domestic violence order or recognised interstate order made against the person;</p> <p>(ii)a police protection notice issued against the person; and</p> <p>(b)each domestic violence order made against the person under the repealed <u>Domestic and Family Violence Protection Act 1989</u>.</p> <p><u>Domestic violence offence</u> includes an offence against the <u>Domestic and Family Violence Protection Act 2012</u>, part 7.</p> <p><u>Note—</u></p> <p>See also the definition of <i>domestic violence offence</i> in section 1.</p>	
		<p>Amendment to the definition of domestic violence in s.8 <i>Domestic and Family Violence Protection Act 2012</i> –</p>	<p>Per recommendation 53 WSJT Report 1.</p>

		<p>8 Meaning of domestic violence</p> <p>1) Domestic violence means behaviour, <u>or a pattern of behaviour</u>, by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that—</p> <ol style="list-style-type: none"> is physically or sexually abusive; or is emotionally or psychologically abusive; or is economically abusive; or is threatening; or is coercive; or in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else. <p>2) <u>Behaviour, or a pattern of behaviour, mentioned in subsection (1)—</u></p> <ol style="list-style-type: none"> <u>may occur over a period of time; and</u> <u>may be more than 1 act, or a series of acts, that when considered cumulatively is abusive, threatening, coercive or causes fear in a way mentioned in that subsection; and</u> <u>is to be considered in the context of the relationship between the first person and the second person as a whole.</u> <p>3) Without limiting subsection (1) <u>or (2)</u>, domestic violence includes the following behaviour—</p> <ol style="list-style-type: none"> causing personal injury to a person or threatening to do so; coercing a person to engage in sexual activity or attempting to do so; damaging a person's property or threatening to do so; depriving a person of the person's liberty or threatening to do so; threatening a person with the death or injury of the person, a child of the person, or someone else; 	<p>Other DFVPA amendments to add 'pattern of behaviour' to sections including:</p> <ul style="list-style-type: none"> s.11 meaning of emotional or psychological abuse s.12 meaning of economic abuse <p>There are other amendments more relevant to domestic violence applications/proceedings which are not criminal in nature, including</p> <ul style="list-style-type: none"> the insertion of a new s.22A (who is the person most in need of protection in a relevant relationship), a new s.36A Court must be given respondent's criminal history and domestic violence history, new s.41G Deciding cross applications, new s.90A Court must be given respondent's criminal history and domestic violence history, New Division 3A on Re-openings, New s.160A Court may make order about disclosure of, or aggrieved's access to, respondent's criminal
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		<p>f. threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;</p> <p>g. causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;</p> <p>h. unauthorised surveillance of a person;</p> <p>i. unlawfully stalking, <u>intimidating, harassing or abusing</u> a person.</p> <p>4) A person who counsels or procures someone else to engage in behaviour that, if engaged in by the person, would be domestic violence is taken to have committed domestic violence.</p> <p>5) To remove any doubt, it is declared that, for behaviour mentioned in subsection (3) that may constitute a criminal offence, a court may make an order under this Act on the basis that the behaviour is domestic violence even if the behaviour is not proved beyond a reasonable doubt.</p> <p>6) In this section—</p> <p>coerce, a person, means compel or force a person to do, or refrain from doing, something.</p> <p>Unauthorised surveillance, of a person, means the unreasonable monitoring or tracking of the person's movements, activities or interpersonal associations without the person's consent, including, for example, by using technology.</p> <p>Examples of surveillance by using technology—</p> <ul style="list-style-type: none"> • reading a person's SMS messages • monitoring a person's email account or internet browser history • monitoring a person's account with a social networking internet site • using a GPS device to track a person's movements • checking the recorded history in a person's GPS device 	<p>history or domestic violence history, new s184A Substituted service.</p> <ul style="list-style-type: none"> • amendments to allow the court to consider a respondent's criminal history and domestic violence history in civil proceedings under the Act. Note: Coinciding amendment to s.42 which would be relevant to persons convicted of a domestic violence offence, which states that the court is not required to, but may, consider the offender's criminal history and domestic violence history (s.42(3)). • Amendment to s.113 (Duration) such that a PPN takes effect when served personally <u>or in a way stated in a substituted service order.</u> <p>Recommendation 54 WSJT Report 1 implemented with amendments to s.150 and s.151 to clarify protections under the DFVPA also apply to criminal</p>
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		<p><i>unlawful stalking, intimidation, harassment or abuse</i> see the Criminal Code, sections 359B and 359D.</p>	<p>proceedings under the Act including contraventions.</p> <p>Recommendation 56 WSJT Report 1 – cross-application amendments</p> <p>Recommendation 57 WSJT Report 1 – s.157 amendments regarding costs</p> <p>Recommendation 58 WSJT Report 1 – respondent criminal history amendments</p> <p>Recommendation 60 WSJT Report 1 – substituted service amendments.</p>
		<p>Amendments to <i>Evidence Act 1977</i> (commenced 1 August 2023)</p> <p>14L Standing of counsellor and counselled person</p> <p>1) This section applies if—</p> <ol style="list-style-type: none"> a counselled person or counsellor is not a party to a proceeding to which subdivision 2 or 3 applies; and <u>the court is deciding—</u> 	<p>Addressed ambiguity of standing of counselled person in PCC applications by replacing s.14L(1)(b).</p> <p>PCC applications were discussed in WSJT Report 2, but no specific recommendations regarding the standing of a counselled person.</p>

		<ul style="list-style-type: none"> i. <u>whether a document or evidence relating to the counselled person or counsellor is a protected counselling communication; or</u> ii. <u>an application for leave under subdivision 3.</u> <p>2) The counselled person or counsellor may appear in the proceeding, including any appeal.</p>	
		<p>21L Application of division 6</p> <ul style="list-style-type: none"> 1) This division applies only to criminal proceedings, other than summary proceedings under the Justices Act 1886. 2) <u>However, despite subsection (1), this division does apply to summary proceedings under the Justices Act 1886 for a domestic violence offence.</u> <p>21M Meaning of protected witness</p> <ul style="list-style-type: none"> 1) For this division, each of the following persons is a protected witness— <ul style="list-style-type: none"> a. a witness under 16 years; b. a witness who is a person with an impairment of the mind; c. for a proceeding for a <u>domestic violence offence or prescribed special offence</u>, an alleged victim of the offence; d. for a proceeding for a prescribed offence, an alleged victim of the offence who the court considers would be likely to be disadvantaged as a witness, or to suffer severe emotional trauma, unless treated as a protected witness; e. <u>for a proceeding for a domestic violence order-related offence, a person who—</u> <ul style="list-style-type: none"> i. <u>is named as the aggrieved, or a relative or associate of the aggrieved, in the domestic violence order; and</u> 	<p>Recommendation 55 WSJT Report 1 – protections apply to cross-examination of protected witnesses.</p> <p>Expansion of the scheme to domestic violence offences more generally, and in the Magistrates Court.</p>

		<p>ii. <u>the court considers would be likely to be disadvantaged as a witness, or to suffer severe emotional trauma, unless treated as a protected witness.</u></p> <p>2) It does not matter whether the proceeding mentioned in subsection (1)© or (d) relates also to another offence that is not <u>a domestic violence offence</u>, a prescribed special offence or a prescribed offence.</p> <p>3) In this section— <i>alleged victim</i> of an offence means a person, other than the person charged, who is—</p> <ol style="list-style-type: none"> alleged to be a person in relation to whom the offence was committed; or alleged to have been subject to violence in relation to the offence. <p><i>Domestic violence order-related offence</i>, in relation to a domestic violence order, means—</p> <ol style="list-style-type: none"> <u>an offence for the contravention of the domestic violence order under the Domestic and Family Violence Protection Act 2012, section 177(2); or</u> <u>an offence for an act or omission that also constitutes an offence mentioned in paragraph (a).</u> <p><i>prescribed offence</i> means an offence defined in the Criminal Code, section 75, 122, 127, 206, 229BB, 229BC, 308, 309, 319A, 323, 335, 338A, 339, 340, 346, 354, 354A, 355, 359, 413, 414, 415, 417A or 419.</p> <p><i>Prescribed special offence</i> means an offence defined in the Criminal Code, section 210, 213, 215, 216, 217, 218, 219, 221, 222, 227, 229B, 306, 313, 315, 315A, 316, 317, 320, 320A, 322, 323A, 323B, 324, 359E, 363, 363A, 364, 409 or 412 or chapter 32.</p> <p><i>Violence means—</i></p> <ol style="list-style-type: none"> an assault on, or injury to, a person; or a threat of an assault on, or an injury to, a person. 	
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		<p>Part 6A Evidence related to domestic relationships and domestic violence</p> <p>103A Definitions for part</p> <p>In this part—</p> <p><i>complainant</i> means an adult victim of an alleged domestic violence offence.</p> <p><i>defence</i> means—</p> <p><u>(a) the legal practitioner representing the defendant in a criminal proceeding; or</u></p> <p><u>(b) if the defendant is unrepresented in a criminal proceeding—the defendant.</u></p> <p><i>family member</i>, of a person, means a person with whom the person has either of the following relationships—</p> <p><u>(a) a family relationship within the meaning of the Domestic and Family Violence Protection Act 2012, section 19(1); or</u></p> <p><u>(b) an informal care relationship within the meaning of the Domestic and Family Violence Protection Act 2012, section 20.</u></p> <p><i>help-seeking behaviour</i> means action taken by a victim of domestic violence to address, or attempt to address, any aspect of the domestic violence, including, for example—</p> <p><u>(a) reporting the domestic violence to the police; or</u></p> <p><u>(b) obtaining a domestic violence order; or</u></p>	<p>Part 6A renamed.</p> <p>Amendment of definitions in s.103A</p> <p>Insertion of s103AB: References to domestic violence include associated domestic violence</p> <p>Insertion of Part 6A Division 1A: Evidence of domestic violence</p> <p>Divisions re-numbers as a result of insertions</p> <p>Provides non-exhaustive list of what may constitute evidence of domestic violence.</p> <p>Provides for expert to give evidence in a criminal proceeding about the nature and effect of domestic violence – Recommendation 64 WSJT Report 1.</p>
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		<p><u>(c) separating from an intimate partner who is the perpetrator of the domestic violence; or</u></p> <p><u>(d) finding alternative accommodation, including accommodation in a refuge; or</u></p> <p><u>(e) seeking counselling or support.</u></p> <p><u>intimate partner</u>, of a person, means a person who is in an intimate personal relationship with the person within the meaning of the Domestic and Family Violence Protection Act 2012, section 14.</p> <p><u>recorded statement</u> means a videorecording or audio recording of a statement made by a complainant in relation to an alleged domestic violence offence.</p> <p><u>relative</u>, of a person, see the Domestic and Family Violence Protection Act 2012, section 19(2).</p> <p><u>safety option</u>, in relation to a defendant who is, or may be, a victim of domestic violence, means an act that may have stopped the violence, other than an act that constitutes, or allegedly constitutes, an offence with which the defendant is charged.</p> <p><u>self-defence</u> means the lawful use of force in self-defence or in aid of the defence of another person under the Criminal Code, sections 271, 272 or 273.</p> <p><u>103AB References to domestic violence include associated domestic violence</u></p> <p>1) <u>A reference in this part to domestic violence committed against a person by an intimate partner or family member of the person includes associated domestic violence committed against a</u></p>	<p>Repeal of s.132B (evidence of domestic violence) – which removes the restriction of that evidence to criminal proceedings under Chapters 28-30 CC – Recommendation 63 WSJT Report 1.</p>
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		<p><u>child, relative or associate of the person by the intimate partner or family member.</u></p> <p>2) <u>In this section—</u></p> <p><u>associate, of a person, see the Domestic and Family Violence Protection Act 2012, section 24(3).</u></p> <p><u>associated domestic violence see the Domestic and Family Violence Protection Act 2012, section 9.</u></p> <p><u>Division 1A Evidence of domestic violence</u></p> <p><u>103CA What may constitute evidence of domestic violence</u></p> <p>1) <u>For this part, evidence of domestic violence may include, but is not limited to, evidence of any of the following matters—</u></p> <ol style="list-style-type: none"> a. <u>the history of the domestic relationship between a person and an intimate partner or family member of the person, including—</u> <ol style="list-style-type: none"> i. <u>domestic violence committed by the intimate partner or family member against the person;</u> <u>or</u> ii. <u>domestic violence committed by the person against the intimate partner or family member;</u> b. <u>the cumulative effect of domestic violence, including the psychological effect, on a person or an intimate partner or family member of the person affected by the violence;</u> c. <u>social, cultural or economic factors that affect a person, or an intimate partner or family member of the person, who has been affected by domestic violence;</u> 	
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		<p>d. <u>responses by relatives, the community or agencies to domestic violence, including further violence that may be used by an intimate partner or family member to prevent, or in retaliation for, any help-seeking behaviour or use of safety options by a person;</u></p> <p>e. <u>ways in which social, cultural or economic factors have affected any help-seeking behaviour undertaken by a person, or the safety options realistically available to the person, in response to domestic violence;</u></p> <p>f. <u>ways in which domestic violence by an intimate partner or family member towards a person, or the lack of safety options, was exacerbated by inequities experienced by the person, including, for example, inequities associated with race, poverty, gender identity or expression, sex characteristics, disability or age;</u></p> <p>g. <u>the general nature and dynamics of relationships affected by domestic violence, including the possible consequences of separation from a person who commits domestic violence;</u></p> <p>h. <u>the psychological effect of domestic violence on people who are or have been in a relationship affected by domestic violence;</u></p> <p>i. <u>social or economic factors that affect people who are or have been in a relationship affected by domestic violence.</u></p> <p>2) <u>This section does not limit the Domestic and Family Violence Protection Act 2012, section 8(3).</u></p> <p><u>103CB Evidence of domestic violence</u></p>	
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		<ol style="list-style-type: none"> 1) <u>Relevant evidence of domestic violence is admissible as evidence in a criminal proceeding.</u> 2) <u>Without limiting subsection (1), the evidence of domestic violence may relate to—</u> <ol style="list-style-type: none"> a. <u>the defendant; or</u> b. <u>the person against whom the offence was committed; or</u> c. <u>another person connected with the proceeding.</u> <p>103CC Expert evidence of domestic violence</p> <ol style="list-style-type: none"> 1) <u>Expert evidence about domestic violence is admissible in a criminal proceeding.</u> 2) <u>Evidence given by an expert may include—</u> <ol style="list-style-type: none"> a. <u>evidence about the nature and effects of domestic violence on persons generally; and</u> b. <u>evidence about the effect of domestic violence on a particular person who has been subjected to domestic violence.</u> 3) <u>For this section, an expert on the subject of domestic violence includes a person who can demonstrate specialised knowledge, gained by training, study or experience, of a matter that may constitute evidence of domestic violence.</u> <p><u>103CD Ultimate issue and common knowledge rules abrogated</u></p> <p><u>Evidence of an expert's opinion given under section 103CC is not inadmissible only because the opinion is about—</u></p> <ol style="list-style-type: none"> a) <u>a fact in issue or an ultimate issue; or</u> b) <u>a matter of common knowledge.</u> 	
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		<p><u>Division 3 Jury directions related to domestic violence</u></p> <p><u>Subdivision 1 General matters</u></p> <p><u>103T Request for direction to jury about domestic violence</u></p> <ol style="list-style-type: none"> 1) <u>This section applies in relation to a criminal proceeding that is a trial by jury if domestic violence is an issue in the proceeding.</u> 2) <u>The prosecution or defence may, at any time during the proceeding, ask the judge to direct the jury about domestic violence generally by informing the jury about all or some of the matters mentioned in subdivision 2, other than section 103ZA.</u> 3) <u>The judge may give the jury the requested direction unless there are good reasons for not doing so.</u> <p><u>103U Request for direction to jury about self-defence in response to domestic violence</u></p> <ol style="list-style-type: none"> 1) <u>This section applies in relation to a criminal proceeding that is a trial by jury if self-defence in response to domestic violence is an issue in the proceeding.</u> 2) <u>The defence may, at any time during the proceeding, ask the judge to direct the jury about self-defence in response to domestic violence by informing the jury about—</u> <ol style="list-style-type: none"> a. <u>the matters mentioned in section 103ZA; or</u> b. <u>all or some of the other matters about domestic violence mentioned in subdivision 2.</u> 3) <u>The judge may give the jury the requested direction unless there are good reasons for not doing so.</u> 	<p>Insertion of a new Part 6A Division 3 – Jury directions related to domestic violence – Recommendation 65 WSJT Report 1.</p> <p>Modelled on WA provisions, aim is to better inform juries/judicial officers to consider evidence of domestic violence raised during the trial.</p>
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		<p><u>103V Judge may direct jury about domestic violence on own initiative</u></p> <ol style="list-style-type: none"> 1) <u>This section applies in relation to a criminal proceeding that is a trial by jury if domestic violence is an issue in the proceeding.</u> 2) <u>The judge may, on the judge's own initiative and in the interests of justice, inform the jury about—</u> <ol style="list-style-type: none"> a. <u>if self-defence in response to domestic violence is an issue in the proceeding—the matters mentioned in section 103ZA; or</u> b. <u>all or some of the other matters about domestic violence mentioned in subdivision 2.</u> <p><u>103W Direction may be given before evidence is adduced and may be repeated</u></p> <ol style="list-style-type: none"> 1) <u>A judge may give a direction under section 103T, 103U or 103V before any evidence is adduced in a proceeding.</u> 2) <u>The judge may also repeat the direction at any time during the proceeding.</u> <p><u>103X Application of subdivision 2 to trial by judge or magistrate sitting alone</u></p> <ol style="list-style-type: none"> 1) <u>This section applies to a criminal proceeding that is a trial by a judge or magistrate sitting alone.</u> 2) <u>The court's reasoning with respect to any matter mentioned in subdivision 2 must, to the extent the court thinks fit, be consistent with how a jury would be directed about the matter under subdivision 2 in the particular case.</u> 	
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		<p><u>103Y No limit of court's duty to direct jury</u></p> <p><u>This division does not limit the matters the court may direct the jury about, including in relation to evidence given by an expert witness.</u></p> <p><u>Subdivision 2 Content of jury directions about domestic violence</u></p> <p><u>103Z Content of general direction about domestic violence</u></p> <ol style="list-style-type: none"> 1) <u>The judge in a criminal proceeding who is directing the jury about domestic violence generally may, if relevant, inform the jury that domestic violence—</u> <ol style="list-style-type: none"> a. <u>is not limited to physical abuse and may, for example, include sexual abuse, psychological abuse or financial abuse; and</u> b. <u>may amount to violence against a person even though it is immediately directed at another person; and</u> c. <u>may consist of a single act; and</u> d. <u>may consist of separate acts that form part of a pattern of behaviour that can amount to abuse even though some or all of those acts may, when viewed in isolation, appear to be minor or trivial.</u> 2) <u>If relevant, the judge may also inform the jury that experience shows that—</u> <ol style="list-style-type: none"> a. <u>people may react differently to domestic violence and there is no typical response to domestic violence; and</u> b. <u>it is not uncommon for a person who has been subjected to domestic violence to stay with an abusive</u> 	
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		<p><u>partner after the domestic violence, or to leave and then return to the partner; and</u></p> <p>c. <u>it is not uncommon for a person who has been subjected to domestic violence not to report domestic violence to police or seek assistance to stop domestic violence; and</u></p> <p>d. <u>decisions made by a person subjected to domestic violence about how to address, respond to or avoid domestic violence may be influenced by a variety of factors; and</u></p> <p><u>Note—</u> <u>See also section 103ZC in relation to the judge informing the jury about factors that may influence a person's decision-making about how to address, respond to or avoid domestic violence.</u></p> <p>e. <u>it is not uncommon for a decision to leave an intimate partner who is abusive, or to seek assistance, to increase apprehension about, or the actual risk of, harm.</u></p> <p><u>103ZA Direction about self-defence in response to domestic violence</u></p> <p>1) <u>If the judge in a criminal proceeding is directing the jury about self-defence in response to domestic violence, the judge may inform the jury that—</u></p> <p>a. <u>self-defence is, or is likely to be, an issue in the proceeding; and</u></p> <p>b. <u>as a matter of law, evidence of domestic violence may be relevant to determining whether the defendant acted in self-defence; and</u></p> <p>c. <u>evidence in the trial is likely to include evidence of domestic violence committed by the victim against the</u></p>	
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		<p><u>defendant or another person whom the defendant was defending.</u></p> <p>2) <u>The judge may also inform the jury that, as a matter of law, evidence that the defendant assaulted the victim on a previous occasion does not mean that the defendant could not have been acting in self-defence in relation to the offence charged.</u></p> <p><u>103ZB Examples of behaviour, or patterns of behaviour, that may constitute domestic violence</u></p> <p><u>The judge in a criminal proceeding who is directing the jury about domestic violence generally may also inform the jury that behaviour, or patterns of behaviour, that may constitute domestic violence include, but are not limited to, the following—</u></p> <ul style="list-style-type: none"> a) <u>placing or keeping a person in a dependent or subordinate relationship;</u> b) <u>isolating a person from family, friends or other sources of support;</u> c) <u>controlling, regulating or monitoring a person's day-to-day activities;</u> d) <u>depriving a person of, or restricting a person's, freedom of movement or action;</u> e) <u>restricting a person's ability to resist violence;</u> f) <u>frightening, humiliating, degrading or punishing a person, including punishing a person for resisting violence;</u> g) <u>compelling a person to engage in unlawful or harmful behaviour.</u> <p><u>103ZC Factors that may influence how a person addresses, responds to or avoids domestic violence</u></p>	
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		<ol style="list-style-type: none"> 1) <u>This section applies if the judge in a criminal proceeding who is directing the jury about domestic violence generally informs the jury about the matters mentioned in section 103Z(2)(d).</u> 2) <u>The judge may also inform the jury that decisions made by a person subjected to domestic violence, about how to address, respond to or avoid domestic violence, may be influenced by matters including, for example—</u> <ol style="list-style-type: none"> a. <u>the domestic violence itself; or</u> b. <u>social, cultural, economic or personal factors, or inequities experienced by the person, including, for example, inequities associated with race, poverty, gender, disability or age; or</u> c. <u>responses by family, the community or agencies to the domestic violence or to any help-seeking behaviour or use of safety options by the person; or</u> d. <u>the provision of, or failure in the provision of, safety options that might realistically have provided ongoing safety to the person, and the person's perceptions of how effective those safety options might have been to prevent further harm; or</u> e. <u>further violence, or the threat of further violence, used by a family member to prevent, or in retaliation for, any help-seeking behaviour or use of safety options by the person.</u> 	
		Amendments to <i>Penalties and Sentences Act 1992</i>	Recommendation 59 WSJT Report 1 – PSA amendments re: respondent's dv history when being sentenced for DVO breach or DV related offence.

		<p>9 Sentencing guidelines</p> <ol style="list-style-type: none"> 1) The only purposes for which sentences may be imposed on an offender are— <ol style="list-style-type: none"> a. to punish the offender to an extent or in a way that is just in all the circumstances; or b. to provide conditions in the court's order that the court considers will help the offender to be rehabilitated; or c. to deter the offender or other persons from committing the same or a similar offence; or d. to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; or e. to protect the Queensland community from the offender; or f. a combination of 2 or more of the purposes mentioned in paragraphs (a) to (e). 2) In sentencing an offender, a court must have regard to— <ol style="list-style-type: none"> a. principles that— <ol style="list-style-type: none"> i. a sentence of imprisonment should only be imposed as a last resort; and ii. a sentence that allows the offender to stay in the community is preferable; and b. the maximum and any minimum penalty prescribed for the offence; and c. the nature of the offence and how serious the offence was, including— <ol style="list-style-type: none"> i. any physical, mental or emotional harm done to a victim, including harm mentioned in information relating to the victim given to the court under section 179K; and ii. the effect of the offence on any child under 16 years who may have been directly exposed to, or a witness to, the offence; and d. the extent to which the offender is to blame for the offence; and 	<p>YJA amendments for mitigatory circumstances relating to DV</p>
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		<ul style="list-style-type: none"> e. any damage, injury or loss caused by the offender; and f. the offender's character, age and intellectual capacity; and g. the presence of any aggravating or mitigating factor concerning the offender; and ga. without limiting paragraph (g), whether the offender was a participant in a criminal organisation— <ul style="list-style-type: none"> i. at the time the offence was committed; or ii. at any time during the course of the commission of the offence; and gb. <u>without limiting paragraph (g), the following—</u> <ul style="list-style-type: none"> iii. <u>whether the offender is a victim of domestic violence;</u> iv. <u>whether the commission of the offence is wholly or partly attributable to the effect of the domestic violence on the offender; and</u> h. the prevalence of the offence; and i. how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences; and j. time spent in custody by the offender for the offence before being sentenced; and k. sentences imposed on, and served by, the offender in another State or a Territory for an offence committed at, or about the same time, as the offence with which the court is dealing; and l. sentences already imposed on the offender that have not been served; and m. sentences that the offender is liable to serve because of the revocation of orders made under this or another 	
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		<p>Act for contraventions of conditions by the offender; and</p> <ul style="list-style-type: none"> n. if the offender is the subject of a community based order—the offender’s compliance with the order as disclosed in an oral or written report given by an authorised corrective services officer; and o. if the offender is on bail and is required under the offender’s undertaking to attend a rehabilitation, treatment or other intervention program or course—the offender’s successful completion of the program or course; and p. if the offender is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the offender’s community that are relevant to sentencing the offender, including, for example— <ul style="list-style-type: none"> i. the offender’s relationship to the offender’s community; or ii. any cultural considerations; or iii. any considerations relating to programs and services established for offenders in which the community justice group participates; and pa. the principle that the court should not refuse to make a community based order for the offender merely because of— <ul style="list-style-type: none"> iv. a physical, intellectual or psychiatric disability of the offender; or v. the offender’s sex, educational level or religious beliefs; and q. anything else prescribed by this Act to which the court must have regard; and r. any other relevant circumstance. <p>2A) However, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for any offence—</p>	
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		<ul style="list-style-type: none"> s. that involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person; or t. that resulted in physical harm to another person. <p>3) In sentencing an offender to whom subsection (2A) applies, the court must have regard primarily to the following</p> <ul style="list-style-type: none"> a. the risk of physical harm to any members of the community if a custodial sentence were not imposed; b. the need to protect any members of the community from that risk; c. the personal circumstances of any victim of the offence; d. the circumstances of the offence, including the death of or any injury to a member of the public or any loss or damage resulting from the offence; e. the nature or extent of the violence used, or intended to be used, in the commission of the offence; f. any disregard by the offender for the interests of public safety; g. the past record of the offender, including any attempted rehabilitation and the number of previous offences of any type committed; h. the antecedents, age and character of the offender; i. any remorse or lack of remorse of the offender; j. any medical, psychiatric, prison or other relevant report in relation to the offender; k. anything else about the safety of members of the community that the sentencing court considers relevant. <p>4) Also, in sentencing an offender for any offence of a sexual nature committed in relation to a child under 16 years or a child exploitation material offence—</p> <ul style="list-style-type: none"> a. the court must have regard to the sentencing practices, principles and guidelines applicable when the sentence is imposed rather than when the offence was committed; and 	
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		<ul style="list-style-type: none"> b. the principles mentioned in subsection (2)(a) do not apply; and c. the offender must serve an actual term of imprisonment, unless there are exceptional circumstances. <p>5) For subsection (4)(c), in deciding whether there are exceptional circumstances, a court may have regard to the closeness in age between the offender and the child.</p> <p>6) In sentencing an offender to whom subsection (4) applies, the court must have regard primarily to—</p> <ul style="list-style-type: none"> a. the effect of the offence on the child; and b. the age of the child; and c. the nature of the offence, including, for example, any physical harm or the threat of physical harm to the child or another; and d. the need to protect the child, or other children, from the risk of the offender reoffending; and e. any relationship between the offender and the child; and f. the need to deter similar behaviour by other offenders to protect children; and g. the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community; and h. the offender's antecedents, age and character; and i. any remorse or lack of remorse of the offender; and j. any medical, psychiatric, prison or other relevant report relating to the offender; and k. anything else about the safety of children under 16 the sentencing court considers relevant. <p>6A) However, for subsection (6)(h), the court must not have regard to the offender's good character if it assisted the offender in committing the offence.</p> <p>7) In sentencing an offender for a child exploitation material offence, the court must have regard primarily to—</p>	
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		<ul style="list-style-type: none"> a. for an offence other than an offence against the Criminal Code, section 228I or 228J—the nature of any material describing or depicting a child that the offence involved, including the apparent age of the child and any activity shown; and aa. for an offence against the Criminal Code, section 228I or 228J—the nature of the doll, robot or other object representing or portraying a child that the offence involved, including the apparent age of the child; and ab. the offender’s conduct or behaviour in relation to the material, doll, robot or other object that the offence involved; and ac. any relationship between the offender and the child the subject of the material, or represented or portrayed by the doll, robot or other object, that the offence involved; and b. the need to deter similar behaviour by other offenders to protect children; and c. the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community; and d. the offender’s antecedents, age and character; and e. any remorse or lack of remorse of the offender; and f. any medical, psychiatric, prison or other relevant report relating to the offender; and g. anything else about the safety of children under 16 the sentencing court considers relevant. <p>7AA) However, for subsection (7)(d), the court must not have regard to the offender’s good character if it assisted the offender in committing the offence.</p> <p>7A) Also, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender under part 9D, division 2.</p> <p>8) If required by the court for subsection (2)(p), the representative must advise the court whether—</p>	
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		<ul style="list-style-type: none"> a. any member of the community justice group that is responsible for the submission is related to the offender or the victim; or b. there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the offender or victim. <p>9) In sentencing an offender, a court must not have regard to the following—</p> <ul style="list-style-type: none"> a. the offender levy imposed under section 179C; b. whether or not the offender— <ul style="list-style-type: none"> i. may become, or is, the subject of a dangerous prisoners application; or ii. may become subject to an order because of a dangerous prisoners application. <p>(9A) Voluntary intoxication of an offender by alcohol or drugs is not a mitigating factor for a court to have regard to in sentencing the offender.</p> <p>(9B) In determining the appropriate sentence for an offender convicted of the manslaughter of a child under 12 years, the court must treat the child's defencelessness and vulnerability, having regard to the child's age, as an aggravating factor.</p> <p>(10) In determining the appropriate sentence for an offender who has 1 or more previous convictions, the court must treat each previous conviction as an aggravating factor if the court considers that it can reasonably be treated as such having regard to—</p> <ul style="list-style-type: none"> (a) the nature of the previous conviction and its relevance to the current offence; and (b) the time that has elapsed since the conviction. <p>(10A) In determining the appropriate sentence for an offender convicted of a domestic violence offence, the court must treat the</p>	
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		<p>fact that it is a domestic violence offence as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.</p> <p>Examples of exceptional circumstances—</p> <p>1 the victim of the offence has previously committed an act of serious domestic violence, or several acts of domestic violence, against the offender</p> <p>2 the offence is manslaughter under the Criminal Code, section 304B</p> <p><u>(10B) In determining the appropriate sentence for an offender who is a victim of domestic violence, the court must treat as a mitigating factor—</u></p> <p><u>(a) the effect of the domestic violence on the offender, unless the court considers it is not reasonable to do so because of the exceptional circumstances of the case; and</u></p> <p><u>(b) if the commission of the offence is wholly or partly attributable to the effect of the domestic violence on the offender—the extent to which the commission of the offence is attributable to the effect of the violence.</u></p> <p>(11) Despite subsection (10), the sentence imposed must not be disproportionate to the gravity of the current offence.</p> <p>(12) In this section—</p>	
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		<p>actual term of imprisonment means a term of imprisonment served wholly or partly in a corrective services facility.</p> <p>child exploitation material offence means any of the following offences—</p> <p>(a)an offence against the Classification of Computer Games and Images Act 1995, section 28 if the objectionable computer game is a child abuse computer game under the Act;</p> <p>(b)an offence against any of the following provisions of the Classification of Films Act 1991—</p> <p>(i)section 41(3) or 42(3) or (4);</p> <p>(ii)section 43 if the offence involves a child abuse publication under the Act;</p> <p>(c)an offence against the Criminal Code, section 228A, 228B, 228C, 228D, 228DA, 228DB, 228DC, 228I or 228J.</p> <p><u>domestic violence see the Domestic and Family Violence Protection Act 2012, section 8.</u></p>	
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<i>Police Powers and Responsibilities and Other Legislation Amendment Act (No.1) 2023</i>	Assent 2 May 2023	Amendments to <i>Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004</i>	Increased reporting periods for reportable offenders, as well as for post-DPSOA reportable offenders (10 years, 20 years, or life, depending on the circumstances). Changes are not retrospective, so if convicted prior to commencement, they have the previous periods.

		Amendments to <i>Police Powers and Responsibilities Act 2000</i>	<p>Expansion of 'controlled operations' to include offences including Criminal Code offences of Fraud, Computer hacking, distributing intimate images, and obtaining or dealing with identification information, CPORPO offences of failure to comply with reporting conditions, false or misleading information, and failing to comply with prohibition (relates to use of controlled operations and surveillance devices).</p> <p>Addition of s85A TORUM to list of Type 1 and type 2 vehicle related offences in s69A(1) PPRA – s.85A also inserted into TORUM by this Act.</p>
		Amendments to <i>Summary Offences Act 2005</i>	Amendments to introduce offences provisions relating to participating, organising (promoting or encouraging another to participate in) or filming, photographing, or publishing a film or photograph, of a vehicle being used in a hooning offence.
<i>Police Powers and Responsibilities and Other Legislation</i>	Assent 2 May 2023	Amendments to <i>Drugs Misuse Act</i>	Increase maximum penalty for trafficking in dangerous drugs to life (was 25 years).

<p><i>Amendment Act (No. 2) 2023</i></p>		<p>Amendments to <i>Police Powers and Responsibilities Act 2000</i></p> <p>754 Evasion Offence amended to include circumstance of aggravation.</p> <p>Insert 754A Proceedings for particular offences against s 754</p> <p><u>(1) A charge of an offence against section 754(2) with a circumstance of aggravation under section 754(3) must be heard and decided summarily if the prosecution elects to have the charge heard and decided summarily.</u></p> <p><u>(2) The maximum penalty that may be imposed on a summary conviction for an offence against section 754(2) with a circumstance of aggravation under section 754(3) is 3 years imprisonment.</u></p> <p><u>(3) The Magistrates Court must abstain from dealing summarily with a charge of an offence against section 754(2) with a circumstance of aggravation under section 754(3) if satisfied, at any stage and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction.</u></p> <p><u>(4) If the Magistrates Court abstains from jurisdiction—</u></p>	<p>Evasion offence in s. 754 increase the maximum penalty from 3 years to 5 years where a circumstance of aggravation applies, which includes if any of the following occur:</p> <ul style="list-style-type: none"> • Offence occurs at night • Use or threatens actual violence • Is or pretends to be armed • Is in company of 1 or more persons • Damages or threatens/attempts to damage property • Has a previous conviction for s.754, or CC offences in s.328A, 408A or 427 (no limit on how long ago these convictions are) <p>No change to minimum penalty</p>
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		<p><u>(a) the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily; and</u></p> <p><u>(b) the proceeding for the charge must be conducted as a committal proceeding; and</u></p> <p><u>(c) a plea of the defendant at the start of the hearing must be disregarded; and</u></p> <p><u>(d) the evidence already heard by the court is taken to be evidence in the committal proceeding; and</u></p> <p><u>(e) the Justices Act 1886, section 104 must be complied with for the committal proceeding.</u></p>	
	To commence upon proclamation	<p>Not yet proclaimed - Amendments to <i>Police Powers and Responsibilities Act 2000</i></p> <p>Insert new provisions:</p> <p><u>378A Application of division</u></p> <p><u>(1) This division applies if—</u></p> <p><u>(a) a person is arrested for, or is being questioned by a police officer about, a minor drugs offence; and</u></p> <p><u>(b) the person has not committed another indictable offence in circumstances that are related to the minor drugs offence; and</u></p> <p><u>Examples of commission of an offence in circumstances related to a minor drugs offence—</u></p> <ul style="list-style-type: none"> <u>• burglary of a home to obtain money to buy dangerous drugs or S4 or S8 medicines the subject of the minor drugs offence</u> 	<p>Replacement of s.379 Additional case when arrest for minor drugs offence may be discontinued – this section will be repealed and replaced with expanded definitions of ‘minor drug offences’ which increases the types of drugs eligible for drug diversion, as well as expanding the Police Drug Diversion Program – eg for a drug diversion warning to be provided at first instance, and for a subsequent drug diversion assessment program to be offered.</p> <p>Some corresponding amendments to the <i>Youth Justice Act</i> also yet to come into force</p>

		<p>• <u>the dangerous drugs or S4 or S8 medicines the subject of the minor drugs offence are obtained as a result of the robbery of another person</u></p> <p>• <u>possessing another dangerous drug or S4 or S8 medicine of a quantity that is more than the prescribed quantity under section 378B</u></p> <p><u>(c) the person has not previously been sentenced to serve a term of imprisonment for an offence against the Drugs Misuse Act 1986, section 5, 6, 8 or 9D; and</u></p> <p><u>(d) a police officer reasonably believes each minor drugs matter the subject of the minor drugs offence was for the person's personal use.</u></p> <p><u>(2) For subsection (1)(b), a reference to another indictable offence does not include another minor drugs offence that is an indictable offence.</u></p> <p><u>378B Meaning of minor drugs offence</u></p> <p><u>(1) A <i>minor drugs offence</i> is—</u></p> <p><u>(a) an offence against the Drugs Misuse Act 1986, section 9 involving possessing not more than the prescribed quantity of a dangerous drug; or</u></p> <p><u>(b) an offence against the Drugs Misuse Act 1986, section 10(1), (2), (4) or (4A) or 10A(1)(a), (b) or (c) involving possessing a thing for use, or that has been used, for the administration, consumption or smoking of a dangerous drug; or</u></p>	
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		<p><u>(c) an offence against the Medicines and Poisons Act 2019, section 34(1) involving possessing not more than the prescribed quantity of an S4 or S8 medicine.</u></p> <p><u>(2) However, a minor drugs offence does not include an offence mentioned in subsection (1)(a) or (b) if the possession relates to an offence by the same person against the Drugs Misuse Act 1986 involving production or supply of a dangerous drug or trafficking in a dangerous drug.</u></p> <p><u>(3) Also, a minor drugs offence does not include an offence mentioned in subsection (1)(c) if the possession relates to an offence by the same person against the Medicines and Poisons Act 2019 involving dealing with, manufacturing or supplying an S4 or S8 medicine.</u></p> <p><u>(4) In this section—</u></p> <p><u>prescribed quantity, of a dangerous drug or S4 or S8 medicine, means a quantity of the drug or medicine prescribed under a regulation for this section.</u></p> <p><u>378C Drug diversion warning</u></p> <p><u>(1) This section applies if the person—</u></p> <p><u>(a) has not previously been offered an opportunity to participate in a drug diversion assessment program under section 379 or 379AA, whether before or after the commencement of this section; and</u></p>	
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		<p><u>(b) has not previously been offered a drug diversion warning.</u></p> <p><u>(2) If the person is an adult, a police officer must offer to give the person a drug diversion warning.</u></p> <p><u>(3) If the person is a child, a police officer may offer to give the person a drug diversion warning.</u></p> <p><u>(4) A police officer may make the offer at any time before the person appears before a court to answer a charge of the minor drugs offence.</u></p> <p><u>(5) When making the offer, the police officer must explain the nature and effect of the drug diversion warning—</u></p> <p><u>(a) to the person; and</u></p> <p><u>(b) if a support person is present when the offer is made—to the support person.</u></p> <p><u>(6) If the person agrees to being given a drug diversion warning, the police officer must give the person a written notice stating the following—</u></p> <p><u>(a) that a drug diversion warning was given to the person;</u></p> <p><u>(b) the time and date the warning was given;</u></p> <p><u>(c) the person's name;</u></p>	
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		<p><u>(d) the police officer's name and rank;</u></p> <p><u>(e) the particulars of the minor drugs offence;</u></p> <p><u>(f) the nature and effect of the warning.</u></p> <p><u>(7) On the giving of the drug diversion warning, the minor drugs matter the subject of the minor drugs offence is forfeited to the State.</u></p> <p><u>(8) If the person is an arrested person, it is the duty of a police officer to release the person at the earliest reasonable opportunity after the police officer has given the person a drug diversion warning.</u></p> <p><u>379 Initial drug diversion assessment program</u></p> <p><u>(1) This section applies if the person—</u></p> <p><u>(a) has previously been offered a drug diversion warning; and</u></p> <p><u>(b) has not previously been offered the opportunity to participate in a drug diversion assessment program under this section, whether before or after the commencement of this section.</u></p> <p><u>(2) If the person is an adult, a police officer must offer the person the opportunity to participate in a drug diversion assessment program.</u></p> <p><u>(3) If the person is a child, a police officer may offer the person the opportunity to participate in a drug diversion assessment program.</u></p>	
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		<p><u>(4) A police officer may make the offer at any time before the person appears before a court to answer a charge of the minor drugs offence.</u></p> <p><u>(5) When making the offer, the police officer must explain the nature and effect of the drug diversion assessment program—</u></p> <p><u>(a) to the person; and</u></p> <p><u>(b) if a support person is present when the offer is made—to the support person.</u></p> <p><u>379AA Subsequent drug diversion assessment program</u></p> <p><u>(1) This section applies if the person—</u></p> <p><u>(a) has previously been offered the opportunity to participate in a drug diversion assessment program under section 379, whether before or after the commencement of this section; and</u></p> <p><u>(b) has not previously been offered the opportunity to participate in a drug diversion assessment program under this section.</u></p> <p><u>(2) If the person is an adult, a police officer must offer the person the opportunity to participate in a subsequent drug diversion assessment program.</u></p>	
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	<p><u>(3) If the person is a child, a police officer may offer the person the opportunity to participate in a subsequent drug diversion assessment program.</u></p> <p><u>(4) A police officer may make the offer at any time before the person appears before a court to answer a charge of the minor drugs offence.</u></p> <p><u>(5) When making the offer, the police officer must explain the nature and effect of the drug diversion assessment program—</u></p> <p><u>(a) to the person; and</u></p> <p><u>(b) if a support person is present when the offer is made—to the support person.</u></p> <p><u>379AB Drug diversion agreement</u></p> <p><u>(1) If the person agrees to an offer made under section 379 or 379AA, the person must sign an agreement (a drug diversion agreement) to participate in, and complete, a drug diversion assessment program.</u></p> <p><u>(2) The drug diversion agreement must include a provision authorising the provider of the drug diversion assessment program to disclose to the commissioner information about—</u></p> <p><u>(a) the person's participation in, and completion of, the program; or</u></p> <p><u>(b) if the person failed to participate in, or complete, the program—the person's failure to participate in, or complete, the program.</u></p>	
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		<p><u>(3) The police officer must—</u></p> <p><u>(a) give the person a written requirement to participate in, and complete, a drug diversion assessment program in accordance with the drug diversion agreement; and</u></p> <p><u>(b) inform the person that failure to comply with the requirement is an offence against section 791.</u></p> <p><u>(4) Also, the police officer must give the chief executive (health), or a person or organisation nominated by that chief executive for this section, a copy of the drug diversion agreement.</u></p> <p><u>(5) On the signing of the drug diversion agreement, the minor drugs matter the subject of the minor drugs offence is forfeited to the State.</u></p> <p><u>(6) If the person is an arrested person, it is the duty of a police officer to release the person at the earliest reasonable opportunity after the police officer is satisfied subsections (1) and (3) have been complied with.</u></p>	
<i>Child Protection (Offender Reporting and Offender Prohibition Order) and Other</i>	Assent 1 September 2023	<p>Part 9 (other than sections 70-72 and 75-82 are taken to have commenced on 23 August 2023</p> <p>To commence upon Proclamation:</p> <ul style="list-style-type: none"> • s50B, 50D – 50H, 50J – 50L, 50N, 55, 63 and 65 (relating to urinating in a public place, being intoxicated in a public place, and the associated PPRA amendments regarding dealing with intoxicated persons. 	

Legislation Amendment Act 2023		<ul style="list-style-type: none"> section 52, to the extent it inserts chapter 24, part 24, division 3 (transitional provisions relating to dealings with intoxicated persons under PPRA) part 5 (PPR regulations) 	
	Assent 1 September 2023	<p><i>Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004</i></p> <p>Replacement of Part 3 – Offender Reporting Orders.</p> <p><u>Division 1 Making offender reporting orders</u></p> <p><u>12A Offender reporting order defined</u></p> <p>An <u>offender reporting order</u> is an order made against a person that the person comply with the reporting obligations imposed on a reportable offender under this Act.</p> <p><u>12B Making offender reporting order—conviction for offence other than prescribed offence</u></p> <ol style="list-style-type: none"> This section applies if a court- <ol style="list-style-type: none"> finds a person guilty of an offence other than a prescribed offence; and records a conviction and imposes a sentence for the offence. <p><u>Note—</u> For when no conviction is recorded, see the Penalties and Sentences Act 1992, section 12 and the Youth Justice Act 1992, section 183.</p> <ol style="list-style-type: none"> The court may also make an offender reporting order against the person if satisfied, on the balance of probabilities, after considering the matters mentioned in section 12D— 	<p>Inserts provision for a court to make an offender reporting order where it has made a forensic order under the <i>Mental Health Act 2016</i> in relation to an offence that is not a prescribed offence (12C), in addition to where a person has been found guilty of an offence that is not a prescribed offence (12B). The court is no longer restricted to being able to make an order where it records a conviction (see previous s.13(4)).</p> <p>Inserts s.12D factors the court must consider before making offender reporting order.</p>

		<ol style="list-style-type: none"> a. <u>the person poses a risk to the lives or the sexual safety of 1 or more children, or of children generally; or</u> b. <u>for a person convicted of a child abduction offence—</u> <ol style="list-style-type: none"> i. <u>the context in which the offence was committed was not familial; and</u> ii. <u>it is appropriate in the circumstances to make the order.</u> <u>Example of circumstances in which it is appropriate to make the order—</u> <u>The commission of the offence was not merely incidental.</u> <p>3. <u>For subsection (2)(a), it is not necessary that the court be able to identify a risk to particular children, or a particular class of children.</u></p> <p><u>12C Making offender reporting order—forensic order</u></p> <ol style="list-style-type: none"> 1. <u>This section applies if a court makes a forensic order in relation to a person.</u> 2. <u>The court may also make an offender reporting order against the person if satisfied, on the balance of probabilities, after considering the matters mentioned in section 12D—</u> <ol style="list-style-type: none"> a. <u>the person poses a risk to the lives or the sexual safety of 1 or more children, or of children generally; or</u> b. <u>if the forensic order was made in relation to a child abduction offence—</u> <ol style="list-style-type: none"> i. <u>the context in which the offence was committed was not familial; and</u> ii. <u>it is appropriate in the circumstances to make the order.</u> 3. <u>For subsection (2)—</u> <ol style="list-style-type: none"> a. <u>a reference in section 12D to an offence is a reference to the offence in relation to which the forensic order is made; and</u> 	
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		<p>b. <u>a reference in section 12D to the conduct the subject of the order is a reference to the conduct that constitutes that offence.</u></p> <p>4. <u>For subsection (2)(a), it is not necessary that the court be able to identify a risk to particular children, or a particular class of children.</u></p> <p>5. <u>An offender reporting order made under subsection (2) ends if the forensic order is revoked under the Mental Health Act 2016, section 441.</u></p> <p><u>12D Matters court must consider before making offender reporting order</u></p> <p>The matters a court must consider for section 12B(2) or 12C(2) are—</p> <p>a) <u>when the conduct the subject of the proposed offender reporting order happened; and</u></p> <p>b) <u>the nature and seriousness of the conduct; and</u></p> <p>c) <u>for each offence to which the proposed order relates—</u></p> <p style="padding-left: 20px;">i. <u>the age of the respondent, the age of the victim of the offence and the difference in their ages when the offence was committed; and</u></p> <p style="padding-left: 20px;">ii. <u>the relationship, if any, between the respondent and the victim of the offence; and</u></p> <p>d) <u>the respondent's criminal history, including the seriousness of the criminal history; and</u></p> <p>e) <u>the respondent's circumstances, including—</u></p> <p style="padding-left: 20px;">i. <u>the access the respondent has to children, including access through the respondent's employment; and</u></p> <p style="padding-left: 20px;">ii. <u>the respondent's needs in relation to accommodation, employment, health and mental health; and</u></p> <p>f) <u>anything else the court considers relevant.</u></p>	
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		<p><u>12E Court may act on own initiative or application</u></p> <ol style="list-style-type: none"> 1. A court may make an offender reporting order— <ol style="list-style-type: none"> a. <u>on its own initiative; or</u> b. <u>on the application of the prosecution.</u> 2. <u>The prosecution may make an application under subsection (1)(b) at any time within 6 months after the day the court—</u> <ol style="list-style-type: none"> a. <u>imposes the sentence for the offence; or</u> b. <u>makes the forensic order.</u> 	
		<p><u>12F Appeal under Criminal Code</u></p> <p><u>(1) If a court makes an offender reporting order against a person under section 12B, the person may appeal against the making of the order under the Criminal Code, chapter 67.</u></p> <p><u>(2) If a court refuses an application for an offender reporting order to be made against a person under section 12B, the Attorney-General may appeal against the refusal under the Criminal Code, chapter 67.</u></p> <p><u>(3) For subsections (1) and (2), the Criminal Code, chapter 67 applies as if the order, or the refusal, were a sentence pronounced on conviction of the person for an indictable offence.</u></p> <p><u>12G Appeal under Mental Health Act 2016</u></p>	<p>An appeal against an order made pursuant to 12B is via the Criminal Code. An appeal against an order under 12C is pursuant to the Mental Health Act.</p>

	<p><u>(1) If a court makes an offender reporting order against a person under section 12C, the person may appeal against the making of the order under the Mental Health Act 2016.</u></p> <p><u>(2) If a court refuses an application for the imposition of an offender reporting order against a person under section 12C, the Attorney-General may appeal against the refusal under the Mental Health Act 2016.</u></p> <p><u>(3) For subsections (1) and (2), the Mental Health Act 2016 applies as if—</u></p> <p><u>(a) the order or refusal were a decision of the Mental Health Court; and</u></p> <p><u>(b) a reference in the Mental Health Act 2016 to the Mental Health Court were a reference to the court that made the order or refused the application.</u></p>	
	Part 3A Offender prohibition orders	Definitions moved to schedule
	Part 3A Subdivision 3 –	amendments changing references to 'section 54 notice' to 'an initial reporting obligations notice'.
	Part 4 Reporting Obligations 5 Request for and provision of personal details by corrective services	Amendments allow Corrective Services to ask a reportable offender about their intended residence upon discharge from custody. This information may

		<ol style="list-style-type: none"> 1. This section applies if a reportable offender is in government detention in Queensland. 2. <u>The chief executive (corrective services) may ask the offender to give the chief executive (corrective services) details of—</u> <ol style="list-style-type: none"> a. <u>the address of the premises where the offender intends to reside when the offender is released; or</u> b. <u>if the offender does not intend to reside at particular premises when the offender is released—each locality where the offender intends to generally be found.</u> 3. <u>The request may be made—</u> <ol style="list-style-type: none"> a. <u>orally or in writing; and</u> b. <u>on or before the offender's release from government detention.</u> 4. <u>The offender may, but is not required to, comply with the request.</u> 5. The chief executive (corrective services) may give the police commissioner the following personal details about the offender— <ol style="list-style-type: none"> a. the offender's name; b. the offender's date of birth; c. the address where the offender generally resided before the offender entered government detention. d. <u>if the offender complied with a request under subsection (2)—the address or locality given to the chief executive (corrective services) in response to the request.</u> 6. The details are taken to be the reportable offender's initial report for the purposes of including the details in the register established under section 68. 7. Subsection (6) does not affect the reportable offender's reporting obligations under section 14. 	<p>form part of a reportable offender's initial report.</p>
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		<p><u>19B Requirement to report each change in premises or locality at which offender stays or can be found</u></p> <p><u>(1) The police commissioner may require a reportable offender to report the changes in the offender's personal details mentioned in subsection (3) if the commissioner is reasonably satisfied that doing so is necessary to protect the lives or sexual safety of children.</u></p> <p><u>(2) The police commissioner imposes the requirement under subsection (1) on the offender by giving the offender a reporting obligations notice under section 54A(3) stating that the offender is required to report the changes.</u></p> <p><u>(3) The reportable offender must report each change in the premises where the offender stays, or locality where the offender can generally be found—</u></p> <p><u>(a)during each period of 3 or more consecutive days in which—</u></p> <p><u>(i)the offender does not stay at the premises where the offender generally resides; or</u></p> <p><u>(ii)the offender does not generally reside at any premises; and</u></p> <p><u>(b)within 24 hours after the change happens.</u></p>	<p>Insertion of new provision – the Police Commissioner may give a reportable offender a notice requiring them to report each change in premise where they stay for a maximum of 3 days, within 24hrs of the change happening.</p>
		<p><u>Insertion of 26A Reportable offender with disability may be assisted to make report</u></p> <p><u>(1) This section applies if—</u></p> <p><u>(a) a reportable offender is a person with disability; and</u></p>	

		<p><u>(b) because of the offender's disability, it is impracticable for the offender to make a report the offender is required to make under this part.</u></p> <p><u>(2) A parent, guardian or carer of the reportable offender, or another person nominated by the offender, may—</u></p> <p><u>(a) if the offender is required to make the report in person—</u> <u>accompany the offender to the place where the offender is required to make the report; and</u></p> <p><u>(b) make the report on the offender's behalf.</u></p>	
		<p>50 Failure to comply with reporting obligations</p> <p>(1) A reportable offender must comply with the offender's reporting obligations, unless the offender has a reasonable excuse.</p> <p>Maximum penalty—300 penalty units or 5 years imprisonment.</p> <p>(2) An offence against subsection (1) is a crime.</p> <p>(3) When deciding whether a reportable offender has a reasonable excuse, the court must have regard to—</p> <p>(a) the offender's age; and</p> <p>(b) whether the offender has a disability that affects the offender's ability to understand, or to comply with, the obligations; and</p> <p>(c) whether the form of notice given to the offender about the obligations was adequate to inform the offender of the obligations, having regard to the offender's circumstances; and</p>	<p>Enables the police commissioner to give a reporting obligations notice to a person convicted of an offence of failing to comply with reporting obligations, requiring them to report unreported obligation to the commissioner, being the personal details, change in personal details, or other information they were required to report that they were convicted of failing to comply with. The requirement to report when issued with a reporting obligations notice is in addition to the ordinary requirements to report.</p> <p>NOTE: offence provisions (old ss. 51, 51A and 51C etc) have been re-numbered and moved to new Part 4AA</p>

		<p>(d)any matter specified by a regulation for the purposes of this section; and</p> <p>(e)any other matter that the court considers is appropriate.</p> <p>(4) It is a defence to proceedings for an offence of failing to comply with a reporting obligation if it is established by or on behalf of the person charged with the offence that, at the time the offence is alleged to have occurred, the person had not received notice, and was otherwise unaware, of the obligation.</p> <p><u>(5) If a reportable offender is convicted of an offence against subsection (1), the police commissioner may, by giving the offender a reporting obligations notice under section 54A(3), require the offender to report the unreported information to the commissioner.</u></p> <p><u>(6) The unreported information is the personal details, change in personal details or other information the reportable offender was required to report under a reporting obligation the offender is convicted of failing to comply with.</u></p> <p><u>(7) A reporting obligations notice mentioned in subsection (5) must state—</u></p> <p><u>(a)the personal details, change in personal details or other information the offender is required to report; and</u></p> <p><u>(b)the ways in which the offender is required to, or may, make the report; and</u></p> <p><u>(c)that the offender must make the report—</u></p>	<p>– Offences and proceedings for offences.</p>
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		<p><u>(i)if the offender is sentenced to, and serves, a term of imprisonment for the offence—within 7 days after the offender is released from government detention for the offence; or</u></p> <p><u>(ii)otherwise—within 7 days after being given the notice.</u></p> <p><u>(8) Section 26 applies for making the report under subsection (5) as if the report were a periodic report.</u></p> <p><u>(9) For subsection (1), a reportable offender's reporting obligations include complying with the requirement imposed on the offender under subsection (5).</u></p>	
	23 August 2023 / 1 September 2023	Amendments to the <i>Youth Justice Act 1992</i>	<p>Part 9 contains amendments to the Youth Justice Act, which were taken to have commenced on 23 August 2023, except for ss.70-72 and 75-82 (which would commence upon assent. Those provisions essentially relate to the detainment of children in places other than detention centres.</p> <p>These amendments were not a part of the original Bill as it moved through the parliamentary process, and arose as a result of <i>Youth Empowered Towards Independence Incorporated v Commissioner of Queensland Police Service & Anor</i> [2023] QSC 174. The</p>

			amendments expressly override the <i>Human Rights Act 2019</i> .
	1 September 2023 / proclamation	<p>Amendments to the <i>Summary Offences Act 2005</i></p> <p>8 Begging in a Public Place is repealed.</p>	<p>The <i>Summary Offences Act 2005</i> has been amended such that s.8 Begging in a Public Place has been repealed. While the <i>Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023</i> also includes amendments to the offence of urinating in a public place, the repeal of being intoxicated in a public place, and associated PPRA amendments regarding police dealing with intoxicated persons, those amendments are to commence upon proclamation and are not yet in force.</p> <p>These amendments are as a result of the Inquiry into decriminalising public intoxication, begging and public urination offences, and health and social welfare-based responses, by the Community Support and Services Committee. Their report (Report 23, tabled 31 October 2023) recommended the repeal of begging and being intoxicated in public places.</p> <p>Recommendation 101 WSJT Report 2 also proposed the repeal of these</p>

			<p>provisions, due to their disproportionate impact on women and girls.</p>
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Justice and Other Legislation Amendment Act 2023	Assent 20 September 2023	<p>Staggered commencement:</p> <ul style="list-style-type: none"> Part 9 commenced on 3 October 2023 (CLSO amendments) Part 5, part 21, Part 26 commence 1 July 2024 (civil liabilities, motor vehicle accidents and personal injuries proceedings amendments) Part 2, part 3 (division 2), sections 40 to 43, section 50 (amendment of s.564 CC re: unborn child), part 12, part 14, part 15, sections 109 to 116, 118 and 119, part 17, section 138(3) and (4), part 25 (amendment of s.9 PSA re: unborn child), sections 187, 193 and 196, parts 32 to 37, and schedule 1 commence upon proclamation (no proclamation yet) Remainder upon assent <p><i>NOTE: There are some amendments to the Oaths Act which will require further changes to the jurat on our precedents.</i></p>	
	20 September 2023 / some by proclamation	Amendment to <i>Appeal Costs Fund Act 1973</i>	Section 35 states that s.24A does not prevent a payment from the fund to Legal Aid Queensland or a Legal Aid

		<p>New section: 24A No payments to Legal Aid Queensland or service providers</p> <p><u>The board must not make a payment from the fund—</u></p> <p><u>(a) to Legal Aid Queensland; or</u></p> <p><u>(b) to a Legal Aid service provider, in relation to a proceeding for which the Legal Aid service provider gave legal assistance under the Legal Aid Queensland Act 1997.</u></p>	<p>service provider in accordance with a certificate of the board issued before the commencement.</p> <p>Therefore, in matters where the board has already issued a certificate, payment will still be able to be made in accordance with s. 14. However, there does not appear to be any allowance for the board to issue a certificate for payment to LAQ if it hadn't already done so prior to 20 September (eg in circumstances where an indemnity certificate has been issued and the application to the board made, but the board has not yet issued a certificate). LAQ provided this feedback during the consultation process for the Bill, noting the financial implications and the need to secure recurrent funding allocations that incorporate the inclusion of Fund claims as part of future budgets.</p> <p>There is also now a time limit for applying to the board for payment from the fund (new s. 14A), however that has no applicability to LAQ given the new s. 24A.</p> <p>Remainder of the provisions to commence upon proclamation have no effect on LAQ's new position.</p>
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	3 October 2023	<p>Amendments to <i>Criminal Law (Sexual Offences) Act 1978</i> commenced 3 October 2023, including replacement of s.7 with the following:</p> <p>7 Application for non-publication order, and notice of application</p> <p><u>(1) This section applies if a defendant is charged with a prescribed sexual offence.</u></p> <p><u>(2) An eligible person may apply to a Magistrates Court for an order (a non-publication order) prohibiting the publication, before the defendant is committed for trial or sentence or sentenced on the charge, of identifying matter relating to the defendant.</u></p> <p><u>(3) The applicant must give 3 business days' notice of their intention to make the application to—</u> <u>(a) the court; and</u> <u>(b) each other eligible person.</u></p> <p><u>(4) However, the court may hear an application for a non-publication order despite the failure of the applicant to give notice under subsection (3) if the court is satisfied—</u> <u>(a) there is a good reason for notice not having been given under subsection (3); or</u> <u>(b) it is in the interests of justice that the court hear the application without notice having been given under subsection (3).</u></p> <p><u>(5) Also, if the applicant is the defendant, notice to the complainant—</u> <u>(a) must not be given personally by the defendant; and</u> <u>(b) must be given by the prosecution giving a copy of the notice to the complainant or another person nominated to receive correspondence on the complainant's behalf in relation to the matter.</u></p> <p><u>(6) Notice under subsection (5) may be given by electronic communication.</u></p>	<p>Under the <i>Criminal Law (Sexual Offences) Act 1978</i> ('CLSO'), the publishing of an adult defendant's identity prior to the matter being committed, in relation to the following prescribed sexual offences is prohibited:</p> <ul style="list-style-type: none"> • Rape (s.349 Criminal Code) • Attempt to commit rape (s.350 Criminal Code) • Assault with intent to commit rape (s.351 Criminal Code) • Sexual assaults (s.352 Criminal Code) <p>The amendments are in response to recommendation 83 of the Women's Safety and Justice Taskforce Report 2. The amendments are rather brief but will have a significant impact for defendants charged with a prescribed sexual offences.</p> <p>From 3 October 2023, the prohibition on identifying an adult defendant charged with a prescribed sexual offence is removed. This applies irrespective of whether:</p> <ul style="list-style-type: none"> • The defendant is charged after commencement; • The defendant was charged before commencement and
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	<p><u>7A Notifications to accredited media entities</u> <u>(1) On receiving a notice under section 7(3), the court must take reasonable steps to ensure that each accredited media entity is notified of the application.</u></p> <p><u>(2) The notification may be by electronic communication or any other way the court considers appropriate.</u></p> <p><u>7B Grounds for non-publication order</u> <u>The court may make a non-publication order if satisfied of one or more of the following grounds—</u> <u>(a) the order is necessary to prevent prejudice to the proper administration of justice;</u> <u>(b) the order is necessary to prevent undue hardship or distress to a complainant or witness in relation to the charge;</u> <u>(c) the order is necessary to protect the safety of any person.</u></p> <p><u>7C Procedure for making non-publication order</u> <u>(1) Each of the following persons may appear and be heard by the court on an application for a non-publication order—</u> <u>(a) the applicant;</u> <u>(b) an eligible person in relation to the charge to which the application relates;</u> <u>(c) an accredited media entity;</u> <u>(d) any other person whom the court considers has sufficient interest in the question of whether the order should be made.</u></p> <p><u>(2) The court may order that the application be heard in closed court.</u></p> <p><u>(3) In hearing the application the court—</u> <u>(a) may receive and take into account evidence of any kind that it considers credible or trustworthy in the circumstances; and</u> <u>(b) must consider the following—</u></p>	<p>the charge is ongoing in the Magistrates court; or</p> <ul style="list-style-type: none"> • The defendant was previously charged with a prescribed sexual offence but was not committed. <p>New s. 7 CLSO permits an eligible person (being the defendant, prosecution, or the complainant) to make an application to a Magistrates Court for a non-publication order. The applicant must give 3 business days notice (which may be truncated in some circumstances) to the court and each eligible person, and it is the prosecution who must give a copy of the notice to the complainant.</p> <p>When a notice is received by the court, the court must take steps to notify each accredited media entity of the application (new s. 7A). An accredited media entity may appear and be heard on the application (new s.7C), in addition to the applicant and an eligible person.</p> <p>The court must consider a number of factors contained within new s.7C(3)(b), which are:</p>
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		<p><u>(i) the primacy of the principle of open justice;</u> <u>(ii) the public interest;</u> <u>(iii) any submissions made or views expressed by or on behalf of the complainant about the application;</u> <u>(iv) any special vulnerabilities of the complainant or the defendant;</u> <u>(v) any cultural considerations relating to the complainant or the defendant;</u> <u>(vi) the potential effect of publication in a rural or remote community;</u> <u>(vii) the potential to prejudice any future court proceedings;</u> <u>(viii) the history and context of any relationship between the complainant and the defendant (including, for example, any domestic violence history);</u> <u>(ix) any other matter the court considers relevant.</u></p> <p><u>(4) If the court grants the application, the court must state in the order—</u> <u>(a) the grounds on which the order is made; and</u> <u>(b) any identifying matter that is not covered by the order; and</u> <u>(c) the extent to which publication of identifying matter is prohibited; and</u> <u>(d) that the order ceases to have effect when the defendant is committed for trial or sentence or sentenced on the charge or when the charge is withdrawn, whichever happens first.</u></p> <p><u>7D Interim orders</u> <u>(1) If an application is made to the court for a non-publication order, the court may, without determining the merits of the application, make an order (an interim order) prohibiting the publication of identifying matter relating to the defendant.</u></p> <p><u>(2) An interim order has effect until—</u> <u>(a) it is revoked by the court; or</u> <u>(b) the court finally decides the application.</u></p>	<p>i. the primacy of the principle of open justice; ii. the public interest; iii. any submissions made or views expressed by or on behalf of the complainant about the application; iv. any special vulnerabilities of the complainant or the defendant; v. any cultural considerations relating to the complainant or the defendant; vi. the potential effect of publication in a rural or remote community; vii. the potential to prejudice any future court proceedings; viii. the history and context of any relationship between the complainant and the defendant (including, for example, any domestic violence history); ix. any other matter the court considers relevant.</p> <p>In hearing the application, the court may receive and take into account evidence of any kind that it considers credible or trustworthy, and may also hear from any other person whom the court considers has sufficient interest in the question of whether the order should be made.</p>
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			applications for a non-publication order application.
	Not yet in force – by date of proclamation	<p>564 Form of indictment</p> <p>(1) An indictment is to be intitled with the name of the court in which it is presented, and must, subject to the provisions hereinafter contained, set forth the offence with which the accused person is charged in such a manner, and with such particulars as to the alleged time and place of committing the offence, and as to the person (if any) alleged to be aggrieved, and as to the property (if any) in question, as may be necessary to inform the accused person of the nature of the charge.</p> <p>(2) If any circumstance of aggravation is intended to be relied upon, it must be charged in the indictment.</p> <p>(2A) Despite subsection (2), a relevant circumstance of aggravation may be relied on for the purposes of sentencing an offender for the offence charged in the indictment despite the relevant circumstance of aggravation not being charged in the indictment for the offence.</p> <p>(3) It is sufficient to describe an offence in the words of this Code or of the statute defining it.</p> <p>(3A) An indictment for an offence may also state the offence is a domestic violence offence.</p> <p>Note— See the Penalties and Sentences Act 1992, section 12A for when a conviction for the offence must also be recorded as a conviction for a domestic violence offence or entered in the offender’s criminal history as a domestic violence offence.</p> <p><u>(3B) 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 also state the name, or a description, of the unborn child.</u></p>	Amendment to s.564 <i>Criminal Code</i> allow the name or description of an unborn child to be placed on an indictment. This is not mandatory, and is still subject to the rules of evidence (LAQ’s submission to LASC, DJAG’s response during public hearings).

		<p>(4) The place of trial is to be named in the margin of the indictment.</p> <p>(5) In this section— <i>relevant circumstance of aggravation</i> means a circumstance of aggravation that is a previous conviction of the offender.</p>	
		<p>Amendment to <i>Penalties and Sentences Act 1992</i></p> <p>Insert the following in to 9 Sentencing Guidelines</p> <p><u>(9C) 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.</u></p> <p>...</p> <p><u>9(12)—</u> <i>relevant serious offence</i> means an offence against— (a) <u>the following provisions of the Criminal Code—</u> (i) <u>sections 302 and 305;</u> (ii) <u>sections 303 and 310;</u> (iii) <u>section 320;</u> (iv) <u>section 323;</u> (v) <u>section 328A;</u> (vi) <u>section 339; and</u> (b) <u>the Transport Operations (Road Use Management) Act 1995, section 83.</u></p>	<p>Amendment to <i>Penalties and Sentences Act 1992</i> to insert further aggravating factor s9(9C) for a relevant serious offence (s.302 and 305, 303 and 310, 320, 323, 328A and 339 CC, and s.83 TORUM) where convicted of that offence in relation to a pregnant person that resulted in destroying the life of the persons unborn child.</p>

		Amendment to <i>Youth Justice Act 1992</i> s. 150	identical to above amendments to s.9 PSA.
Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024	Assent 18 March 2024	<p><u>DFVPA amendments</u></p> <ul style="list-style-type: none"> Amendment to s 37 of the <i>Domestic Family Violence Protection Act</i> to provide that where a court makes a protection order, the court must consider the appropriate period for the order to continue in force. <p><u>Bail Act amendments</u></p> <p>Amends s 11, creating (3A) – A court considering imposing special conditions must consider the effect of the conditions on a defendant's responsibilities to:</p> <ul style="list-style-type: none"> A person they are in a family relationship with, and a caregiver to A person they are in an informal care relationship with If pregnant, the unborn child 	This Act was the result of a large number of recommendations from the Hear Her Voice Reports 1 and 2. Many of the provisions have not yet commenced.

		<p>Inserts s 16(2)(i) – the effect of the refusal of bail on</p> <ul style="list-style-type: none"> • A persons they are in a family relationship with, and primary caregiver • Informal care relationship • If pregnant, the unborn child <p>Bail Act insertions apply to the release of a person on bail on or after commencement, regardless of when the alleged offence occurred or when proceedings commenced</p> <p><u>Youth Justice Act amendments</u></p> <ul style="list-style-type: none"> • Includes additional matters to be considered in making decisions for bail (s 96) • Bail conditions must not unduly restrict a child's ability to carry out responsibilities where they are a primary caregiver in a family relationship, in an informal care relationship or pregnant (s 97) • Bail provisions apply to the release of a child on or after commencement (s98) • Creates additional sentencing considerations (s 100): <ul style="list-style-type: none"> ○ To consider the hardship any sentence imposed would have on the child having regard to their characteristics, including disability, gender, race; and ○ The probable effect a sentence would have on a person the child is in a family relationship with and a primary caregiver, in an informal care relationship, and if pregnant, the child of the pregnancy. 	
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		<ul style="list-style-type: none"> • Sentencing provisions apply to a child being sentenced after commencement, regardless of when the conviction happened (s 101) <p><u>Penalties and Sentences Act amendments</u></p> <ul style="list-style-type: none"> • Amends section 9 to include considerations of: <ul style="list-style-type: none"> ○ The effect of a sentence imposed on a person the offender is in a family relationship and primary caregiver, informal care relationship or pregnant ○ The offender's history of being abused or victimised ○ If Aboriginal or Torres Strait Islander, cultural considerations including the effect of systemic disadvantage and intergenerational trauma • Provisions apply to the sentencing of offenders after commencement regardless of when convicted. 	
	Commencement on a date to be fixed by proclamation	<p><u>Criminal Code amendments</u></p> <p><i>Division 3 - Consent & mistake of fact</i></p> <ul style="list-style-type: none"> • New definition of 'consent' and 'circumstances where there is no consent' <ul style="list-style-type: none"> ○ Changes to 'consent' <ul style="list-style-type: none"> ▪ Includes that a person may withdraw consent at any time ▪ Includes that a person does not consent just because they consented to a different act with the same person, the same act 	

		<p>with the same person at a different time or place, the same act with a different person, a different act with a different person</p> <ul style="list-style-type: none">○ Extensive but not exhaustive 'circumstances where there is no consent' includes where a person<ul style="list-style-type: none">▪ does not say anything to communicate consent▪ do not have the cognitive capacity to consent▪ are so affected by alcohol or another drug as to be incapable to consent or withdrawing consent▪ are unconscious or asleep▪ participates in the act because of force, a fear of force or harm, coercion, blackmail, intimidation▪ participates in the act because they are unlawfully detained, overborne by the abuse of a relationship of authority▪ participates because of a false representation about the nature and purpose of the act▪ participates because they are mistaken about identity▪ participates because of false representation about whether the other person has a serious disease.▪ Participates on the basis that a condom is used for the act and the other person does not use a condom, tampers with the condom, removes the condom, or	
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		<p>becomes aware that the condom is no longer effective but continues with the act</p> <ul style="list-style-type: none"> ▪ If a person suffers GBH <ul style="list-style-type: none"> • Replacement provisions for 'mistake of fact in relation to consent' at 348A <ul style="list-style-type: none"> ○ Regard may not be had to voluntary intoxication of the person ○ A belief is not reasonable if the person did not, <u>immediately before or at the time of the act</u>, say or do anything to ascertain whether the other person consented to the act. This provision does not apply if the defendant proves they had a cognitive or mental impairment. • creates s 348B 'cognitive impairment' and 348C 'Mental health impairment' for the purposes of 348A. • inserts s 590BA which provides that notice of intention to rely on expert evidence of cognitive impairment or mental health impairment as a defence to s 348A(3) must be given in writing to the ODPP within 14 days after committal <p><i>Division 4 - Jury directions – corroboration</i></p> <ul style="list-style-type: none"> • Amends s 632 to provide that a judge must not give certain directions about unreliable witnesses and uncorroborated evidence of a witness <p><i>Division 5 - Coercive control</i></p> <ul style="list-style-type: none"> • New 334C - Offence of coercive control 	
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		<ul style="list-style-type: none"> • Amends s 552A to allow the offence of coercive control to be heard summarily on prosecution election and a plea of guilty • 348C only applies to acts of domestic violence that were done after the commencement <p><i>Division 6 – New aggravating facts and domestic violence averments</i></p> <ul style="list-style-type: none"> • Amends s 564 & 572 relating to averments on indictment relating to children and domestic violence <p><u><i>Other DFVPA amendments</i></u></p> <ul style="list-style-type: none"> • New s 47B – if application for protection order to be adjourned, court must consider temporary protection order • New s 157D – media may apply for transcript of domestic and family violence proceedings <p><i>Division 5 – Court based perpetrator division</i></p> <ul style="list-style-type: none"> • New 135B creates scheme for making a diversion order for an adult appearing before a Magistrates Court charged with contravening a DVO or PPN • New s 135C – 135S outline process and requirements for diversion order • New s 186A provides that complainant must be informed by police about the making of a diversion order 	
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		<p><i>Division 6 – New criminal offence of engaging in domestic violence or associated domestic violence to aid respondent</i></p> <ul style="list-style-type: none"> • New s 179A creates offence <p>Amendments to s 56 to include additional standard condition for respondent not to organise, encourage, ask, tell, force or engage another person to commit domestic violence against the aggrieved</p> <p><u><i>Evidence Act amendments</i></u></p> <ul style="list-style-type: none"> • Replacement of s 21 – Improper questions. • New 103ZE – court must exclude public from the courtroom while the complainant in a sexual offence case gives evidence. Section 103ZE(5) provides mandatory jury directions about the exclusion of the public. • New s 103ZG – Prohibition on questions and evidence concerning sexual reputation of complainant • New s 103ZH – Restriction on questions and evidence concerning complainant’s sexual activities. This evidence can only be admitted with leave of the court. Leave must be sought within the timeframes at new s 103ZI <p><i>Division 3 – Jury directions for sexual offences</i></p> <ul style="list-style-type: none"> • New s 103ZO – provisions apply to jury or judge alone trials for sexual offences • New s 103ZP Requirement to give indication of evidence relating to subdivision 3 and 4 	
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		<ul style="list-style-type: none"> • New s 103ZQ when directions must be given – 1(a) if there is a good reason, or 1(b) if requested to give a direction by a party, unless there is a good reason not to give the direction • Subdivision 3 – consent and mistake of fact (may direct) – directions relating to circumstances (103ZS), responses (103ZT) to non-consensual activity, lack of physical injury violence or threats (103ZU), responses giving evidence (103ZV), behaviour and appearance of complainant (103ZW), mistake of fact in relation to consent (103ZX), • Subdivision 4 – other directions (must direct) – direction regarding differences on complainant's account (103ZY), direction on lack of complaint or delay in making a complaint (103ZZ), direction on post offence relationship (s103ZZA) • Subdivision 5 – prohibited directions – directions in relation to credibility of complainants (s 103ZZB) <p><i>Division 4 – Expert evidence in relation to sexual offences</i></p> <ul style="list-style-type: none"> • Relates to evidence of a defendant's cognitive impairment or mental health impairment in relation to s 348. • S 103ZZH establishes sexual offence expert evidence panel and following sections create rules for the panel • New s 94A – admissibility of preliminary complaint in sexual offences and domestic violence offences • S 103ZD – direction about lack of complaint or delay in making complaint – creates mandatory directions and prohibits directions about complainant's credibility 	
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<i>Victims Commissioner and Sexual Violence Review Board Act 2024</i>	<p>Assent 9 May 2024</p> <p>Commencement on date to be fixed by proclamation</p>	<ul style="list-style-type: none"> • Establishes Victims' Commissioner (Chapter 2) • Declares charter of victim rights (Chapter 3) • Establishes Sexual Violence Review Board (Chapter 4) 	<p>This Act was the result of recommendations from Hear Her Voice Report 2, specifically:</p> <ul style="list-style-type: none"> • Recommendation 18 (Victims' Commissioner) • Recommendation 19 (review of Charter of Victim Rights) • Recommendation 181 (functions of Victims Commissioner to gather

			<p>views and experiences of victim-survivors)</p> <ul style="list-style-type: none">• Recommendation 46 (Sexual Assault Case Review Board). <p>This legislation was also influenced by recommendations arising from the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence, and the Legal Affairs and Safety Committee Inquiry into support provided to victims of crime.</p>
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