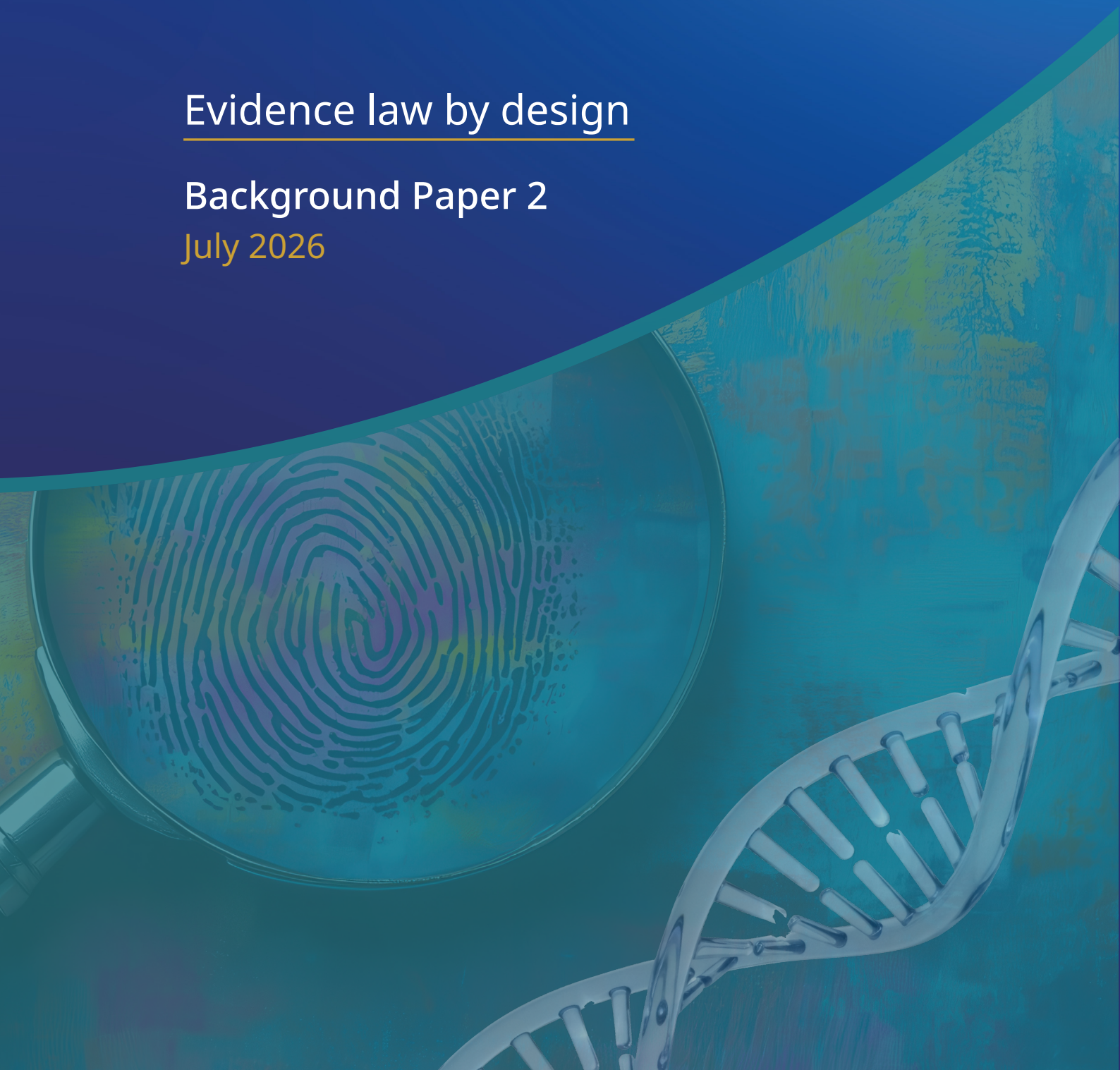


Evidence Law Review

Evidence law by design

Background Paper 2

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Collaborators:

We thank Nicholas Simoes da Silva for his significant contribution to this Background Paper. We particularly acknowledge his contribution to the conceptual framing of the paper and his computational analysis of the Evidence Act 1977 (Qld).

Acknowledgements:

We thank Justice Lincoln Crowley for his creative inspiration to depict the complexity of the Evidence Act 1977 as ‘alphabet soup’, which we reflect in a graphic in this Background Paper. Justice Crowley shared this analogy in his opening remarks as a panellist for the launch of the Evidence Law Review.

Reference to legislation:

All references to legislation are to Queensland legislation, unless otherwise stated.

This paper reflects the law and information available to us at 1 July 2026.

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Summary

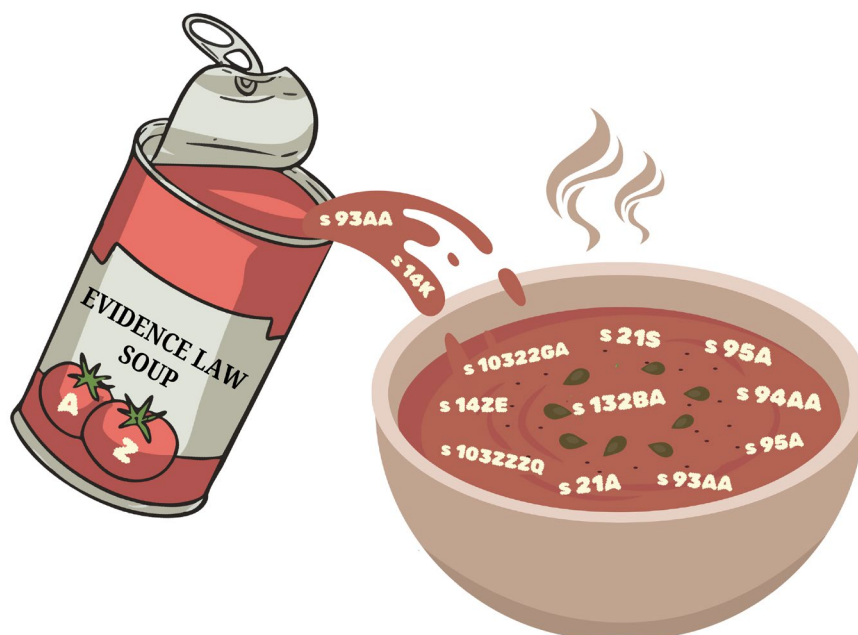
Complex legislation is incoherent, incomprehensible, and hard to navigate. The Evidence Act 1977 is unnecessarily complex. Parliament has made 910 distinct amendments to the Act to achieve specific policy goals. This piecemeal approach to reform has made the Act complex, and difficult to understand and use.

The complexity of the Act arises from its structure, length, language, and use of defined terms and alphanumeric provisions, making it akin to ‘alphabet soup’. Good legislative design can remedy this complexity. It makes the law easier to understand. This facilitates access to justice, and equality under the law. It also promotes consistent and efficient application of the law and ensures laws remain fit for the future.

The Attorney-General has asked us to review the Evidence Act 1977 and draft evidence legislation to modernise and simplify Queensland evidence law to ensure the effective administration of justice and the protection of victims, without reducing existing rights or safeguards.

This Background Paper explores our approach to preparing draft evidence legislation that reflects our guiding principles for reform: fair, clear, effective, and enduring. We explain the principles and models that underpin our approach to the proposed scope and structure of the draft legislation as well as providing a blueprint for future review and reform to the Act and other relevant laws.

We are committed to developing laws grounded in our guiding principles for reform that reflect substantive policy decisions, informed by our terms of reference. This includes addressing fragmentation, maintaining rights and safeguards, and fostering uniformity in the context of the development and progressive adoption of uniform evidence law (‘UEL’) in Australia. The architecture of our draft legislation will reflect principles of good legislative design. We will support this with guidance for maintaining its quality, consistency, and coherence in future reforms. We will draft legislation to be usable and navigable, with clear, succinct, principles-based provisions that balance flexibility with certainty to support necessary adaptation over time.



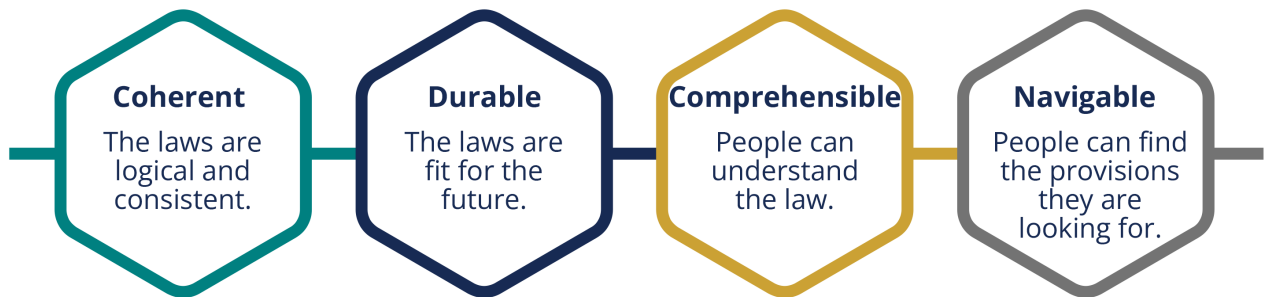
Introduction

1. This Background Paper explores our approach to preparing draft evidence legislation that is fair, clear, effective, and enduring. We explain the principles and models that underpin our approach and outline our draft legislation's proposed scope and structure.
2. The Attorney-General has asked us to review and make recommendations about reforming Queensland evidence law. Our terms of reference guide our review, and ask us to consider:
 - Whether the Act should cover all aspects of evidence law or whether some aspects should be separately legislated.¹
 - The extent to which common law rules of evidence continue to apply and whether the Act should codify them.²
 - Whether adopting further, or all, UEL provisions is appropriate and desirable.³
 - Recent legislative and common law developments, including Parts 6A, 6B 6C and 7A of the Act.⁴
3. As we discuss in [Background Paper 1](#), Queensland has not adopted UEL, though we have adopted some UEL provisions and terminology. All other Australian jurisdictions, except South Australia, have now adopted UEL as the basis of their evidence law.⁵ This is relevant context for our review. We are carefully evaluating factors that support national uniform legislation, including consistency, efficiency, and equality, counterbalanced against those that support divergent approaches in different contexts.
4. As one of the outcomes of this review, we will provide the Attorney-General with draft evidence legislation. We will develop and consult on a Draft Exposure Bill. We will consider consultation feedback, and undertake further research and analysis, in developing draft evidence legislation that reflects our recommendations. The broader Queensland legislative context and Government policy commitments also directly inform our consideration of the appropriate scope and content of draft evidence legislation.
5. Our draft legislation must cover the broad range of contexts where evidence law applies, including criminal and civil proceedings and pre-trial procedures. It must accommodate the needs of a diverse range of users of the law, including people who require special protections due to their experience of child sexual abuse or domestic and family violence matters. It must reflect recent and anticipated developments, including in the form, collection and use of information facilitated by technological advancements.
6. Our draft legislation must distil and reconcile various sources of evidence law. This includes the laws in the Evidence Act 1977. While our focus is that Act, we must also consider how our draft legislation would interact with evidence laws in other legislation, rules, practice directions and at common law.
7. Our legal system is maturing, and the interaction between common law and statute is continuing to evolve. Legislation is increasingly the dominant mechanism for making law, though common law remains relevant. When the Commission drafted the Bill that became the Evidence Act 1977, it did not purport to override or replace the common law.⁶ It did seek to reconcile, align, and modernise laws of evidence dispersed across different statutes. We are building on our approach to drafting that Act, in several ways.
8. First, we will clearly state the primary rules and principles of evidence law, including rules

recognised at common law.

9. Second, we will streamline and build on the framework of UEL,⁷ to glean the benefits of consistency and harmony uniformity can offer. We will temper this with our commitment to retaining laws that offer additional rights or safeguards, and by tailoring laws for the Queensland context where that is appropriate. In doing so, we balance the merits of uniformity with localisation to ensure our draft evidence legislation is adapted to the Queensland context.
10. Third, where the draft evidence legislation does not repeal and replace laws in other Acts, it will work clearly and compatibly alongside them.
11. Our proposed legislative blueprint will shape our draft legislation. It will also provide a foundation for recommendations about future review and reform of evidence and other relevant laws. Our blueprint reflects our four guiding principles:
 - **Fair** — Supporting access to justice and equality before the law.
 - **Clear** — Being easy to understand and apply.
 - **Effective** — Supporting the efficient and effective administration of justice.
 - **Enduring** — Reflecting contemporary approaches to law and technology and capable of accommodating future developments.
12. We will draft legislation that gives effect to our guiding principles by applying principles of good legislative design, including working principles identified by the Australian Law Reform Commission ('ALRC').⁸ Implementation of these principles will promote clear and comprehensive laws, which will support an efficient and effective justice system.

Figure 1: Working principles



13. This Background Paper discusses our application of these principles in relation to:
 - **Substantive policy** — Choices about the content of our draft legislation.
 - **Legislative architecture** — Choices about the overall structure of our draft legislation and the wider legislative hierarchy.
 - **Drafting and usability** — Choices about how we express and present our draft legislation.
14. We begin with a brief discussion about legal complexity.

The problem with legal complexity

15. The Evidence Act 1977 is unnecessarily complex. This results in incoherence and incomprehensibility and affects a person's ability to navigate and apply the law.⁹

Figure 2: Snapshot of the complexity of the Evidence Act 1977



16. We have analysed the complexity of the Evidence Act 1977 using a ‘law as data’ approach, a mixed methods approach which includes socio-legal research and computational legal analysis. **Appendix A** sets out our research method.
17. Insights from our analysis show that, since its enactment, Parliament has significantly expanded the Act, widening its regulatory scope, increasing reliance on explicit statutory definitions, and increasing entanglement of internal provisions and external legislation through prolific cross-referencing. The data points to an escalating cognitive load for users of the Act.

How complexity emerges in legal frameworks

18. Legal frameworks are structures comprised of legal principles, precedent, laws in statute, rules, regulations, guidance, and policy. They govern society, guide legal processes, and protect or enforce rights. They are also systems with interconnected, organised elements that produce discernible effects.¹⁰
19. Parliament, the judiciary, and the executive collectively create, develop and sustain legal frameworks. The separation of powers doctrine assigns each a constitutional role. Parliament holds power to make laws, the executive holds power to enforce laws, and the judiciary holds power to interpret and apply laws to individual cases.¹¹ However, Parliament can delegate law-making powers to Ministers and independent agencies, and hold Ministers accountable through the principles of responsible government.
20. Legislative features that can make a statute more complex include language, defined terms, exemptions, and its length. The ALRC noted:

All legislative features have some potential benefit, and the question is whether the benefit outweighs the disadvantage caused by the complexity of the feature, or whether there is another feature that can achieve the same benefit with less complexity.¹²

21. Sometimes unavoidable factors drive complexity, such as social, political and economic trends. Avoidable drivers can include limited time and resources for legislative development.¹³ Complexity can also stem from high-level decisions made during the legislative design and development process, some of which may be avoided with a strong legislative blueprint.¹⁴
22. We examine these and other drivers in our discussion below.

Indicators and effects of complexity

23. Legislative complexity can reduce a user's ability to navigate, understand, and apply the law.¹⁵ This affects access to justice and equality under the law. Former Chief Justice Robert French AC identified broader issues raised by complexity in statute, including the democratic legitimacy of law, public confidence in the law, the certainty of law, transactional costs, and the growth of less visible soft law.¹⁶
24. We can observe complexity in evidence law through indicators including:
 - Incoherence in the logic and structure of legislation.
 - The statement of highly particularised rules-based provisions, rather than principles-based provisions.
 - The proliferation of provisions which make the law difficult to navigate.
 - Obsolete provisions.
 - Complex language which makes the law difficult to comprehend.¹⁷
 - The inclusion of complex procedures.¹⁸
 - Different rules of evidence for distinct stages of legal proceedings.¹⁹
25. We can map these indicators of complexity to legislative features and measure them using particular metrics. We used many of these metrics to measure and analyse the complexity of the Evidence Act 1977, and to inform our approach to drafting evidence legislation that avoids unnecessary complexity. **Table 1** in **Appendix A** identifies various legislative features and potential metrics for measuring legislative complexity.

Substantive policy decisions

26. Considerations of good legislative design extend beyond legislative architecture and drafting. Well drafted legislation must accurately reflect, and support fulfillment of, the substantive policy intent underpinning the law. In this way, laws can properly achieve their purpose. Our terms of reference guide our approach to designing and drafting evidence legislation for Queensland. We aim to translate the policy intent we can distil from our terms of reference into laws that are structured, fit for purpose, effective, coherent, and navigable for all users of the law. This includes addressing fragmentation, maintaining rights and safeguards, and fostering uniformity.

Addressing fragmentation

27. Queensland evidence law is fragmented across statute and common law.
28. Common law, also known as judge-made law, has always been the main source of evidence law in Queensland. The common law coexists with relevant legislation.
29. The Evidence Act 1977 is the primary piece of legislation setting out Queensland evidence law.

It is not exhaustive and does not state all rules of evidence that apply in Queensland. The Act does not codify or replace the common law of evidence and relies on it to supplement gaps. Other legislation, rules, and practice directions also articulate rules of evidence.

30. Our legislative blueprint seeks to comprehensively address this fragmentation.

Retaining existing rights and safeguards

31. Our draft evidence legislation will include select provisions that are not in UEL but are in the Evidence Act 1977. We are also exploring whether we should express common law concepts in legislation. Consistent with our terms of reference, our draft legislation will maintain rights and retain safeguards for people the law recognises as potentially facing additional, or distinct, barriers to accessing justice.²⁰
32. This will preserve aspects of Queensland evidence laws that have surpassed UEL, in a way that is consistent with UEL, enduring, fit for purpose, and respects the Queensland context and drafting conventions.
33. Our terms of reference also require us to have regard to Government policies in undertaking our review.²¹ This includes the Legislative Standards Act 1992, which legislates fundamental legislative principles.²²
34. The Legislative Standards Act 1992 seeks to ensure that 'Queensland legislation is of the highest standard'.²³ It defines 'fundamental legislative principles' as the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.²⁴
35. The fundamental legislative principles require legislation to have sufficient regard to the institution of Parliament, as well as to the rights and liberties of individuals, having regard to several factors.²⁵ Relevantly, they include that the legislation:
- Is consistent with principles of natural justice.²⁶
 - Provides appropriate protection against self-incrimination.²⁷
 - Does not adversely affect rights and liberties, or impose obligations, retrospectively.²⁸
 - Does not confer immunity from proceeding or prosecution without adequate justification.²⁹
 - Has sufficient regard to Aboriginal tradition and Island custom.³⁰
 - Is unambiguous and drafted in a sufficiently clear and precise way.³¹
36. The Office of the Queensland Parliamentary Counsel ('OQPC') Notebook elaborates the fundamental legislative principles and addresses issues not raised in the Legislative Standards Act 1992, including:
- Abrogation of common law rights must be justified.³²
 - Abrogation of established statute law rights and liberties must be justified.³³
 - Abrogation of rights and liberties from any source must be justified.³⁴
 - Consequences imposed by legislation should be proportionate and relevant to the actions giving rise to the consequences.³⁵
 - Legislation should provide for an appropriate standard of proof for relevant matters, with any changes to the common law standard of proof justified.³⁶
 - All persons should be afforded equality under the law, which is a basic requirement under the rule of law in a democratic society.³⁷

- Legislation should not be discriminatory. It should always be reasonable and fair, even where it does not specifically encroach on individual rights and liberties.³⁸
- Consideration of the effect of legislation on the rights and liberties of individuals often involves examining the balance between the rights of individuals and the rights of the community or more general rights.³⁹

37. Many of these principles align with our obligations under the Human Rights Act 2019.

Fostering uniformity

38. Our terms of reference ask us to consider whether adopting further, or all, UEL provisions while retaining the benefit of recent Queensland reforms is appropriate and desirable.⁴⁰ Our terms of reference also state that the modernisation and simplification of Queensland evidence law should ensure the effective administration of justice and protection of victims without reducing existing rights or safeguards.⁴¹
39. We are therefore approaching the task of drafting evidence legislation with the aim of adapting UEL for the Queensland context. Our Draft Exposure Bill and Consultation Paper will test the extent to which it is appropriate and desirable for Queensland to adopt, and adapt, further UEL provisions.
40. Uniform legislation aims to promote 'national coherence in areas where the Australian Government has limited or no powers to legislate under the Constitution'⁴² and harmonisation, narrowing 'the potential for different outcomes between similar cases in different jurisdictions'.⁴³
41. In adopting a more uniform approach to evidence law, our draft evidence legislation will promote consistency, efficiency, and equality under the law.⁴⁴
42. In the context of national uniform legislation, uniformity refers to the degrees of similarity between laws,⁴⁵ either as text or applied law.⁴⁶ There are different structures or mechanisms for introducing uniform laws.⁴⁷ This includes model, or 'mirror', legislation such as UEL.
43. The desirability of uniformity depends on practical and pragmatic considerations, as Goldring stated 'uniformity for its own sake is not desirable'.⁴⁸ Mirror legislation supports uniformity with versatility that allows jurisdictions to apply uniformity in a way that responds to local needs and contextual factors.⁴⁹ The ALRC has recognised, in various reviews related to the harmonisation of laws across jurisdictions, the value of local variation.⁵⁰ It acknowledged that 'the degree of harmonisation should be balanced against the need to account for local circumstance'.⁵¹
44. Critically, a chief purpose of the ALRC's initial review of evidence law was to 'develop a principled approach to evidence law'.⁵² This has translated into UEL which is more principled than rules-based in its framing and statement of the law.
45. Our draft evidence legislation will reflect this principled approach. It will include all UEL provisions we identify as relevant and appropriate for Queensland, adapted to the Queensland context. This will harmonise Queensland laws with UEL jurisdictions. It will offer Queensland the benefits of adopting model laws that the ALRC developed following its comprehensive review of evidence law, supplemented by more recent amendments, and informed by the experience and learnings of other jurisdictions, as well as Queensland.
46. We are balancing harmonisation with nuance that appropriately reflects the Queensland context, and the policy basis to modernise evidence law and to retain existing rights and

safeguards. This includes where Queensland laws surpass UEL in their innovation and currency.

Legislative architecture

47. Legislation is generally an expression of policy intent.⁵³ Its operation may become the catalyst for further policy decisions, reflected in amendments to the legislation.⁵⁴ Policy positions also shift and evolve over time. Legislative complexity can develop through a 'tendency to respond to policy issues with legislative changes even when legislation is not necessary to address them',⁵⁵ or through an 'aversion to principles-based legislation'.⁵⁶ Both its initial design and iterative development can make legislation complex and impact its comprehensibility and navigability.
48. In designing draft evidence legislation, we are applying working principles to give effect to our guiding principles for the review. These are:
 - Coherence
 - Durability
 - Comprehensibility
 - Navigability.
49. In doing so, we will help users to develop 'mental models' of this law.

Architecture of the Evidence Act 1977

50. The Evidence Act 1977's initial design and Parliament's approach to amending it are separate sources of complexity that both affect the Act's coherence, comprehensibility, and navigability.
51. As discussed, the Act reflects this complexity in the nature and number of amendments and the form of these amendments.
52. Evidence law operates alongside and in conjunction with civil and criminal procedure rules. Unlike some Australian jurisdictions, Queensland lacks legislation prescribing criminal procedures for the Supreme and District Courts.⁵⁷ Consequently, Parliament has inserted numerous criminal procedure provisions applicable to all Queensland courts into the Evidence Act 1977, as well as the Criminal Code.⁵⁸ While the Government is currently drafting the Criminal Procedure (Magistrates Court) Bill, to replace the Justices Act 1886, it will only apply to Queensland Magistrates Courts and will not prescribe procedures for the Supreme and District Courts. We discuss this trend and its implications below.

Design of the Act

53. The Evidence Act 1977 applies a hybrid approach, legislating parts of the law of evidence while leaving parts to the common law. The Commission's review of Queensland evidence law and drafting of the Bill that became the Evidence Act 1977 preceded the ALRC's review of evidence law and recommendation for UEL.
54. The philosophy underpinning the Commission's drafting approach was to 'state in modern form so much of the law of evidence as may be conveniently set out in such an instrument'.⁵⁹ The Commission's undertaking was not comprehensive, as demonstrated by the avoidance of 'highly controversial alterations ... for fear that they might unduly delay the adoption of modern evidence legislation in Queensland'.⁶⁰ The Commission did not attempt to incorporate

all statutory rules of evidence in its Draft Evidence Bill, considering them better placed in the Act to which they related.⁶¹

55. The Commission did not seek to abolish the common law related to evidence, noting that this approach was consistent with the Australian common law tradition, as well as other common law countries.⁶²
56. Maintaining Queensland evidence law in both common law and statute has produced unnecessary complexity. For instance, the common law states the rule against hearsay and the opinion rule, while the Act states some of their exceptions without stating the rules. This fractured approach makes it difficult to navigate the law.

Amendment of the Act

57. At enactment, the Evidence Act 1977 did not include a purpose or objects clause. The long title simply stated that it was an Act 'to consolidate, amend and reform the law of evidence'. Parliament amended the long title in 2024, identifying additional objectives: 'to protect persons concerned in the commission of sexual offences from identification and for related purposes'.⁶³ Many of the reforms to the Act reflect this latter purpose.
58. Since 1989, Parliament has made 910 individual amendments to the Act⁶⁴ in response to reviews, inquiries, and discrete issues.⁶⁵ Part 2, which addresses witnesses, contains many of these amendments.
59. Amendments to the Act have responded to critical issues such as:
 - Measures to assist special witnesses.⁶⁶
 - The impact of the Criminal Code on women.⁶⁷
 - Experiences of child witnesses.⁶⁸
 - Sexual assault counselling privilege.⁶⁹
 - Assistance of witnesses (Intermediary Scheme).⁷⁰
 - Jury directions regarding delays in sexual assault complaints.⁷¹
 - Admissibility of recorded statements of evidence of domestic and family violence.⁷²
 - Provision of video-recorded evidence-in-chief in domestic and family violence cases.⁷³
 - Jury directions regarding domestic and family violence cases.⁷⁴
 - Tendency and coincidence evidence.⁷⁵
 - Evidence related to sexual offences.⁷⁶
60. Parliament has amended the Act in preference to separately legislating to implement these reforms. For instance, in response to the Women's Safety and Justice Taskforce recommendations addressing the Criminal Law (Sexual Offences) Act 1978,⁷⁷ the Government introduced a Bill to repeal the statute and transpose, in modernised form, its provisions into the Evidence Act 1977.⁷⁸
61. We can infer from our analysis that the Evidence Act 1977 has become the default choice:
 - To ensure application of provisions across civil and criminal jurisdictions and in relation to proceedings under the Youth Justice Act 1992.

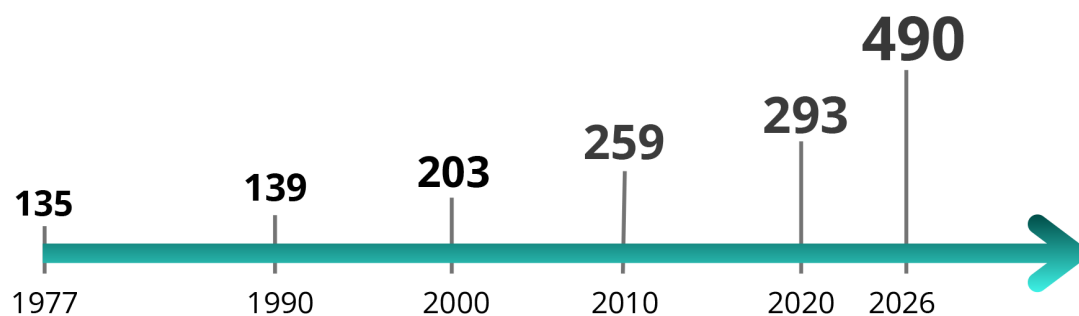
- Due to the limited jurisdiction of the Justices Act 1886, which applies only to the Magistrates Courts, and the lack of an equivalent criminal procedure Act applicable to Supreme and District Courts.

62. Patchwork amendments are an inherent risk to coherence.⁷⁹ While reforms to the Evidence Act 1977 have been important in supporting the effective administration of justice, protection of victims, right to a fair trial, and other safeguards, the piecemeal approach to reform has resulted in incoherence and unnecessary complexity. The ALRC identifies widespread use of alphanumeric provisions, such as section 12BAA, as an indicator of incoherence or patchwork legislative change.⁸⁰ This is apparent in the Act's extensive alphanumeric numbering system.
63. In total, there are 311 alphanumeric sections in the Act. Part 2 alone incorporates eight alphanumeric divisions⁸¹ and 128 alphanumeric sections. This constitutes over 40% of alphanumeric sections in the Act. Several sections with alphanumeric numbering use up to four letters, for example, section 103ZZGA,⁸² impacting the Act's navigability.
64. Prolific use of alphanumeric divisions and sections indicates heavy post-enactment insertion of new laws into existing sequences and reflects the Act's structural aging. Part 2 divisions related to competency of witnesses and capacity to be sworn, special provisions for child witnesses, sexual assault counselling privilege, journalist privilege, evidence of affected children, use of soundtracks from particular video recordings, dealings with and destruction of recordings, and intermediaries exemplify this.⁸³
65. The insertion of alphanumeric provisions correlates directly to the high volume of amendments to Part 2. Since 1986, Parliament has passed 43 Acts amending Part 2 to reflect changing policy and society's developing understanding of issues related, for example, to domestic and family violence, sexual violence and the impact of the Criminal Code on women.⁸⁴ As the explanatory notes to these amending Acts state, policy reasons include the risk that 'perpetrators will not be brought to justice',⁸⁵ and to increase both the 'accountability of perpetrators' and 'protection for victims'.⁸⁶

Widening of the Act's scope and length

66. The structure of the Evidence Act 1977 has substantially widened over time. Insertion of new divisions, subdivisions, and sections into the Act has widened the Act's scope. Over the past decade, amending Acts have bolted new divisions within existing parts and new parts onto the Act's framework, increasing its length and complexity.
67. The physical length of the Act is now seven times longer than at enactment.⁸⁷ This increase reflects the flurry of reforms since 2020.⁸⁸ Part 2 now constitutes almost one third of the Act.

Figure 3: Increase in the number of sections in the Evidence Act 1977 since enactment



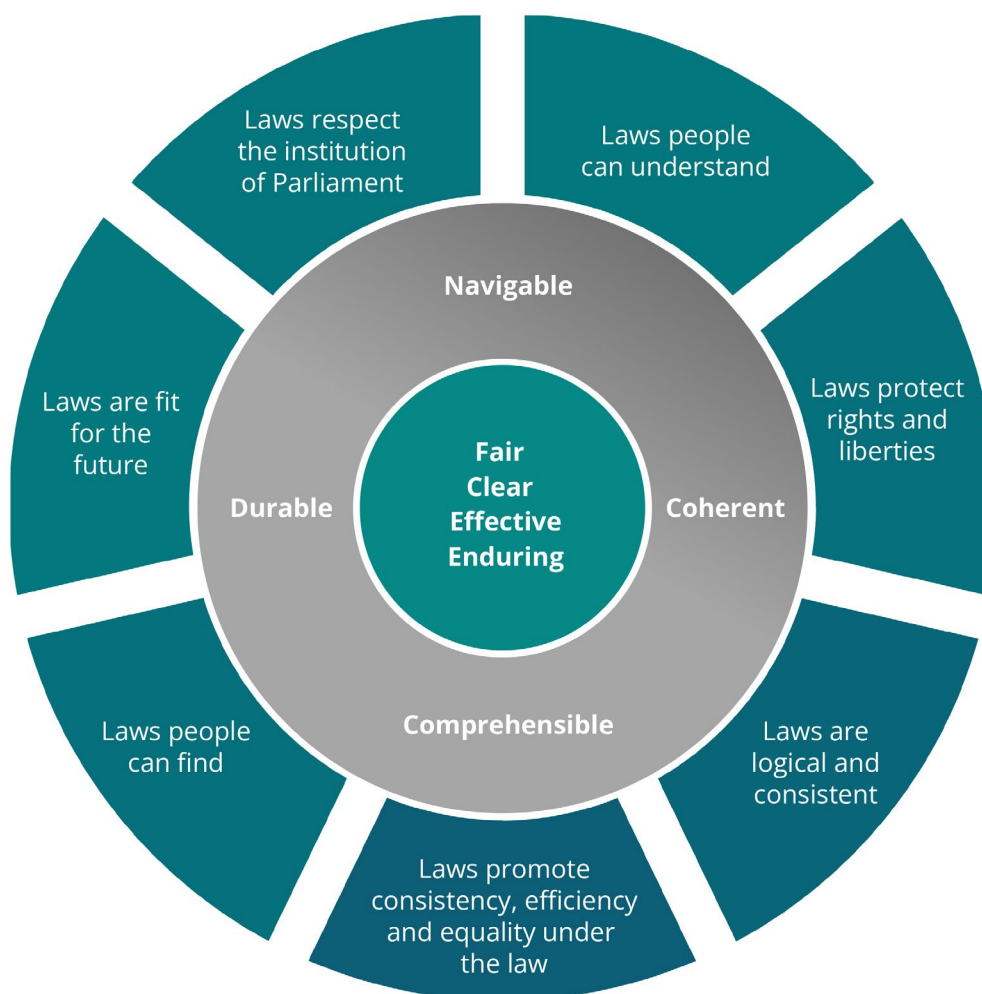
68. The Act reflects a thematic or scheme-based approach to drafting, grouping related evidentiary and procedural provisions. The Act will often state an evidentiary provision, followed by multiple procedural provisions that give effect to that evidentiary provision. For example, five provisions follow section 103ZH (Restriction on questions and evidence concerning complainant's sexual activities), addressing applications for leave to ask such questions or admit such evidence. While this grouping of provisions may provide clarity about which provisions belong together under a scheme, it detracts from the Act's overall coherence.
69. The inclusion of many procedural provisions in the Act, particularly in Part 2, has also made the Act longer, more complex, and less navigable. Other jurisdictions use criminal procedure Acts to house such provisions, such as the giving of evidence by domestic violence complainants, the use of witness intermediaries, and the admissibility of out-of-court representations.⁸⁹
70. The Act also contains provisions that are substantive in nature. These are summary offence provisions which are generally concerned with unauthorised dealing with or disclosure of sensitive information.⁹⁰
71. The Act lacks a coherent logic and structure. While it loosely follows the course of a trial – witnesses, means of obtaining evidence, proof of documents and other matters, admissibility of statements, and representations – it is incomplete. As noted above, it omits key rules of evidence recognised at common law.
72. Parliament's rationale for inserting substantive and procedural provisions into the Act is unclear. In addition to the possible reasons identified above, we can infer that this approach has become a default position to reflect the high policy nature of reforms. Miscategorisation of procedural provisions as 'evidentiary rules' may have prevented them from being located elsewhere, included in subordinate legislation.

Good legislative design

73. Legislative design is an intentional practice that aims to develop laws and legal frameworks that are fit for purpose, structured, effective, coherent, and navigable.⁹¹ Like human-centred design, legislative design focuses on the experience of users of the law.⁹²
74. We distinguish good legislative design from good legislative drafting, which Rose stated:

... boils down to the need to inform those affected by the legislation, and those who are to administer or enforce it, as far as possible exactly what they must do or not do in general or in given circumstances, or how far their power or discretion to do or not to do things in given circumstances extends.⁹³
75. Good legislative design is broader. Our guiding principles, discussed above, help distil its benefits, which include making the law fair, clear, effective, and enduring.
76. Good legislative design can remedy unnecessary complexity and incomprehensibility in the law.⁹⁴
77. Over the past 40 years, the ALRC has articulated working principles for good legislative design. In addition to their reports on evidence law and development of UEL, the ALRC used legislative design principles to create a blueprint to address complexity in financial services legislation.⁹⁵ This work informs our approach and is consistent with our guiding principles and Queensland's fundamental legislative principles ('FLPs').⁹⁶

Figure 4: Mapping our guiding principles and working principles to good legislative outcomes



Designing coherent evidence law

... what is coherent is intelligible and forms a rational, understandable unity rather than a patchwork quilt.⁹⁷

Effective use of legislative hierarchy

78. Coherent legislation is logical in structure and content, consistent, free from internal contradictions, and contains elements that work harmoniously.⁹⁸ Coherence enhances the law's usability and accessibility by helping a user to mentally map legislation.⁹⁹ A coherently structured and organised Act equips a user to 'see at a glance the general thrust of the Act and see, again at a glance, which provisions are relevant to them'.¹⁰⁰ As courts interpret provisions in the context of the statute as a whole,¹⁰¹ legislative coherence can support coherent and consistent interpretation by courts.¹⁰²

79. Coherent legislation reflects a legislative hierarchy that is clear and respects the institution of Parliament. To achieve this:
- Primary legislation should contain fundamental principles, significant policy, provisions that create offences or impose significant penalties, and matters impacting an individual's rights.¹⁰³
 - Subordinate legislation, such as regulations and rules, should not contain matters appropriate to primary legislation but should house prescription and procedures prone to becoming outdated because of social, economic, and technological change.¹⁰⁴
 - Non-legislative procedural guidelines, such as practice directions issued by judges, should supplement legislation, regulations, and rules, providing rules and instructions to facilitate the management of court proceedings.¹⁰⁵
80. Inappropriate use of the legislative hierarchy can diminish coherence and pose a risk to the role and powers of Parliament.
81. Queensland's fundamental legislative principles also require legislation to have sufficient regard to the institution of Parliament.¹⁰⁶
82. Whether legislation has sufficient regard to the institution of Parliament depends on, for example, whether it:
- Allows the delegation of legislative power only in appropriate cases and to appropriate persons.¹⁰⁷
 - Sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.¹⁰⁸
 - Authorises the amendment of an Act only by another Act.¹⁰⁹
83. We will make effective use of the legislative hierarchy and apply the fundamental legislative principles in our design of draft evidence legislation. This includes in our assessment of which provisions from the Evidence Act 1977, UEL and common law belong in the body of draft evidence legislation, and which are best located in subordinate legislation or procedural guidance.

Using UEL as an organising framework

84. Our draft evidence legislation will reflect the logic, structure, and organisation of UEL, with appropriate additions and modifications. Its framework will be based on UEL, drawing on the Model Uniform Evidence Bill and the uniform evidence Acts.¹¹⁰
85. The logic, structure, and organisation of UEL reflects the trial process, which is intuitive and supports a user to develop and maintain a mental map of the legislation.¹¹¹ This enhances the navigability of UEL.¹¹² It makes it easier for a user to locate and remember where to find the provisions they need. Navigability is important for all users of the law.
86. The policy underpinning the logic, structure, and organisation of UEL and working principles of good legislative design will inform our assessment of how we can best reflect Queensland evidence law, including provisions from the Evidence Act 1977 and common law, in the body of draft evidence legislation which reflects UEL's structure. Precedents set by other jurisdictions localising UEL will also inform the design of our draft evidence legislation.
87. We will use approaches including:

- Adopting an existing UEL provision where the provision is substantively the same as Queensland evidence law or where we prefer the provision.
 - Modifying an existing UEL provision where we prefer the provision and identify scope to modernise the law.
 - Expanding an existing UEL provision by inserting additional sub-sections, paragraphs and sub-paragraphs to incorporate an existing Queensland or new provision.
 - Inserting an existing Queensland or new provision under a new division or into a schedule, including the dictionary.
 - Inserting a new provision into an existing UEL division using an alphanumeric provision to incorporate an existing Queensland or new provision.
88. It is important to properly scope the content of the law so that it is coherent. In its reviews of evidence law both prior to and following the enactment of UEL, the ALRC discerned and classified laws of evidence to determine what UEL should, and should not, include.
89. In 1985, the ALRC published an Interim Report as part of its comprehensive review of the law of evidence.¹¹³ This report provides critical insights into how the ALRC settled on rules of evidence for UEL.
90. The ALRC found that, while there is no conclusive definition of a 'rule of evidence', rules of evidence are adjectival law.¹¹⁴ The ALRC, quoting Walker, described adjectival law as:
- ... the body of principles and rules which deal with the means by which 'people's rights and duties may be declared, vindicated or enforced, or remedies for their infraction secured'.¹¹⁵
91. The ALRC distinguished adjectival and substantive law, and noted that, although there are adjectival rules which are 'clearly procedural in nature and rules that are clearly evidentiary', there are also rules that fall into a 'grey area'.¹¹⁶ The ALRC advocated that in such instances, evidence law should exclude rules that are 'not clearly part of evidence law or which should be considered in a wider context'.¹¹⁷
92. The function of a provision can make principles and rules of evidence 'more' adjectival (and therefore 'less' substantive). The ALRC described the functions of evidence law broadly, in terms of rules that are concerned with the process of fact finding and which 'control':
- What evidence may be received (admitted).¹¹⁸
 - Who may give evidence.¹¹⁹
 - The course of the trial.¹²⁰
93. The ALRC drew further distinctions to distil the 'rules of evidence'. It differentiated rules of evidence from 'rules of procedure', despite both developing from the same 'general power and duty to control the proceedings' and the lack of a clear distinction.¹²¹ The ALRC's rationale for deciding what was a 'law of evidence', as compared to procedure, included that the classification was 'sensible and rational', and 'internally consistent'.¹²² The ALRC also considered whether an evidence code would be 'incomplete' if a rule was excluded.¹²³ It classified some principles as 'principles of ordinary reasoning', therefore excluding them as 'rules of evidence'.¹²⁴ It also highlighted the importance of categorising laws appropriately.¹²⁵
94. Categorising types of rules as more 'evidentiary' and less 'procedural' or 'substantive' through the processes of inclusion and exclusion, the ALRC defined the 'law of evidence' as comprised of three main areas:

Witnesses — Competence and compellability, sworn and unsworn evidence, manner of questioning witnesses.

Rules of admissibility and exclusion — Relevance, secondary evidence of documents, hearsay, opinion, admissions and confessions, convictions as evidence of the facts on which they are based, identification, character, prior conduct, privileges, exclusion of evidence in the public interest, exclusionary discretions.

Aspects of proof — Judicial notice, authentication, standard of proof, and corroboration.¹²⁶

95. The ALRC's list of excluded topics is equally instructive:

Those topics which should be classified as part of the substantive law or which are so linked to the substantive law that they can only properly be considered in that context. These include legal and evidential burden of proof, parole evidence rule, *res judicata*, issue estoppel, presumptions.

Those topics of adjectival law which should be classified as procedural rather than evidentiary. The result of this distinction is the exclusion of rules such as those relating to the gathering of evidence (including evidence on commission) the perpetuation of testimony, who begins, notice of alibi evidence, no-case submissions and the standard of proof applicable.

Topics such as ordering witnesses out-of-court, bans on the publication of evidence, duties of the prosecution in calling evidence, the powers of judges and parties to call witnesses and the suggestion that there should be changes in the organisation and operation of forensic scientific services.¹²⁷

96. In addition to this approach to classifying laws, clear policy intent informs UEL's initial design and reform.
97. The ALRC intended that UEL absorb and modify existing common law rules of evidence, to 'remove unnecessary restrictions on evidence being placed before courts and to reform the law to meet the demands of contemporary society'.¹²⁸ While UEL does not purport to codify the law, and coexists with other laws that contain evidentiary provisions, it provides a comprehensive statement of core rules and principles of evidence law and codifies the laws relating to admissibility of evidence.¹²⁹
98. In their 2005 joint report, the ALRC, NSW Law Reform Commission and Victorian Law Reform Commission ('Law Reform Commissions') maintained recognition of the benefits of uniformity. They recommended that governments pursue uniformity in evidence laws unless there is good reason to the contrary and that the uniform Evidence Acts should be a comprehensive statement of the laws of evidence and apply generally to all criminal and civil proceedings.¹³⁰
99. Their findings balance the merits of uniformity with other criteria. For example, in concluding that provisions for child witnesses were better located in procedural and proceeding-specific legislation, they focussed on the nature of the provisions and their tailored operation.¹³¹ In recommending that UEL should be amended to include warnings about a child's evidence, they noted the nature of the provisions, their broad application to proceedings with a jury, their link to an existing UEL provision, and that, given existing precedent to include these provisions, their inclusion would increase uniformity.¹³²
100. The Law Reform Commissions' distinctions and reasoning provide criteria for determining the inclusion of evidentiary provisions in UEL. For instance, the provision may be one or more of the following:
- Not procedural in nature.

- Applicable to all types of proceedings in which there is a jury.
 - Qualifying the operation of a provision already located in UEL.
 - Reinforcing the policy underpinning a provision already located in UEL.
 - Already located in UEL and therefore its adoption would promote uniformity.¹³³
101. These criteria, and the ALRC's earlier guidance, will support our decision-making about whether a provision from the Evidence Act 1977 belongs in the body of our draft evidence legislation or elsewhere.

Using schedules

102. We will use schedules to make the law coherent and navigable. Schedules are an effective legislative design tool for promoting accessibility, clarity, and consistency. Using schedules will enable us to reconcile and obtain the benefits of both uniformity with model national legislation and bespoke, context-specific legislation.
103. The use of schedules will support us to design a clear legislative blueprint for Queensland evidence law. We will use schedules to:
- Maintain the structure and numbering of UEL.
 - Distinguish principles of evidence law and procedural provisions.
 - Identify provisions for which we recommend further review and reform and providing a discrete and effective pathway for this.
104. Schedules will:
- Contain key definitions, to maintain consistency with Queensland drafting conventions.
 - Relocate and organise procedural provisions from the Evidence Act 1977 which support evidentiary provisions in the body of the legislation. Including relevant procedural provisions in a schedule will allow us to retain recent reforms while improving the navigability of the Act.
 - Accommodate divisions of the Evidence Act 1977 that implement national schemes. This includes, for example, the national witness identity protection scheme, the scheme for taking evidence and receiving submissions by audio visual link and audio link, and the summary procedure to obtain evidence for Queensland or other jurisdictions.¹³⁴
 - Consolidate legislative jury directions from UEL and the Evidence Act 1977.

Recommendations for related reform

105. In addition to drafting evidence legislation, we may make recommendations in our final report about related legislative reforms, where we consider this appropriate and justified. This may include:
- The relocation of remaining provisions in the Evidence Act 1977 to other legislation.
 - The development of subordinate legislation and procedural guidelines.
 - Review of specific UEL provisions.
106. We may also identify issues relevant to future reviews and reforms. For example, we may identify issues to inform the statutory review of the recently legislated tendency and coincidence evidence provisions.¹³⁵

Proposing a legislative blueprint

107. Legislative blueprints and post-legislative scrutiny mechanisms can temper complexity arising from progressive amendments. Legislative blueprints can specify the ‘the manner in which a piece of legislation should be amended in future years to maintain the law’s fundamental policy aims and its design philosophy’.¹³⁶ Post-legislative scrutiny aims to ensure legislation remains current and coherent in design and substance over time.¹³⁷
108. Use of legislative blueprints is uncommon in Australia, but evident in tax law.¹³⁸
109. Given the complexity of the Evidence Act 1977 and our understanding of its genesis, we will develop a legislative blueprint to guide amendment of future evidence legislation in Queensland. This blueprint will aim to maintain the integrity of the policy aims and design philosophy of our draft evidence legislation.¹³⁹ Schedules in our draft evidence legislation will provide a blueprint for future reform by identifying schemes and provisions we recommend for further review and reform.
110. Post-legislative scrutiny can also perform an important role in helping to ensure that legislation maintains its quality, consistency, and coherence in design and substance.¹⁴⁰
111. Queensland’s ongoing participation in the Standing Council of Attorneys-General can also support the further development of UEL alongside other jurisdictions, fostering harmonisation of evidence law across Australia.

Drafting and usability

112. We are preferencing a principles-based approach to drafting evidence legislation that is durable. Adopting technological neutrality supports this aim. We are designing legislation that is clear, navigable, and succinct. This will support users of the law, including self-represented litigants, to find what they are looking for.

Avoiding unnecessary particularisation

113. Detailed policy can lead to detailed and complex laws.¹⁴¹ For instance, legislation can become more complex when legal norms are categorised or particularised with the aim of achieving clarity, certainty, and consistency of application.
114. The Evidence Act 1977 contains many highly particularised rules-based provisions that add to the Act’s length and complexity. A chief source of the Act’s complexity is the insertion of highly particularised provisions to address specific circumstances and clarify the admissibility of certain types of evidence, such as evidence of domestic violence. Notably, the most recent amendments to Part 6A and the insertion of Parts 6B and 6C added over 80 new provisions.
115. The Act favours categorisation and particularisation over a principles-based approach. This may reflect concern that a principles-based approach affords greater judicial discretion and requires greater judicial interpretation of the law, leading to inconsistency in the law’s interpretation and application.¹⁴² However, extensive interpretation of UEL provisions can mitigate uncertainty.
116. Godwin et al caution against conflating detail with certainty, observing that:

[G]reater detail in legislation often leads to greater complexity, requiring the legislation to recognise extensive exceptions and qualifications in order to make it workable or fit for purpose.¹⁴³

117. In its review of financial services legislation, the ALRC identified the proliferation of laws as a corollary of particularisation.¹⁴⁴ It acknowledged, however, that there are valid aims of particularisation, including affording ‘certainty of application and meaning’,¹⁴⁵ which may be appropriate to include in legislative instruments.¹⁴⁶
118. Former Chief Justice Allsop AO has noted the ‘false certainty’ created by the modern tendency to deconstruct and particularise the law ‘to the point of exhaustion and sometimes incoherence’ in the quest for certainty:
- Attempts to define whole concepts concerning human experiential relationships are generally doomed. Such attempts change the concept itself and only bring artificial certainty, by that change.¹⁴⁷
119. Particularisation, especially high particularisation of provisions to apply to specific circumstances, can result in overlap and duplication,¹⁴⁸ and gaps in the law. In this way, specificity can impair clarity.¹⁴⁹
120. A combination of principles and rules-based approaches in evidence legislation can help to ensure protection of rights, including in unforeseen and complex situations.

Principles-based drafting

121. Stating provisions as broad principles creates flexibility in the law as provisions can be interpreted to apply to a wide range of circumstances.¹⁵⁰ While flexibility in the law promotes durability, it is often in tension with legal certainty. Drafters use different approaches to balance these needs.
122. Lovric points to the tension between the flexibility afforded by stating provisions as broad principles and a need for legal certainty, stating:
- Broad principles have a degree of uncertainty at their edges; they have a core of relatively clear application surrounded by a penumbra of uncertain application. Some aspects of this uncertainty may be clarified by surrounding provisions ... Other aspects of this uncertainty may be clarified by subsequent amendments or case law. Yet even with such clarifications, the entire operation of a broad principle is never fixed in a bright-line way.¹⁵¹
123. Despite this drawback, Lovric identifies that drafting in principles ‘allows many rules to be compressed into one principle. This can be easier to read, can avoid loopholes and is often closer to original policy decisions’.¹⁵² He highlights accepted drafting methods for dealing with this uncertainty, including providing clarifications, add-ons, and carve-outs.¹⁵³ Authoritative judicial interpretation, which UEL has benefited from, can also increase clarity.
124. In comparison, stating provisions as rules provides greater legal certainty because it limits judicial discretion. Yet these provisions are more rigid and prescriptive, applying to distinct categories and in limited circumstances.¹⁵⁴ One principles-based provision may do the work of multiple rules-based provisions.
125. There are clear consequences when the law departs from a flexible, principles-based approach and becomes rules-based and prescriptive. The ALRC highlighted in its 1985 Interim Report that inflexibility and over-prescription can result in unnecessarily lengthy and complex laws.¹⁵⁵ It identified inflexibility of the law as a key issue, particularly in relation to rules governing the admission of secondary documentary evidence¹⁵⁶ and the authentication and identification of evidence.¹⁵⁷ In relation to authenticity, the ALRC stated:

The problem of the inflexibility of the law is demonstrated by the plethora of legislation dealing with authentication of public documents and the legislation or rules found in some courts permitting [certain] agreements...¹⁵⁸

126. Designing evidence laws that are flexible and principles-based does not guarantee that this flexibility won't 'harden' into rules that are then applied inflexibly. The ALRC acknowledged that a need for legal certainty often drives calcification of the law, observing that:
- If the existing rules are derived from a broad discretionary power, their present state is testimony to ... the tendency to develop practices and for those practices to harden and acquire the status of rules which are applied inflexibly.¹⁵⁹
127. It cited examples such as 'the practice relating to leading questions, cross-examination on prior statements, the hostile witness [and] refreshing memory' in support of this observation.¹⁶⁰
128. Not all the ALRC's proposals for UEL optimised flexibility. For example, it preferred a more categorical, rather than principles-based, approach to framing exceptions to the hearsay rule. In proposing a broad, inclusionary test underpinned by the guiding principles of reliability, procedural fairness, justice, and the preference for best evidence,¹⁶¹ Justice Kirby, then co-Chair of the ALRC, identified complexity as a key disadvantage of the majority's proposal. The majority identified lack of certainty and predictability as disadvantages of Kirby J's more flexible approach.¹⁶²
129. Since the Commonwealth and New South Wales first implemented UEL in 1995, the High Court and intermediate appellate courts have extensively interpreted it. This will limit legal uncertainty for any UEL provisions we adopt in our draft evidence legislation.

Technological neutrality

130. Detailed legislative provisions can fail to keep pace with technological developments, become dated, and be applied inconsistently over time.
131. For example, UEL provisions on identification evidence are prescriptive: visual identification evidence is inadmissible unless police first hold an identification parade, unless doing so is unreasonable.¹⁶³ This rule partly responded to concerns raised in the case of *Alexander v The Queen* about the quality of black and white photo board images,¹⁶⁴ which are now obsolete. In our preliminary consultations, we heard that police rarely hold identification parades. A more general provision, like clause 134 of the Evidence Bill 2025 (WA) which applies to 'police-assisted' identification evidence, may allow for the emergence of innovative, more reliable eyewitness identification practices that align with police practice.
132. In its 1987 Final Report, the ALRC highlighted the need to design new evidence law with flexibility to deal with contemporary, emergent, and future (unknown) issues, including new technologies:
- It is not possible to predict the future requirements and future problems that a law of evidence will face. We cannot tell, in particular, what new technologies will emerge. In the meantime, what is required is legislation which addresses identifiable problems and issues in such a way that it can be used in a changing society. This can be done, and has been done in the proposals, by providing a systematic treatment and avoiding, wherever possible, language that is too specific. If this is not done, reform proposals will fail. For example, the attempted reforms of the 1960's which dealt with the use of microfilm and photocopies in evidence cannot now be used for copies produced by modern copiers because it

was framed in technical language and the technology has changed. By producing proposals which closely reflect the underlying policy objective and which have flexibility built into them it is possible for the legislation to cope with the future.¹⁶⁵

133. Evidence legislation that is flexible and reflects core policy objectives will better meet the demands of the future.
134. Durability helps ensure legislation maintains its 'currency and relevance over ... time'.¹⁶⁶ We recognise the importance of durability through our guiding principle of 'enduring', which requires that our draft evidence legislation is contemporary, grounded in knowledge, and fit for the future.¹⁶⁷
135. Designing laws to be flexible and adaptable can support them to endure societal, technological, and economic change. Using the legislative hierarchy effectively can also support laws to adapt to and reflect changing circumstances.¹⁶⁸
136. Technological neutrality can promote flexibility and durability, helping to future-proof laws.¹⁶⁹ It requires legislation to 'not favour or discriminate against any particular technology, but to focus on the effects or functions of technologies broadly'.¹⁷⁰ This is as relevant to evidence law as it is to other areas of the law.
137. The rapid development of technology that uses generative artificial intelligence and its disruptive effects warrants careful consideration in our draft evidence legislation. This includes, for example, ensuring that the legislation can deal appropriately with deepfakes which a party may purport to be authentic evidence and spurious claims that authentic evidence is a deepfake.¹⁷¹
138. Our design of durable draft evidence legislation will balance flexibility with certainty to help ensure it can adapt to societal, technological, and economic change and provide predictability. Provisions which reference obsolete technology include those governing the reproduction of documents.¹⁷²

Plain language

139. The range and variety of unique words in the text of the Evidence Act 1977 has decreased, while its word count has significantly increased. This indicates that new textual additions may be highly repetitive. Rather than introducing new legal concepts, new provisions are routinely based on standardised procedural phrasing, administrative boilerplate, or rigid statutory formulas, indicating that the Act has become more mechanical and procedure-heavy over time.
140. Designing law for comprehensibility can enhance a user's ability to understand and access the law. The degree of linguistic complexity and the level of legal knowledge required to understand the law are key factors determining comprehensibility.¹⁷³
141. The OQPC states that '[l]egislation should be simple, precise and organised in a way to enhance comprehension'.¹⁷⁴ The ALRC acknowledges that '[d]ifferent users of legislation have different abilities to process the language used in legislation which may relate to their social and educational backgrounds'.¹⁷⁵
142. Comprehensibility, in part, relies upon drafting in plain language.¹⁷⁶ As the Victorian Law Reform Commission stated:

'Plain English' involves the use of plain, straightforward language which ... conveys its meaning as clearly and simply as possible, without unnecessary

pretention or embellishment. It is to be contrasted with convoluted, repetitive and prolix language.¹⁷⁷

143. The organisation, sequence, and presentation of provisions can also aid comprehensibility.¹⁷⁸ Too much information can also make a provision less comprehensible.¹⁷⁹
144. In designing comprehensible draft evidence legislation for Queensland, we aim to ensure people can understand the law.

Succinctness and addressing redundancy

145. The length of the Act has significantly increased over time. Since 2015, the Act's word count has increased from 41,536 to 76,642.
146. The structural density of the Evidence Act 1977 has similarly increased over time. The number of divisions has increased from 16 at enactment to 66 today. The average number of subsections per section has also increased, generating 'heavy' sections with complex, multi-step rules and exceptions.
147. Section 21A, which deals with the evidence of special witnesses, is a useful example for understanding both the sources and outcomes of this complexity. It contains:
- 14 subsections, 5 of which are alphanumeric.
 - 15 sub-sub-sections.
 - 12 Roman numeral provisions.
 - 2 capital letter provisions.
148. The structural density of section 21A is due to the range of functions the section performs. Section 21A contains:
- A scope of application provision.
 - Admissibility of evidence provisions.
 - Exclusions.
 - Powers for making mandatory orders and directions.
 - Powers for making discretionary orders and directions.
 - Procedural provisions, including notice requirements for applications.
 - Jury directions.
 - Deeming provisions.
149. The Evidence Act 1977 includes provisions that are obsolete or no longer necessary in the Queensland context, including provisions related to:
- Clarifying legal competence in cases where a person was previously convicted.¹⁸⁰
 - Marital and family privileges.¹⁸¹
 - Witnesses for defence to be sworn.¹⁸²
 - Actions for breach of promise of marriage.¹⁸³
 - Obtaining government documents in civil matters.¹⁸⁴

150. The Act also contains redundant definitions for formally defined terms used once or not at all in the text of the Act. Redundant or 'ghost' definitions have endured repeal of the sections that used them.
151. Redundancy can be both a symptom and a problem, creating work for people who use the legislation. It highlights the need for post-legislative scrutiny to ensure legislation remains current and coherent over time.¹⁸⁵

Use and location of definitions

152. Queensland legislation commonly uses defined terms to aid statutory interpretation and comprehensibility.¹⁸⁶ Depending on the approach, defined terms can make legislation less navigable.¹⁸⁷ This is particularly the case when a 'reader must look somewhere other than the text they are reading to give the defined term meaning'.¹⁸⁸
153. The Evidence Act 1977 defines terms within sections. These sections may be stand-alone definition sections, or evidentiary provisions that contain a definition in a subsection. These definitions are applied within the section, in subsequent sections, or the divisions or sub-divisions indicated. The Dictionary in Schedule 3 lists defined terms and refers to the provisions that define them. Situating definitions near provisions that apply them helps reduce the 'cross-referencing tax' for users of the law, as they do not need to constantly consult Schedule 3 to ensure they are applying the specific statutory meaning of a word.
154. The number of unique terms defined in the Act has risen substantially over the past four decades. The Act contained 35 unique defined terms at enactment, 170 in 2015 and 293 at present. The use of defined terms in the Act has also risen from 4,643 instances in 2015 to 9,088 today.¹⁸⁹ This significant increase in the number of defined terms has created a highly specialised, insulated vocabulary, affecting the accessibility of the Act.
155. As noted above, our draft evidence legislation will utilise a Schedule to consolidate defined terms.

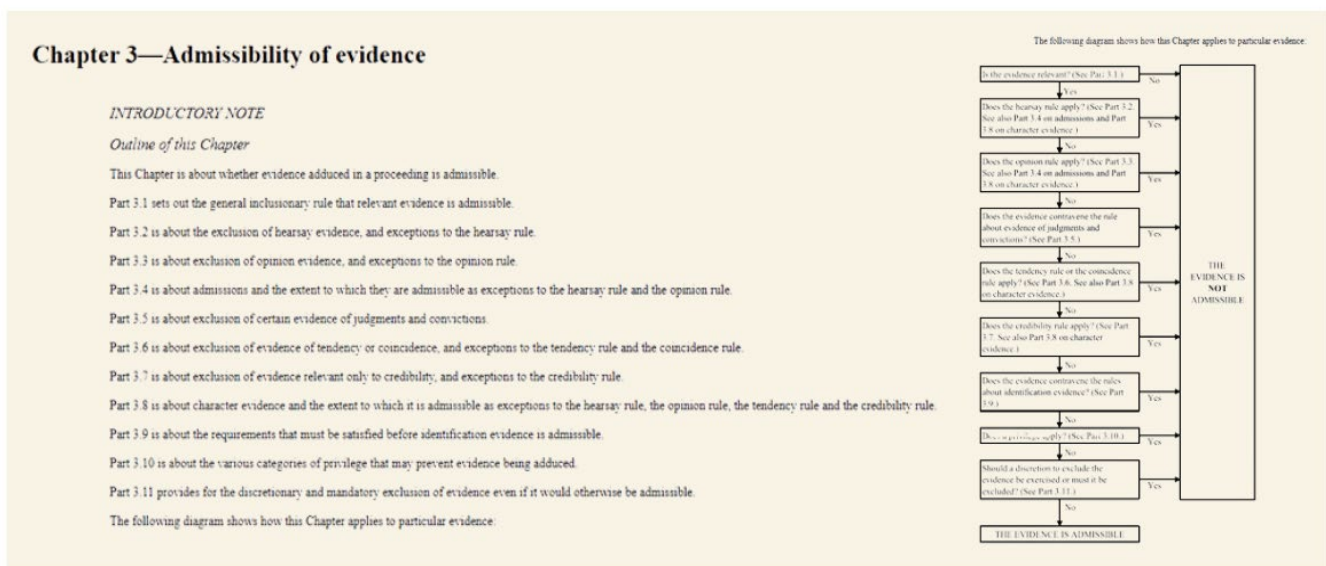
Internal and external cross-references

156. The Evidence Act 1977 has become vastly more interconnected, both internally and with other Acts.
157. The number of unique Acts referenced by the Evidence Act 1977 has expanded since 2015. The frequency of these external references has increased significantly over the same period, from 164 to 530. The Evidence Act 1977 now functions as a hub, requiring users of the Act to possess a working knowledge of a much wider array of Acts.
158. Internal cross-references, which are formal links to other parts of the same Act, increased from 545 in 2015 to 1,439 today. Unlinked, plain-text internal references, for example, 'subject to section 45', followed a similar trajectory, growing from 268 to 679. The heavy increase in self-referencing suggests provisions are less likely to stand alone. Interpreting a single provision may now require tracing a web of 'subject to' and 'in accordance with' clauses across different provisions of the Act.
159. In designing our draft evidence legislation, we aim to minimise the cognitive load created by cross-references.

Navigability aids

160. Navigability means 'the ability of a person who uses legislation to find, and find their way around, the law'.¹⁹⁰ Navigable legislation supports users of the law to find what they need, in the same way maps and signposts assist wayfinding.¹⁹¹
161. There are several types of navigability aids. These include aids that:
 - Form part of the statute text and constitute law, for example, a heading to a chapter, part, division or subdivision of an Act, a heading to a section or subsection,¹⁹² examples, notes,¹⁹³ schedules, appendices, cross-references, and signposts.¹⁹⁴
 - Form part of the statute text and are not operative text but have an interpretive function, for example, footnotes and editor's notes.¹⁹⁵
 - Do not form part of the statute and are technological in nature, for example, hyperlinks.¹⁹⁶
162. Navigability and comprehensibility are mutually enhancing.
163. The simplified outline and diagram in the introductory note to Chapter 3 of UEL are good examples of aids that enhance the navigability and comprehensibility of UEL.¹⁹⁷

Figure 5: Introductory note and application diagram – Chapter 3 of UEL



164. Our draft evidence legislation will support people to find relevant provisions by applying navigability aids.

Appendix A: Our research method

165. Our analysis of the complexity of the Evidence Act 1977 used a ‘law as data’ approach and drew on mixed methods, including socio-legal research and computational legal analysis.
166. Computational legal analysis treats legislation as data and uses computer science and big data tools ‘to collect, analyse and understand the large and unstructured data, such as for instance (legal) text’.¹⁹⁸
167. Our computational analysis of the Act provided a comprehensive longitudinal profile of the Act across 38 points in time from 22 October 2015 to 1 July 2026. This profile included data points that correspond with many of the metrics in **Table 1**. We then analysed these data points to generate novel insights about the Act’s complexity.
168. **Table 1**, which draws on the ALRC’s work on this topic,¹⁹⁹ identifies various legislative features and potential metrics for measuring legislative complexity.

Table 1: Metrics for measuring legislative complexity

Legislative feature	Potential metrics
Legislative change	• Number of amendments to Acts in total and per year • Development of inconsistent alphanumeric numbering systems (for example, section12BAA)
Structure	• Number of sections, subsections, paragraphs, subparagraphs, and sub-subparagraphs within each hierarchical container • Density of structural elements
Length	• Page and word count of a legislative text • Word count per provision
Redundancy	• Number of provisions that are no longer necessary
Prescription	• Length of provisions, including over time • Intricacy of structural elements in provisions
Language	• Readability measures, including the Flesch Reading Ease score • Vocabulary size (for example, number of words comprising the vocabulary of the text or provision) • Entropy (which is a numerical score identifying the variability of a text’s language use and potentially subject matter) • Average word and sentence length in legislative text or provision
Definitions	• Number of defined terms in a legislative text or provision • Number of uses of defined terms within a text or provision

Legislative feature	Potential metrics
	• Location of definitions within legislative texts • Proportion of all words that are potentially subject to a definition • Number of definitions that have certain characteristics, such as only applying in certain contexts
Cross-references	• Number of internal cross-references (that is, references to provisions within the same legislative text)

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49 Guzyal Hill, National Uniform Legislation (Springer Nature, 2022) 33.
50 Australian Law Reform Commission, NSW Law Reform Commission, and Victorian Law Reform Commission, Uniform Evidence Law (Final Report No 102, December 2005) [2.31] 58; Australian Law Reform Commission, Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence (Report No 143, January 2025) [1.85] 84.
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- 53 Andrew Godwin, Vivienne Brand, and Rosemary Teele Langford, 'Legislative Design - Clarifying the
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- 54 Andrew Godwin, Vivienne Brand, and Rosemary Teele Langford, 'Legislative Design - Clarifying the
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- 55 Australian Law Reform Commission, Complexity and Legislative Design (Background Paper FSL2) [48] 11.
- 56 Australian Law Reform Commission, Complexity and Legislative Design (Background Paper FSL2) [48] 11.
- 57 Criminal Procedure Act 2004 (ACT) s 5; Criminal Procedure Act 1986 (NSW) ss 7, 46 and 245; Criminal
Procedure Act 1921 (SA) s 6; Criminal Procedure Act 2009 (Vic) s 1; Criminal Procedure Act 2004 (WA) ss 19
and 81.
- 58 Note that the Criminal Code Act 1899 (Qld) is also applied to certain aspects in the Magistrates Court. For
example, Justices Act 1886 (Qld) s 41 applies the disclosure provisions in the Criminal Code.
- 59 Evidence Act 1977 (Qld), as enacted; Queensland Law Reform Commission, The Law Relating to Evidence
(Report No 19, November 1975) 2.
- 60 Queensland Law Reform Commission, The Law Relating to Evidence (Report No 19, November 1975) 2.
- 61 Queensland Law Reform Commission, The Law Relating to Evidence (Report No 19, November 1975) 2.
- 62 Queensland Law Reform Commission, The Law Relating to Evidence (Report No 19, November 1975) 2.
- 63 Evidence Act 1977 (Qld) Long title. The text 'and to protect persons concerned in the commission of sexual
offences from identification' was inserted by Criminal Law (Coercive Control and Affirmative Consent) and
Other Legislation Amendment Act 2024 (Qld) s 67.
- 64 Through 112 subsequent Acts.
- 65 Including the Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the
Criminal Code (Report, February 2000) i; Queensland Government, Queensland Government Response to
the Report of the Special Taskforce on Domestic and Family Violence, Not Now, Not Ever: Putting an End to
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(Report, 14 August 2017) 192–93.
- 66 The Criminal Code, Evidence Act and Other Acts Amendment Act 1989 (Qld) ss 63–64, inserting Evidence Act
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- 67 Criminal Law Amendment Act 2000 which amended pt 6, inserted pt 2, div 6 and made other amendments
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- 68 Evidence (Protection of Children) Amendment Act 2003 (Qld) which amended the Evidence Act 1977 pts 1, 2,
3, 6 and 8 and inserted pt 9 divs 1 and 2 and sch 3 Dictionary.
- 69 Victims of Crime Assistance and Other Legislation Amendment Act 2017 (Qld) s 7, inserting Evidence Act
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- 70 Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020 (Qld) s 44,
inserting Evidence Act 1977 (Qld) pt 2 div 4C.
- 71 Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020 (Qld) s 39,
inserting Evidence Act 1977 (Qld) s 132BA.
- 72 Evidence and Other Legislation Amendment Act 2022 (Qld) s 37, inserting Evidence Act 1977 (Qld) pt 6A.
- 73 Evidence and Other Legislation Amendment Act 2022 (Qld) s 37, inserting Evidence Act 1977 (Qld) pt 6A.
- 74 Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment
Act 2023 s 67, inserting Evidence Act 1977 (Qld) pt 6A, div 3.
- 75 Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024 (Qld) s 40, inserting
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- 77 Women's Safety and Justice Taskforce, Hear Her Voice: Women and Girls' Experiences Across the Criminal
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Australian Law Reform Commission, Complexity and Legislative Design (Background Paper FSL2) [123] 28.

Evidence Act 1977 (Qld) pt 2, divs 1A, 1B, 2A, 2B, 4A, 4AA, 4B, and 4C.

See Evidence Act 1977 (Qld) pt 6B, div 4, sub-div 2.

Evidence Act 1977 (Qld) pt 2, divs 1A, 1B, 2A, 2B, 4A, 4AA, 4B, and 4C.

See Explanatory Notes, Evidence (Protection of Children) Amendment Bill 2003 (Qld); Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld).

Explanatory Notes, Evidence (Protection of Children) Amendment Bill 2003 (Qld) 1.

Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld) 1.

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103 Department of the Premier and Cabinet (Qld), 'The Queensland Legislation Handbook' [2.4] 7; Department
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104 Department of the Premier and Cabinet (Qld), 'The Queensland Legislation Handbook' [2.4] 7; Department
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105 See, eg, Supreme Court of Queensland Act 1991 (Qld) s 17; District Court of Queensland Act 1967 (Qld) s
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106 Legislative Standards Act 1992 (Qld) s 4(2).

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115 DM Walker, The Oxford Companion to Law (Clarendon Press, 1980) 24, quoted in Australian Law Reform
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Evidence Act 1977 (Qld) s 6. This provision stems from a historical rule where a person was not legally competent due to interest in the proceeding or conviction. This is no longer the norm.

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184 Evidence Act 1977 (Qld) s 134A. This section was reviewed in 2004–2005 to ascertain whether it had any
 185 relevance given there were equivalent means of disclosure under freedom of information laws and third-
 186 party disclosure under the Uniform Civil Procedure Rules 1999. See Attorney-General and Minister for
 187 Justice, Reports to the Legislative Assembly under Section 56A(4) of the Statutory Instruments Act 1992 (22
 188 September 2004). Parliament has amended but not repealed s 134A.

185 Australian Law Reform Commission, Post-Legislative Scrutiny (Background Paper FSL8, May 2023) [1]–[2] 1.

186 Office of the Queensland Parliamentary Counsel, Principles of Good Legislation: OQPC Guide to FLPs: Clear
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187 Australian Law Reform Commission, Improving the Navigability of Legislation (Background Paper FSL3,
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189 Because this specific metric tests for exact string matches, it does not capture plural forms or grammatical
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192 If the Act was enacted after 30 June 1991 or the heading was amended or inserted after 30 June 199. See
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193 This is not the case in the Evidence Act 1995 (NSW) s 3(2).

194 Acts Interpretation Act 1954 s 14(1)–(5); Australian Law Reform Commission, Improving the Navigability of
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