

Information Privacy and Other Legislation Amendment Bill 2023

Statement of Compatibility

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, make this statement of compatibility with respect to the amendments to be moved during consideration in detail (the amendments) of the Information Privacy and Other Legislation Amendment Bill 2023 (Bill).

In my opinion, the amendments are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The policy objectives of the Bill are to:

- make key changes to Queensland's information privacy framework to better protect personal information and provide appropriate responses and remedies for data breaches and misuse of personal information by agencies; and
- make changes to Queensland's information privacy and right to information frameworks to clarify and improve their operation; and
- make legislative amendments to support the operation of the administrative scheme which will provide for the proactive release of Cabinet documents (the proactive release scheme).

The objectives of the *Coal Mining Safety and Health Act 1999* (CMSH Act) include to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations; and to require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level.

The objectives of the amendments are to:

- ensure that extension by an agency to conduct an assessment of a data breach under the mandatory data breach notification (MDBN) scheme may only be for a period of time reasonably required for the assessment to be conducted;
- more comprehensively exclude an APP entity that is subject to the *Privacy Act 1988* (Cth) ¹ (Commonwealth Privacy Act) from being an agency that is subject to the IP Act, rather than excluding APP entities from the QPPs and the MDBN scheme;
- clarify that before an authorised officer exercises powers under Chapter 3A, part 5 of the *Information Privacy Act 2009* (IP Act), they must first give a notice of entry and seek consent, before entering an agency's place of business without consent;
- allow an authorised officer exercising powers under Chapter 3A, part 5 of the IP Act to observe, via audio visual link, a demonstration of the data handling systems and practices of the agency that relate to the mandatory data breach notification scheme;
- clarify that the functions of the Information Commissioner under the IP Act include reviews in relation to the mandatory data breach notification scheme and promoting understanding of and compliance with the IP Act generally;
- remove the exclusion for entities established by letters patent from the definition of 'public authority' in both the *Right to Information Act 2009* (RTI Act) and the IP Act;
- expand the situations when the Information Commissioner can require searches to be conducted in relation to any external review process relating to access decisions under the RTI Act;
- provide that the Information Commissioner may direct agencies and Ministers to make a decision on an application for amendment of personal information in certain circumstances;
- provide that before the Information Commissioner directs an agency or Minister to make a decision on an application for access or amendment of personal information, the Information Commissioner must be satisfied it is reasonably likely that the agency or Minister would be able to make a decision which is consistent with the primary object of the Act;
- provide that if the Information Commissioner becomes aware of new documents during an external review, then before the Information Commissioner refers the documents to an agency or Minister for decision about access to the documents, the Information Commissioner must be satisfied it is reasonably likely that the agency or Minister would be able to make a decision which is consistent with the primary object of the Act;
- ensure that whenever an agency or Minister makes a decision about whether access is to be given to documents, the applicant can review whether the agency or Minister has taken reasonable steps to identify and locate documents the applicant has applied for; and
- address other minor technical issues in the Bill, including ensuring internal consistency in terminology.

¹ Under the Commonwealth Privacy Act, an APP entity means an agency or organisation (as defined by that Act).

The objectives of the *Coal Mining Safety and Health Act 1999* (CMSH Act) include to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations; and to require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level.

The objectives of the amendments to the CMSH Act are to update the definition of 'union'. The definition of 'union' is relevant to the appointment by the union of industry safety and health representatives (ISHRs) and procedural matters related to ISHRs.

The definition requires updating due to the withdrawal of the Mining and Energy Union (MEU) from the Construction Forestry Maritime and Mining Union (CFMMEU) on 1 December 2023. As a consequence of the coal mining safety and health functions of ISHRs, it is important to confirm that any appointments of ISHRs are not affected by the withdrawal of the union from 1 December 2023 until commencement by assent of the amended definition of 'union'.

The functions of ISHRs under section 118(1) of the CMSH Act are: a) to inspect coal mines to assess whether the level of risk to the safety and health of coal mine workers is at an acceptable level; (b) to review procedures in place at coal mines to control the risk to safety and health of coal mine workers so that it is at an acceptable level; (c) to detect unsafe practices and conditions at coal mines and to take action to ensure the risk to the safety and health of coal mine workers is at an acceptable level; (d) to participate in investigations into serious accidents and high potential incidents and other matters related to safety or health at coal mines; (e) to investigate complaints from coal mine workers regarding safety or health at coal mines; (f) to help in relation to initiatives to improve safety or health at coal mines.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Information privacy and right to information amendments

The amendments engage the right to freedom of expression in section 21 of the HR Act.

Freedom of expression is fundamental to the operation of a democratic society. Justice Bell, in *XYZ v Victoria Police (General)* [2010] VCAT 255 held that ‘the human right to freedom of expression incorporates a positive right to obtain access to government-held documents.’ The RTI Act provides a comprehensive scheme for access to information in the government’s possession and under the Government’s control.

In general, the amendments promote the right to freedom of expression, in that they improve processes providing for access to information, including personal information, held by government agencies.

In particular amendments 44 to clauses 119 and amendment 47 to clause 123 will provide that before the Information Commissioner directs an agency or Minister to make a decision on an application for access, or refers additional documents to an agency or Minister for decision,, the Information Commissioner must be satisfied it is reasonably likely that the agency or Minister would be able to make a decision which is *consistent with the primary object of the Act*. This replaces the requirement in the Bill for the Information Commissioner to be satisfied it is reasonably likely that the agency or Minister would be able to make a decision which is *satisfactory to the applicant*. These amendments will make a clearer and more workable decision-making framework for the Information Commissioner, creating efficiencies and benefitting applicants.

Also, amendment 42 to clause 117 will provide that whenever an agency or Minister makes a decision about whether access is to be given to documents, the applicant can review whether reasonable steps have been taken to identify and locate documents the applicant has applied for. This supports the right of access to government-held documents by providing a means for an applicant to be satisfied that agencies and Ministers have met relevant legislative requirements relating to their access application.

Also, amendments 7 to 10 to clause 19 and amendments 40 and 41 to clause 84 will remove amendments in the Bill excluding entities established by letters patent from the definition of ‘public authority’ in relation to both the IP Act and the RTI Act. This will preserve the status quo in relation to such entities, meaning that there will not be any limitation on human rights from the exclusions.

Taken together the amendments will improve efficiencies in the process for access to, and amendment of information, and facilitate better outcomes for individuals seeking access to information.

CMSH Act amendments

In relation to the CMSH Act amendments, I consider the following human rights are engaged:

- right to life (section 16 of the HR Act);
- property rights (section 24 of the HR Act); and
- right to liberty and security of person (section 29 of the HR Act).

In my opinion, the amendments to the CSMH Act promote the right to life and the right to security of the person protected by the HR Act. The right to life protects the lives of all persons and includes the right not to be arbitrarily deprived of life. It imposes positive obligations on the State to take appropriate steps and adopt positive measures to protect the health and safety of its citizens. The right to security of the person similarly places a positive obligation on the State to take appropriate steps to ensure the physical safety and health of those who are in danger of physical illness or harm.

The amendments to the CSMH Act support the aims of the Act to protect the safety and health of persons at coal mines through confirming that any ISHRs appointed from 1 December 2023 until commencement of the amendments have certainty of appointment to perform the coal mining safety and health functions of an ISHR. These functions assist in protecting the safety and health of coal mine workers at coal mines.

Section 24 of the HR Act protects people from having their property unlawfully removed. Section 24(2) provides that a person must not be arbitrarily deprived of the person's property. The right says that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property.

Property includes real and personal property and can include contractual rights, statutory rights, and other economic interests such as employment or appointments. Deprivation is considered to be acts or decisions that, amongst other acts and decisions, limit or terminate property rights.

The amendments to the CSMH Act update the name of the relevant union that appoints ISHRs, and confirms that any appointment of ISHRs between 1 December 2023 and commencement of the amendments by assent is not arguably affected in any way by the changing name of the union that appoints them.

For this reason, the amendments to the CSMH Act do not limit human rights and are compatible with human rights.

Conclusion

In my opinion, the amendments to be moved during consideration in detail of the Bill are compatible with human rights under the HR Act.

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