



ATSILS
Aboriginal and
Torres Strait Islander
Legal Service (Qld) Ltd

Brisbane Office | ABN: 1111 6314 562

-  Level 5, 183 North Quay, Brisbane Qld 4000
-  PO Box 13035, George Street, Brisbane Qld 4003
-  07 3025 3888 | Freecall 24/7: 1800 012 255
-  07 3025 3800
-  info@atsils.org.au
-  www.atsils.org.au



13th April 2023

Ms Imelda Bradley
Director, Strategic Policy
Department of Justice and Attorney-General
GPO Box 149
Brisbane QLD 4001

By email: JusticeMISCBill2023@justice.qld.gov.au

Dear Ms Bradley,

Re: Consultation Drafts (2) - Justice and Other Legislation Amendment Bills 2023

Thank you for the opportunity to provide comments in relation to:

- (a) the Consultation Draft of the Justice and Other Legislation Amendment Bill 2023 which proposes to amend the Criminal Code (Qld) and the *Penalties and Sentences Act 1992* (Qld) (JOLA Bill 1); and
- (b) the Consultation Paper in relation to, and Consultation Draft of, the Justice and Other Legislation Amendment Bill 2023 which proposes to amend the *Oaths Act 1867* and *Oaths Regulation 2022* (JOLA Bill 2).

Whilst we have no concerns regarding JOLA Bill 2, we have identified some issues with the drafting of the proposed amendments in JOLA Bill 1 which we have sought to outline in this submission.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional

and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 24 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

JOLA Bill 1 – Better recognition of the deaths of unborn children as a result of criminal acts

Whilst we appreciate the policy considerations behind legislative amendments which create legal recognition for the deaths of unborn children as a result of criminal acts, we have some concerns regarding the drafting proposed in JOLA Bill 1.

Clause 4 - Scope of the phrase “resulted in destroying the life of the person’s unborn child”

It is unclear as to what “resulted in destroying the life of the person’s unborn child” means in proposed new section 9(9C) of the *Penalties and Sentences Act 1992*. There are no definitions of the key terms “resulted”, “destroying” or “destruction” or a “person’s unborn child” in the context of this phrase and there appears to be nothing in the proposed amendments or existing legislation which assists either. Relying upon the plain meaning of these key terms creates uncertainty in the breadth of the phrase’s

¹ We assume that the proposed removal of the word “fetus” was intentional, however there is no explanation for this in the factsheet or other materials provided. We compare this approach to New South Wales’ legislation which refers to a “foetus” which is described as: (a) of at least 20 weeks’ gestation, or (b) if it is not possible to reliably establish the period of gestation—that has a body mass of at least 400 grams, per section 54A of the *Crimes Act 1900 No 40* (NSW).

application, for example would it capture a situation where a foetus is significantly harmed and the mother decided to have an abortion? We are also unsure as to what the term “resulted” means, for example, if an individual’s criminal act is only one factor in the loss of a person’s unborn child, would that be captured? Additionally, we consider the use of the word “destroying” in this context to be problematic. It is not clear as to why the words “causing loss” of the person’s unborn child, as an example, were used similar to that which is contained in New South Wales’ standalone offence of causing loss of a foetus².

In our view, more careful consideration needs to be given to the drafting of this provision to ensure certainty in scope and application.

JOLA Bill 2

We support the proposed amendments to section 13E of the *Oaths Act 1867* which would do away with the mandatory requirement for Justices of the Peace and Commissioners for Declarations to include their place of employment when witnessing affidavits or statutory declarations and provide the following options for other witnesses to include information about their identity: the name of the witness’ place of employment or the witness’ employment address; the witness’ home address; witnesses’ telephone number; or the witness’ email address (leaving it to the witness to select the option which is least revealing). We share the concerns documented in the relevant Factsheet regarding the unnecessary exposure to risk that may be caused by requiring a witness to note their place of employment when witnessing relevant documents on the basis that such may cause inadvertent disclosure of the location of a domestic and family violence victim which could compromise the safety of the witness and/or any children of the witness, other affected people and employees at the witness’ place of employment. Accordingly, the proposed amendments to section 13E are welcomed.

We have no other comments or concerns regarding the proposed amendments contained in JOLA Bill 2 or the Consultation Paper in relation to JOLA Bill 2 more generally.

² See section 54A, *Crimes Act 1900 No 40*(NSW).

Conclusion

A review of the proposed amendments in JOLA Bill 1 which seek to give legal recognition for the deaths of unborn children as a result of criminal acts has revealed some concerns regarding certainty and precision in the drafting. In our view, the drafting needs to be clearer to avoid uncertainty in its application. We are supportive of the proposed amendments contained in JOLA Bill 2.

We thank you for the opportunity to provide feedback on these very important consultations.

Yours faithfully,

Shane Duffy
Chief Executive Officer