

TERMS OF REFERENCE

A review of evidence law in Queensland

Background

The law of evidence governs the nature and form of material that may be brought before a court. In Queensland state courts, the rules of evidence are contained in Queensland legislation, primarily the *Evidence Act 1977* (Qld), court rules and the common law.

The Uniform Evidence Law (UEL), primarily based on the Commonwealth's *Evidence Act 1995* (Cth), has been adopted by New South Wales, Victoria, Tasmania, the Northern Territory and the Australian Capital Territory. Western Australia recently passed the *Evidence Act 2025* (WA) which adopts the UEL. The UEL was intended to function as evidential codes, replacing common law rules.

Two decades ago, Queensland chose not to adopt the UEL. However, in recent years the evidence law of Queensland has been frequently amended, often adopting particular UEL rules and terminology, such as tendency and coincidence. For example, the recently commenced new Part 7A replaced the common law test for the admissibility of propensity evidence in criminal proceedings established in *Pfennig v The Queen* (1995) 182 CLR 461 with a two-limb test aligned with Australia's UEL jurisdictions.

This approach to partially adopt aspects of the UEL in response to reviews and inquiries considering discrete legal issues, rather than evidence law as a whole, has resulted in a piecemeal and inconsistent framework.

A review of evidence law is timely and consistent with other Governments' consideration of these issues.

Terms of reference

1. I, DEB FRECKLINGTON, Attorney-General and Minister for Justice and Minister for Integrity (Attorney-General), refer to the Queensland Law Reform Commission (the Commission) pursuant to section 10 of the *Law Reform Commission Act 1968* (Qld) for review and investigation, the scope, operation and suitability of the *Evidence Act 1977* (Qld) (the Act).

Scope

2. The Commission is asked to undertake a review of the Act that considers the need to modernise and simplify the Act to ensure the effective administration of justice in Queensland and the protection of victims, without reducing existing rights or safeguards.
3. In undertaking its review, the Commission is asked to consider:
 - a. The relationship of the Act to the *Evidence Act 1995* (Cth) and other applicable evidence laws and the desirability of streamlining evidence law.
 - b. Whether adopting further provisions of the UEL, or all, while retaining the benefit of recent Queensland reforms, is appropriate and desirable.
 - c. The extent to which common law rules of evidence continue to operate and whether they should be codified in the Act.
 - d. The importance of maintaining a simple, efficient and effective justice system in which clear and comprehensive laws of evidence play a fundamental role.
 - e. Recent legislative and common law developments, including Parts 6A, 6B, 6C and 7A of the Act.
 - f. The appropriate scope and application of evidence law in particular contexts, including in child sexual abuse matters and matters involving domestic and family violence.
 - g. The impact of technological and other developments on evidence law, including the ability to videorecord and give evidence remotely.
 - h. The Act's application to pre-trial procedures, and whether any reforms are appropriate and desirable.
 - i. Whether the Act should cover all aspects of evidence law or whether some aspects should be separately legislated.
4. The Commission is asked to make recommendations on whether reform is required to the following areas of evidence law:
 - a. the examination, cross-examination and re-examination of witnesses,
 - b. the admissibility of statements and representations as provided for in Part 6 of the Act
 - c. the hearsay rule and its exceptions
 - d. the opinion rule and its exceptions

- e. the tendency and coincidence rule
 - f. the credibility rule and its exceptions
 - g. privileges, including client legal privilege
5. If the Commission recommends reform of the Act, or other legislative reform, the Commission is asked to prepare draft legislative provisions based on its recommendations, noting that the decision whether to progress those recommended reforms is a matter for the Government.
6. In undertaking its review, the Commission should have regard to:
 - a. relevant Queensland Government policies
 - b. relevant court rules and practice directions
 - c. current legislative and regulatory frameworks in other Australian and comparative international jurisdictions
 - d. any other relevant matters.

Consultation

The Commission should consult with Queensland Government agencies and relevant statutory bodies, the Judiciary, key legal stakeholders, academics and any other stakeholders the Commission considers relevant.

Timeframe

The Commission is to provide its final report to the Attorney-General by 1 December 2027.

Dated the *5th* of *December* 2025


DEB FRECKLINGTON MP
Attorney-General and Minister for Justice
Minister for Integrity