

LEGISLATIVE COUNCIL

JUSTICE LEGISLATION AMENDMENT (TRIAL BY JUDGE ALONE AND
OTHER MATTERS) BILL 2022

(Amendments and New Clauses to be proposed in Committee by Mr GRIMLEY)

1. Clause 1, page 2, after line 19 insert—
 - "(ca) to amend the **Evidence (Miscellaneous Provisions) Act 1958** in relation to confidential communications; and".

NEW CLAUSE

2. Insert the following New Clause to follow clause 8—

'8A Evidence (Miscellaneous Provisions) Act 1958—confidential communications

- (1) In section 32C(3) of the **Evidence (Miscellaneous Provisions) Act 1958**, for "The court" **substitute** "Subject to subsection (3A), the court".

- (2) After section 32C(3) of the **Evidence (Miscellaneous Provisions) Act 1958 insert—**

"(3A) In a criminal proceeding, the court must not waive the requirement, under subsection (2)(a), to give notice to the prosecutor."

- (3) For section 32C(4) of the **Evidence (Miscellaneous Provisions) Act 1958 substitute—**

"(4) If, in a criminal proceeding—

- (a) the prosecutor receives notice under subsection (2); or
- (b) the prosecutor is required under that subsection to give notice, and either the prosecutor does so or that requirement is waived—

the prosecutor must give the protected confider notice of the application as soon as is reasonably practicable.

- (4A) Notice under subsection (4) must include—

- (a) advice that the protected confider has a right to appear in the proceeding to make submissions, including confidentially as described in subsection (6A)(b); and
- (b) advice that the protected confider should consider whether to seek legal advice.

- (4B) The court may waive the requirement to give notice under subsection (4) if the court is satisfied, on the balance of probabilities, that the protected confider—

- (a) cannot be located; or
 - (b) has consented to not being notified."
- (4) After section 32C(6) of the **Evidence (Miscellaneous Provisions) Act 1958 insert—**
 - "(6A) The protected confider may—
 - (a) appear in the proceeding; and
 - (b) make submissions including by giving to the court, by affidavit, a statement describing the harm that is likely to be caused to the protected confider if the application is granted.
 - (6B) A court that receives a confidential statement under subsection (6A)(b) must not disclose it."
- (5) After section 32D(1) of the **Evidence (Miscellaneous Provisions) Act 1958 insert—**
 - "(1A) Additionally, a court must not grant leave to compel the production of, to produce or to adduce protected evidence unless either—
 - (a) the requirement to give notice to the protected confider under section 32C(4) was waived under section 32C(4B); or
 - (b) that requirement was not waived but the court is satisfied, on the balance of probabilities, that the protected confider could not be located; or
 - (c) the protected confider was given notice under section 32C(4) and the court is satisfied, on the balance of probabilities, that the protected confider has had a reasonable opportunity to obtain legal advice."!