

# Child Safe Organisations Bill 2024

## Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019*, I, Charis Mullen MP, Minister for Child Safety, Minister for Seniors and Disability Services and Minister for Multicultural Affairs, make this statement of compatibility with respect to the Child Safe Organisations Bill 2024 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Bill

Following an extensive five-year inquiry, the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) presented its Final Report on 15 December 2017, finding widespread and systemic failings of institutions to protect children and respond to child sexual abuse. ‘Institution’ was broadly defined to include any entity (or organisation) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children.

As part of its Final Report, the Royal Commission recommended state and territory governments:

- require relevant organisations to comply with 10 Child Safe Standards (CSS) as a best-practice approach to keep children safe (recommendation 6.8, Volume 6, Final Report); and
- establish nationally consistent reportable conduct schemes (RCS) to provide independent oversight across sectors, of organisational responses to allegations of child abuse (recommendations 7.9 – 7.12, Volume 7, Final Report).

The Queensland Government has accepted or accepted in-principle all CSS and RCS recommendations. Following the release of the Royal Commission’s Final Report, most states and territories have now implemented CSS and established a RCS.

On 10 August 2023, the Honourable Craig Crawford MP, then Minister for Child Safety and Minister for Seniors and Disability Services released the *Growing Child Safe Organisations in Queensland Consultation Regulatory Impact Statement* (CRIS), seeking public feedback on the regulatory impact of options developed for CSS and RCS in Queensland.

On 22 March 2024, the Queensland Government released a Decision Impact Analysis Statement summarising the results of consultation and providing a final recommendation to establish a legislated child safe organisations (CSO) system in Queensland comprising: (1) a collaborative regulatory model to implement mandatory CSS and ensure compliance by in-scope organisations; and (2) oversight of institutional child abuse complaints and allegations through a nationally consistent RCS.

The Queensland Government has endorsed the Queensland Family and Child Commission (the Commission) as the independent oversight body responsible for administering the CSO system.

The Child Safe Organisations Bill 2024 (the Bill) is intended to support implementation of this recommended model in Queensland. The policy objective of the Bill is to improve the safety and wellbeing of children in Queensland organisations and ensure children who are at risk of experiencing abuse or who have experienced abuse in institutional settings are supported early, in a trauma-informed, appropriate way.

The Bill establishes an integrated CSO system in Queensland that includes:

- mandatory CSS, reflecting the *National Principles for Child Safe Organisations* (National Principles), with scope aligned to the recommendations of the Royal Commission and Queensland's *Working with Children (Risk Management and Screening) Act 2000*;
- inclusion of a Universal Principle to embed the right to cultural safety for Aboriginal and Torres Strait Islander children across all 10 CSS implemented by in-scope organisations;
- a nationally consistent RCS as recommended by the Royal Commission that requires heads of in-scope organisations to report and investigate allegations of reportable conduct to an independent oversight body (recommendations 7.9 – 7.12, Volume 7, Final Report); and
- the functions and powers of the Commission to oversee implementation and compliance by in-scope entities within CSS and RCS, aligned with the recommendations of the Royal Commission (recommendation 6.11, Volume 6, Final Report).

## Human Rights Issues

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

In my opinion, the relevant human rights under the *Human Rights Act 2019* (HR Act) that are relevant to the Bill are:

- right to life (section 16);
- protection from torture and cruel, inhuman or degrading treatment (section 17);
- freedom of thought, conscience, religion and belief (section 20);
- freedom of expression (section 21);
- right to privacy and reputation (section 25);
- right to protection of families and children (section 26);
- cultural rights – generally (section 27);
- cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28);
- right to liberty and security of person (section 29); and
- right to a fair hearing (section 31).

### Child Safe Standards

The Bill requires prescribed entities ('child safe entities') to implement and comply with 10 CSS prescribed under clause 9 and a Universal Principle for the cultural safety of Aboriginal and Torres Strait Islander children, which applies across all 10 CSS (clause 11). The 10 CSS provide a framework to help promote organisational cultures that prioritise the safety and wellbeing of children.

Elements of the 10 CSS include, for example: embedding child safety in leadership, governance and culture; ensuring the participation of children and families in decision-making; respecting

equity and diversity in policy and practice; ensuring staff working with children are suitable, trained and supported; developing child-focused complaints processes; ensuring safe online and physical environments for children; conducting ongoing reviews of implementation; and ensuring policies and procedures document how the organisation is child safe.

I consider the elements of the CSS and Universal Principle broadly promote and protect human rights protected under the HR Act including:

- *Right to life* (section 16) – where the CSS and Universal Principle seek to support the safety and wellbeing of children engaging with child safe entities, including where they are within the care of the State, reflecting the State’s positive obligation in this regard<sup>1</sup>;
- *Protection from torture and cruel, inhuman or degrading treatment* (section 17) and *Right to liberty and security of person* (section 29) – where the CSS and Universal Principle seek to protect children from risk of harm through child safe entities’ policies, procedures and practice;
- *Freedom of thought, conscience, religion and belief* (section 20), *Cultural rights (generally)* (section 27) and *Cultural rights of Aboriginal peoples and Torres Strait Islander peoples* (section 28) – where the CSS provide that equity is upheld and diverse needs are respected in child safe entities’ policies and practice and where the Universal Principle requires child safe entities to provide an environment that promotes and upholds cultural safety for Aboriginal children and Torres Strait Islander children;
- *Protection of families and children* (section 26) – where the CSS and Universal Principle support the purpose of protecting the safety, wellbeing and best interests of children engaging with child safe entities, including their families; and
- *Fair hearing* (section 31) – where the CSS (standard 6) seek to ensure child-focused complaints processes, which may further support procedural fairness.

Further detail regarding clauses within the Bill relating to CSS which limit human rights are considered below.

### **Reportable conduct scheme**

The Bill will also promote human rights under the HR Act through the RCS, including:

- *Protection from torture and cruel, inhuman or degrading treatment* (section 17) – the RCS is focused on reporting and investigations in response to reportable conduct which is defined broadly to include criminal conduct (such as child sexual offences) as well as conduct that may not reach a criminal offence threshold, but that is a cause of harm to children;
- *Protection of families and children* (section 26(2)) – the RCS is aimed at promoting the protection of children from harm including by improving institutional responses to reportable allegations and reportable convictions;
- *Right to security of person* (section 29) – by requiring reporting entities to respond appropriately to allegations of harm and creating safer places for children; and
- *Fair hearing* (section 31) – where persons subject to reportable allegations or reportable convictions are provided with opportunities to provide submissions to investigations, and access to internal and external review processes.

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<sup>1</sup> See *Keenan v United Kingdom* (European Court of Human Rights, Application 27229/92, 4 March 2001) ECTHR 2001.

Further detail regarding clauses within the Bill relating to RCS which limit human rights are considered below.

**If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)**

**Child Safe Standards**

**Information sharing**

(a) the nature of the right

***Freedom of expression***

Section 21 of the HR Act provides that every person has the right to hold an opinion without interference and the right to freedom of expression, including the freedom to seek, receive and impart information in a variety of mediums. The right may include access to information held by government where reasonable and proportionate.<sup>2</sup>

Freedom of expression will be limited by the Bill where it is proposed to prohibit a person from disclosing confidential information relating to CSS, other than for prescribed purposes (see clauses 48, 56, 57). The Bill further provides protections for identifying information (clause 47, 55(2)) and an offence for unauthorised disclosure or publication (clauses 56, 57, 58). This will limit the right by limiting the kind of information that a person may freely impart.

***Right to privacy and reputation***

Section 25 of the HR Act provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and not to have the person's reputation unlawfully attacked. In particular, the right to privacy protects the individual against interference with their physical and mental integrity, including personal information and correspondence.<sup>3</sup> 'Arbitrarily' in the human rights context refers to interferences which are 'capricious, unpredictable or unjust, or unreasonable to the extent of not being proportionate to a legitimate aim that is sought'.<sup>4</sup>

A person's right to privacy and reputation will be limited by the proposed information sharing arrangements under clause 48 where information about an individual or their organisation may be shared between prescribed CSS entities and other corresponding interstate entities (clause 53). Individuals sharing information through this scheme will be protected from liability and reprisals under clauses 59 and 60 respectively.

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<sup>2</sup> See Human Rights Committee, *General Comment No 34: Freedoms of opinion and expression (Article 19 of the International Covenant on Civil and Political Rights)*, 102nd sess, UN Doc CCPR/C/GC/34 (12 September 2011) [18]; see also *XYZ v Victoria Police* [2010] VCAT 255.

<sup>3</sup> Explanatory Notes, Human Rights Bill 2018 (Qld) 22.

<sup>4</sup> *P J B v Melbourne Health & Ors (Patrick's Case)* [2011] VSC 327 [85].

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to further protect the safety, wellbeing and best interests of children engaging with child safe entities in Queensland. The Royal Commission examined the factors that can influence the risk of harm to children in institutional settings as well as the factors that protect children and make institutions safer, and recommended the implementation of 10 CSS to improve the safety of children in institutions (recommendations 6.5 and 6.6, Volume 6, Final Report). The Royal Commission noted that information sharing between institutions with responsibilities for children's safety and wellbeing is necessary to identify, prevent and respond to incidents and risks of child sexual abuse.<sup>5</sup>

Effective information sharing arrangements are key to the successful operation of the CSS framework. Improved information sharing to identify risks to the safety of children, which demonstrates non-compliance with the CSS and Universal Principle, will complement existing mechanisms to protect children in Queensland.

This purpose is consistent with the right to the protection of families and children (section 26, HR Act), where information supports compliance with the CSS and Universal Principle in child safe entities to ensure the safety, wellbeing and best interests of children. The purpose is also consistent with the right to liberty and security of person (section 29, HR Act) which extends to protection against physical and mental harm or injury.<sup>6</sup> Information shared to identify non-compliance with the CSS and Universal Principle enables appropriate identification and responses to ensure the safety of children within child safe entities by the Commission. This is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will achieve its purpose by establishing an information sharing framework under clause 48 that enables confidential information relating to a concern about a failure to implement or comply with the CSS and Universal Principle, or information that will assist the Commission in performing its functions under the Bill, to be shared between the Commission and relevant prescribed CSS entities (e.g. sector regulators, child safe entities, other public sector entities and prescribed bodies). Such information is intended to be recorded or disclosed or used only where permitted under clause 56 and clause 57, including, for example, where authorised under another law or with the written consent of the person (who is an adult) to whom it relates.

The Bill provides an information sharing framework that reflects the Royal Commission's commentary to enable information to be shared between prescribed entities in a way that is purpose-driven, appropriate and effective in identifying, preventing and responding to concerns of non-compliance (Volume 8, Final Report).

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<sup>5</sup> *Royal Commission Into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 9 <[Recordkeeping and information sharing | Royal Commission into Institutional Responses to Child Sexual Abuse \(childabuseroyalcommission.gov.au\)](#)> ('*Royal Commission*').

<sup>6</sup> Human Rights Committee, *General Comment No 35: Liberty and security of person* (Article 9 of the International Covenant on Civil and Political Rights), 112<sup>th</sup> sess (16 December 2014) [3], [9].

In consideration of this finding, the purpose of the limitation will be achieved where clause 47 supports proactive sharing of information to assist the Commission to become aware of CSS and Universal Principle compliance issues and to identify sectors requiring support to build capacity. The limitation is necessary for child safe entities and the Commission to fulfil their functions and responsibilities in the CSS framework.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive or reasonably available alternatives to establishing effective information sharing arrangements to facilitate the operation of the CSS scheme. Information must be shared about individuals and child safe entities to identify and remedy instances of non-compliance with the CSS and Universal Principle.

The Bill will provide safeguards to ensure that, where concerns involve a particular child, the child's identity is protected as far as practicable (clause 47(2)). The Bill further safeguards against unauthorised use, disclosure, recording or publication of confidential information, including where it may identify a child, and provides that this is an offence under clauses 56-58. Clause 56 provides a person may only make a record of information received through involvement in the administration of the Act in prescribed circumstances. Clause 57 similarly provides that a person receiving confidential information cannot use or disclose the information to another person unless it is in prescribed circumstances including where the use or disclosure is authorised by law or a commissioner of the Commission. While these safeguards will limit the right to freedom of expression, they are intended to mitigate limitations on the right to privacy and build on other protections provided under the Bill for: certain information under other legislation; or information that is subject to privilege not being affected where shared under the Bill (clause 55).

Protection against unauthorised disclosure also supports compliance of the Commission and relevant public entities with the Information Privacy Principles under the *Information Privacy Act 2009*.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Information sharing between prescribed CSS entities will: facilitate the collaborative regulatory approach to assist with implementation of, and compliance with, the CSS and Universal Principle; and support the Commission in investigating and responding to non-compliance so that risks to children are effectively identified and capacity building activities are targeted where most needed. This supports the purpose of ensuring the safety, wellbeing and best interests of children are promoted within Queensland entities.

The ability to receive and disclose confidential information for the purposes of the CSS scheme strikes a fair balance between the right to privacy and reputation and right to freedom of expression, and the protection of children from risk within organisations. The safeguards provided under the Bill ensure that privacy is limited only to the extent necessary to facilitate the CSS framework, with disclosure only permitted in prescribed circumstances.

On balance, it is considered that the limitation of the right to freedom of expression and right to privacy and reputation is reasonable and demonstrably justified where information sharing is for the purposes described above and these rights are outweighed by the need to ensure the protection of children by ensuring effective implementation of, and compliance with, the CSS and Universal Principle.

(f) any other relevant factors

Nil.

### **Oversight by the Commission – enforcement measures**

(a) the nature of the right

#### ***Right to privacy and reputation***

As noted above, section 25 of the HR Act provides that a person has the right not to have the person's privacy, family, home or correspondence (including personal information) unlawfully or arbitrarily interfered with, and not to have the person's reputation unlawfully attacked.

The right to privacy will be limited where the Commission may exercise the following powers that may involve the disclosure of personal information:

- compliance notices – issuing a compliance notice to a child safe entity to take required action where the Commission believes the entity is failing to implement and comply with the CSS and Universal Principle (clause 18);
- enforceable undertakings – accepting and publishing details of an enforceable undertaking with a child safe entity (clauses 19-22);
- applying to a court to seek orders to enforce compliance with a compliance notice or enforceable undertaking that a child safe entity has failed to comply with (clause 23); and
- publishing details of non-compliance with a compliance notice or an enforceable undertaking (clause 24).

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is for the Commission to implement measures to promote the safety of children within organisations. The Commission has prescribed functions under chapter 2, including, for example, to promote the safety of children, continuous improvement by child safe entities to ensure the safety of children, and to monitor implementation of, and compliance with, the CSS and Universal Principle (clause 13).

To ensure proper and effective responses to non-compliance with CSS obligations under the Bill, including providing education and guidance, it is necessary for the Commission to exercise powers to investigate compliance. This further promotes the safety of children within institutional contexts, including their wellbeing and best interests, under the CSS framework. The purpose of the limitation is consistent with the protection of families and children (section 26, HR Act), which promotes the right of every child, without discrimination, to the protection

that is needed by the child, and is in the child's best interests, because of being a child.<sup>7</sup> Likewise, the purpose is consistent with the right to liberty and security of person (section 29, HR Act). CSS provide a mechanism for ensuring children are safe in organisations, and the powers of the Commission are intended to protect children by building the capability of child safe entities to achieve and maintain child safe policies, procedures and practices in compliance with the CSS and Universal Principle.

The cultural rights of Aboriginal and Torres Strait Islander peoples (section 28, HR Act) are also promoted with the powers of the Commission to exercise these measures of enforcement to ensure child safe entities are providing an environment that promotes and upholds the cultural safety of Aboriginal and Torres Strait Islander children in compliance with the Universal Principle. These are proper purposes consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will achieve the purpose by ensuring child safe entities are implementing and complying with the CSS and Universal Principle, and enabling the Commission to proportionately respond to concerns of non-compliance.

The Royal Commission recommended that state and territory governments should ensure CSS oversight bodies take a responsive and risk-based approach when monitoring compliance with the CSS and, where possible, utilise existing regulatory frameworks to monitor and enforce the CSS (recommendation 6.10(c), Volume 6, Final Report). A core principle of responsive regulation as contemplated by the Royal Commission was taking a proportionate approach to compliance, where a range of enforcement measures are available, and where coercive measures are only used when less interventionist measures have not successfully achieved compliance. Regulatory efforts should be focused on improving safety for children and prioritising cultural change in organisations, rather than meeting prescriptive compliance requirements.<sup>8</sup>

Further, the CRIS consultation process highlighted that while there is strong stakeholder support for capacity building as the first response of the Commission to indicators of non-compliance, a range of enforcement methods and penalties are also strongly supported to ensure significant non-compliance can be addressed where capacity building responses have not addressed concerns.<sup>9</sup>

Consistent with the Royal Commission's commentary and stakeholder feedback, the Bill provides the Commission with a graduated suite of compliance and enforcement powers to allow regulatory responses to be flexible, proportionate and tailored according to the characteristics and risk profile of a child safe entity. This includes the ability for the Commission to issue compliance notices requiring remedial action, accept written undertakings (*enforceable undertakings*) and publish details of non-compliance (clauses 18-22, 24).

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<sup>7</sup> Ibid.

<sup>8</sup> *Royal Commission* (Final Report, December 2017) vol 6, 275 <[Making institutions child safe | Royal Commission into Institutional Responses to Child Sexual Abuse \(childabuseroyalcommission.gov.au\)](#)>.

<sup>9</sup> Queensland Government, *Growing Child Safe Organisations in Queensland Decision Impact Analysis Statement* (Report, 22 March 2024) 112 <[Growing child safe organisations | Community support | Queensland Government \(www.qld.gov.au\)](#)>.



By publishing information that a child safe entity is non-compliant with a compliance notice or an enforceable undertaking, child safe entities are held to account in a transparent, accountable process, which seeks to ensure the safety of children that the entity engages with. Similarly, issuing compliance notices achieves the purpose of the limitation by requiring the child safe entity to take action to address non-compliance and become child safe.

When the Commission applies to a court for assistance with enforcing compliance with the CSS and Universal Principle, where an entity has failed to comply with a compliance notice or enforceable undertaking, the court may make orders appropriate to enforce compliance. These orders may further achieve the purpose of the limitation where the child safe entity is required to comply with the compliance notice or enforceable undertaking, to implement and comply with the CSS and Universal Principle.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive or reasonably available alternatives to ensure the Commission is empowered to provide proportionate, responsive regulatory approaches to ensure compliance with the CSS and Universal Principle. Noting the diversity and complexity of organisations proposed to be in scope of CSS obligations, the Commission needs a graduated suite of enforcement powers, tailored to the characteristics of a child safe entity and potential or actual non-compliance.

The Bill contains safeguards for the exercise of these powers by the Commission, including that the Commission is to adopt the most effective and proportionate means of assisting child safe entities to comply with CSS obligations (clause 14). This is intended to provide that enforcement powers are exercised proportionately to the risk identified by a child safe entity, on the basis of its characteristics. Such enforcement powers should not be used where education and guidance will address the issue of non-compliance.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Bill seeks to strike a fair balance in providing for a graduated suite of enforcement powers for the CSS and Universal Principle to promote the safety of children within Queensland organisations, while also emphasising that such powers are to be exercised in a proportionate and risk-responsive manner, with education and capacity building the primary focus of the Commission.

On balance, it is considered that the limitation of the rights is reasonable and demonstrably justified to protect the safety and wellbeing of children by ensuring compliance with CSS obligations, which outweighs the limitation on privacy and reputation that may result when the Commission exercises such powers.

(f) any other relevant factors

Nil.

## **Reportable Conduct Scheme**

### **Information sharing**

#### ***Right to privacy and reputation***

(a) the nature of the right

As noted above, the scope of the right to privacy and reputation (section 25(2), HR Act) is broad and relates to a person's personal information as well as their home and family life. The Bill includes a broad information sharing framework to enable prescribed reporting entities to share relevant information regarding the RCS (clause 49). This includes the Commission and equivalent oversight bodies in other jurisdictions with an RCS, sector regulators, reporting entities, government departments, police services in Queensland and other jurisdictions, and prescribed oversight bodies. Relevant information includes, for example, information regarding the progress, findings and reasons as part of an RCS investigation.

This will limit the right to privacy as prescribed reporting entities may share personal information, as part of relevant information, under this provision, if it is for a prescribed purpose.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of information gathering and sharing under the RCS is to promote the safety of children in institutions, and protect children from harm, by improving how institutions respond to and investigate allegations of reportable conduct, with cross-sectoral oversight by an independent body.

Information sharing and gathering will contribute to oversight of how organisations respond to allegations of harm but also prevent people, who are known to be a risk to children but where the risk may not be reflected through a criminal record, from engaging with children across different institutions. This is intended to prevent these people, who pose a risk to children, from being able to move to different organisations or sectors to avoid detection. Information sharing is also intended to contribute to other regulatory frameworks, such as those regulated by sector regulators and oversight bodies, aimed at promoting the safety and wellbeing of children. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation to an individual's right to privacy will achieve the purpose by ensuring that organisations and government entities that have relevant functions in relation to the RCS, or protection of children from harm, are able to access information for the purposes prescribed under clause 49. This includes, for example: if necessary to lessen or prevent a serious risk or threat to the life, health or safety of a child or class of children; to enable the investigation of criminal conduct by police services; or if relevant for a reporting entity or sector regulator to take appropriate action in relation to a finding of reportable conduct.

Broad sharing of information related to a reportable allegation or a reportable conviction will enable these services and regulators across different sectors (such as the Queensland College of Teachers, Working with Children Check) to collaborate to prevent people who are known to be a risk to children, but who may not have criminal records that reflect this, from engaging with children across different institutions.

Experience with RCSs in New South Wales and Victoria demonstrate that the intelligence gathering component has been critical to identifying persons who pose a risk to children. The Royal Commission found the RCS enables prevention and early detection of child sexual abuse by assisting institutions to identify high-risk situations and employees through information gathering. Sharing information about people who are a known risk to children, but who may not have relevant criminal records, allows their engagement with children to be limited, which will prevent harm to children.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the RCS. A model that does not enable the collection and sharing of information obtained under the RCS between agencies is not feasible as it will significantly compromise the operation of the RCS, including the ability of the Commission to identify individuals of concern, as well as patterns of risk to children and to prevent further harm.

The Bill includes protections around information sharing to ensure information is only shared in circumstances where it is reasonably necessary for the protection of children. Information may only be shared in limited circumstances, such as if it is necessary to lessen or prevent a serious risk or threat to the life, health or safety of a child or class of children; or to enable a police service to investigate criminal conduct. The framework is enabling, so it does not compel prescribed reporting entities to provide information.

Clause 49 also does not include the sharing of evidentiary material or a relevant record or transcript which is regulated under clause 52. Clause 52 enables a prescribed RCS entity or the Commission to request from the Director of Public Prosecutions (DPP) or police commissioner, evidentiary material in relation to a charge or conviction that may involve reportable conduct, and the Commission only to request certain witness statements under the *Evidence Act 1977* due to their sensitive nature. The DPP or police commissioner may refuse to disclose the requested information including, for example, if it will prejudice an investigation or prosecution before a court.

A prescribed reporting entity is also subject to the offence against unauthorised use or disclosure of information obtained under the RCS (clause 57) as well as the prohibition on publication of particular information (clause 58).

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The ability to gather and share relevant information between prescribed RCS entities, for the purposes of the RCS, strikes a fair balance between the right to privacy and reputation and the public benefit gained from protecting children from harm in institutional settings. This fair balance is achieved as the limitation is not arbitrary and the importance of ensuring that institutions are a safe place for children, and preventing harm to children, outweigh the interference with a person's privacy. Safeguards will be in place to ensure that information is shared only to the extent necessary for the operation of the RCS, to effectively prevent harm to children.

- (f) any other relevant factors

Nil.

## **Scope of reportable conduct and reporting obligations**

### ***Right to privacy and reputation***

- (a) the nature of the right

As noted above, section 25(2) of the HR Act recognises a person's right to privacy and reputation.

The scope of 'reportable conduct' will include conduct that is outside the course of a worker's role with the reporting entity, as well as historical conduct before the employee was engaged by an entity (in limited circumstances) (clauses 26, 112). The RCS also requires heads of reporting entities to notify the Commission if they become aware of a reportable allegation or reportable conviction, which may involve reportable conduct, and investigate and report on the matter, which may include information in relation to a worker's home and personal life depending on the nature of the allegation or conviction (clauses 36, 37).

The right will be limited as personal information relating to a worker's home and family life may be collected and investigated.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Mandatory reporting of reportable allegations and reportable convictions aims to protect children from harm and promote their safety and wellbeing. The purpose of including conduct outside a worker's role as well as historical conduct, as part of reporting and investigation obligations under the RCS, is also to promote the safety of children in institutions, and protect children from harm, by improving how institutions respond to and investigate allegations of reportable conduct.

This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

In particular, this includes preventing people who pose a risk of harm to children in any setting, from having access to children in an organisational setting. This means that heads of reporting entities will be required to report conduct, regardless of whether it occurs within a specific role or workplace setting, that includes: a child sexual offence, sexual misconduct committed in relation to, or in the presence of a child; ill-treatment of a child; physical violence committed in relation to, or in the presence of, a child; significant neglect of a child; or behaviour that causes significant emotional or psychological harm to a child. This goes to the broader purpose of the RCS to prevent harm to children.

The inclusion of historical conduct also ensures that allegations of reportable conduct and reportable convictions may still be investigated and responded to if a new allegation is made after the commencement of the scheme. This aims to limit consideration of all historical conduct but still provide a mechanism for investigations that may impact the engagement of a current worker of an entity.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation to a worker's right to privacy, through mandatory reporting and investigation of particular conduct, will achieve the purpose by ensuring that organisations in scope respond to reports of child abuse appropriately, with the oversight of the Commission. This responds to findings by the Royal Commission of widespread under-reporting to authorities where abuse towards children was known or suspected, and insufficient responses to reports of harm. This also captures a broader scope of conduct and workers than existing regulatory frameworks aimed at the protection of children, including the Working with Children Check, mandatory reporting within the child protection and education sectors, and failure to report and failure to protect offences under the Criminal Code.

Inclusion of conduct that is outside the course of a worker's employment, and for certain historical conduct, will also achieve the purpose as the RCS predominantly targets individuals who work in institutions that exercise a high degree of responsibility for children and engage in activities that involve a heightened risk of child abuse. Due to the nature of these roles, an individual's reportable conduct outside of their employment is equally important to indicate whether they pose a risk to children in a professional setting. This may also apply to historical conduct if the worker is still engaged by the entity in a role that may expose them to children. The scheme is intended to address any current risk a worker may pose to children. All RCSs in other jurisdictions include reportable conduct whether or not the conduct is alleged to have occurred within the course of a person's employment, as long as the person was a worker at the time the reporting entity/employer became aware of the allegation.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

While it would be less restrictive to only include conduct that occurs in the course of a worker's role, or post-commencement of the Act, this would not adequately address all risks of harm to children and therefore would not achieve the purpose of the limitation. It would limit an organisation's ability to identify and report persons who may pose a risk to children in other settings.

It is expected that the level of investigation about a report that relates to a worker's home or family life will be lawful and proportionate to the harm alleged which will reduce the potential interference. Additionally, the Victorian and New South Wales experience is that there are very few reports that relate to conduct outside the course of employment, and therefore it is predicted that this interference will be small. Allegations of historical conduct may be more complex and require support from the Commission, for example, where the entity is unable to undertake the investigation.

A less restrictive option for reporting obligations may be to rely on existing reporting mechanisms such as mandatory reporting requirements that oblige certain professionals to make a mandatory report to Child Safety if the person has a 'reasonable suspicion that a child has suffered, is suffering or is at an unacceptable risk of suffering significant harm caused by physical or sexual abuse and may not have a parent able and willing to protect them'. While this is one important existing safeguard under the existing mandatory reporting framework, such reports of harm may not be identified as a risk in an employment setting. The RCS will capture a broader range of conduct, which may occur across different settings. As such, this alternative option will not achieve the intended purpose.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The scope of reportable conduct and reporting obligations under the Bill strike a fair balance between the right to privacy and reputation, and the public benefit from protecting children from harm in institutional settings. The ability to report on, and collect information about, a person's home and family life will be limited to the extent it relates to an allegation of reportable conduct or reportable conviction, and to facilitate an investigation in response to that matter.

As noted above, there will be safeguards surrounding how this information will be collected and shared. This limitation will promote the safety of children in institutions by allowing institutions to gain a more holistic view of a worker and the risks they pose, as well as limiting movement of an individual who poses a risk of harm to children across high-risk sectors.

- (f) any other relevant factors

Nil.

## **Investigations by reporting entities and the Commission**

### ***Right to privacy and reputation***

- (a) the nature of the right

Section 25(2) of the HR Act recognises a person's right to not have their privacy, family or home or correspondence unlawfully or arbitrarily interfered with, and their reputation unlawfully attacked. The scope of this right is broad and relates to a person's personal information as well as their home and family life.

Clause 36 requires the head of a reporting entity to ensure an investigation into a reportable allegation or reportable conviction is conducted. Clause 43 of the Bill provides that the Commission may conduct direct, own-motion investigations into a reportable allegation or reportable conviction. The Commission's function will be supported by powers of investigation including the power to compel stated information or documents from a person or entity, such as the power to require reasonable help from a person while at a premises (clauses 86, 87) or to provide information regarding the Commission's investigation under chapter 3 (clauses 91, 92). Any investigation may include confidential and sensitive information regarding the worker the subject of the allegation, the child to which the matter relates, or other persons involved in the matter, which will limit the right to privacy and reputation.

The power to request and compel information/documents, interview witnesses, and enter and search premises, as part of an investigation, will limit the right to privacy of employers and employees.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The requirement for reporting entities to arrange for an investigation if they become aware of a reportable allegation or reportable conviction, and the Commission's ability to conduct own-motion investigations of organisations, is to promote the safety of children in institutions, and protect children from harm, by improving how institutions respond to and investigate allegations of reportable conduct. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation of a person's right to privacy, which may occur if they are the subject of an investigation by a reporting entity, will achieve the purpose by ensuring institutions respond appropriately to reports of harm by arranging for an investigation of reportable conduct. The limitation of a person's right to privacy, if subject to an investigation by the Commission, will achieve the purpose as it provides an independent level of scrutiny of a reporting entity's investigations and will improve transparency and accountability under the scheme.

The Commission may conduct an investigation in certain circumstances that may warrant independent oversight and intervention, such as if it is in the public interest, or the Commission believes the head of the reporting entity has failed to investigate, or is reasonably unable to investigate. This means this is a discretionary function that the Commission will be able to use in exceptional circumstances. This supports the purpose of the RCS to protect children from harm and promote their safety and wellbeing.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no less restrictive or reasonably available way to achieve the purpose of the Bill, as the mandatory element of investigations is critical to achieving the purpose. The Royal Commission found that reports were not made regarding known or suspected child sexual abuse to law enforcement agencies, child protection departments and other government authorities

when there was a legal obligation as well as when it was voluntary. A voluntary scheme would not bolster the intended protections of the RCS, to oblige institutions to report, and respond to reports of harm through investigations, with the oversight and assistance of an oversight body.

Own motion investigations are also proposed in limited circumstances, such as where the Commission considers it is in the public interest, or an organisation is unable or unwilling to conduct the investigation. Any use of investigative powers, particularly where a warrant is not required, must be commensurate to the seriousness of the reportable allegation and/or conviction.

The Bill includes safeguards such as offences against the disclosure of confidential information in administration of the Act (clauses 56, 57). Investigations must also comply with the requirements of procedural fairness. The hearing rule requires the decision-maker to give a person whose interests may be affected, a reasonable opportunity to respond before a decision is made. The Bill provides that prior to an investigation ending, a reporting entity or the Commission (as applicable) must ensure the worker is given written notice of any proposed adverse findings and a reasonable time to provide written submissions in response, which must be considered (clauses 36, 43).

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The requirement for an investigation by reporting entities, and ability of the Commission to conduct own motion investigations, strike a fair balance between the right to privacy and reputation and the public benefit gained from protecting children from harm in institutional settings. The nature of reportable conduct is considered sufficiently serious that it over-rides any limitation of these rights, noting the intent of the RCS is to protect children from harm and workers that may pose a risk of harm to children, from moving across sectors and entities that may exercise care, supervision or authority over children.

(f) any other relevant factors

Nil.

## **Reportable allegations and reportable convictions made during religious confession**

### ***Freedom of thought, conscience, religion and belief***

(a) the nature of the right

Section 20(1) of the HR Act protects a person's right to freedom of religion, including the freedom to observe a religious belief in practice. The Bill will require heads of reporting entities to notify the Commission of reportable allegations and reportable convictions, with no exceptions made for information received during otherwise confidential or secret discussions, including religious practices (clause 34).

The freedom of religion will be limited as it is proposed that the RCS will require reporting of reportable allegations or convictions, even where it is ascertained during religious practices,



including the Sacrament of Confession. This includes where religious practice requires confession to be kept confidential.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of ensuring reportable allegations and reportable convictions include information received in otherwise confidential discussions (for example, religious practices) is to protect children from harm, by improving how institutions respond to and investigate allegations of reportable conduct. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to freedom of religion will achieve the purpose, as it will ensure religious institutions are not exempt from reporting and investigation obligations by virtue of religious practices where confessions are kept confidential. This is also necessary as the Royal Commission heard a high proportion of child sexual abuse cases occurred in religious institutions and found evidence of many inadequate institutional responses.

Further, the particular nature and characteristics of religious institutions have contributed to a heightened risk of child sexual abuse. This includes cultures of secrecy which may be perpetuated if exceptions are made for religious practices. RCSs in some other jurisdictions include information received during otherwise confidential religious confession.

Existing regulatory frameworks for the religious sector are minimal, with no independent oversight of child safe practices. Capturing reportable allegations that occur during otherwise confidential religious practices, as part of the scope of the RCS, is essential to achieving the purpose of preventing harm to children.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

A less restrictive approach is adopted in the Australian Capital Territory (ACT), where allegations made during religious confession are only reportable if they relate to sexual abuse against a child or non-accidental physical injury to a child. However, it is considered that this will not achieve the purpose of the scheme in Queensland, to prevent and address harm to children. ACT's approach will not address other risks to children, including sexual misconduct and behaviours that cause significant psychological or emotional harm to children.

It is considered crucial that reportable allegations made during otherwise confidential religious practices are reportable under the scheme, particularly as the Royal Commission emphasised the heightened risk of harm to children in religious institutions. The scheme will not go far enough to protect children if exceptions are made for these particularly high-risk environments.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The inclusion of religious practices, and religious institutions where there are activities or services through which adults have contact with children, as part of an RCS, is a critical element to protect children from harm in religious institutions. While the Royal Commission only specifically recommended the inclusion of religious confessions in relation to mandatory reporting to the police, it highlighted how religious institutions present a high risk of institutional harm to children.

Noting this increased risk, it would be inconsistent with the purpose of the RCS to create a special exception for religious institutions. However, this limits a person's freedom to demonstrate their religion or belief. For example, the practice of the Sacrament of Confession to a priest of the Catholic Church is a fundamental religious practice and belief. However, the need for children to have safe spaces from all types of harm outweighs the necessary and limited intrusion on this otherwise confidential religious practice. In line with the Royal Commission's conclusion, the right to practise religion cannot prevail over the safety of children, and religious institutions that are tasked with caring for, or providing services for children, must provide an environment where children are safe from harm. On balance, the purpose of the provisions outweighs the limitation on the right.

- (f) any other relevant factors

Nil.

## **General provisions – child safe standards and reportable conduct scheme**

### **Enforcement powers of authorised officers**

- (a) the nature of the right

#### ***Right to privacy and reputation***

As noted above, section 25 of the HR Act provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and not to have the person's reputation unlawfully attacked. The right to privacy protects the individual against interference with their physical and mental integrity, including personal information, data collection and correspondence.

The right to privacy will be limited by the Bill where an authorised officer may require a person to provide information, including personal information, if they exercise their powers relating to investigation, monitoring and enforcement of compliance with the Act (clause 63) including:

- powers of entry with consent or under a warrant (clause 73);
- general powers upon entry – searching and inspecting the premises, including examining documents; making enquiries with people on the premises; observing activities on the premises; taking photographs (clause 85);
- power to require reasonable help from a person while at a premises, including to provide information or a document (clauses 86, 87);

- power to require a person to provide their personal details, including name and residential address (clause 89); and
- power to require a person to answer questions or provide information or a document based upon a reasonable belief that an offence has been committed against the Act (clauses 91, 92).

Clause 91 also applies if an authorised officer reasonably believes a relevant person may be able to give information regarding specific obligations under the Act regarding compliance by a child safe entity with the CSS and Universal Principle; a reporting entity's systems or final report; or an investigation by a sector regulator or relevant to the Commission's own investigation.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the investigative and enforcement powers of authorised officers is to promote the safety of children in institutions and protect children from harm. The ability to compel information from relevant persons is critical to the Commission's ability to investigate and promote compliance with obligations under the Act regarding the CSS and Universal Principle and RCS. The ability to enter premises is also critical to the Commission's ability to thoroughly investigate potential breaches of offences. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation helps to achieve the purpose by ensuring the Commission has adequate investigative powers to obtain necessary information to enforce obligations under the CSS and Universal Principle, and RCS, and to determine whether there have been offences committed under the Act. These offences include, for example:

- failure to comply with a compliance notice under the CSS and Universal Principle (clause 18) or failure to comply with an enforceable undertaking (clause 21);
- failure of the head of an entity to notify the Commission of a reportable allegation or reportable conviction within prescribed timeframes (clause 34);
- unauthorised use or disclosure of confidential information or publication of information that would enable identification of particular persons (clauses 57, 58); or
- taking a reprisal against a person that provides assistance under the Act (clause 60).

The limitation further supports its purpose as it ensures authorised officers are able to obtain and examine evidence to determine if any offence has been committed. This includes appropriate powers for its authorised officers to be able to properly conduct an investigation into a reportable allegation or reportable conviction, including to determine if the allegation is substantiated or the reporting entity has responded appropriately to an allegation.

The powers of authorised officers of the Commission to enforce compliance where there is a risk identified to children also meets the purpose of the limitation where authorised officers can enter and investigate a child safe entity's or reporting entity's premises, including to require assistance and information, to assess potential or actual non-compliance with the CSS and

Universal Principle, and the RCS. Similarly, the ability for an authorised officer to inspect documents or require information from persons supports a proportionate regulatory approach where there has been potential or actual non-compliance. Without the ability to require information from persons regarding potential or actual non-compliance, the Commission would be unable to provide effective oversight of the CSS and RCS.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The Commission will not be able to perform its oversight and investigative functions adequately without these enforcement powers. For example, the Commission will not be able to conduct a fulsome own-motion investigation without core investigative powers, which range from requests for information to the ability to enter premises, if required. Therefore, less restrictive options of not enabling these powers or including lesser powers would not meet the purpose of the CSS or RCS.

Additionally, the Bill provides safeguards to the exercise of enforcement and investigation powers, including:

- permitting entry to a premises with the informed consent of the occupier or with a warrant (clause 73);
- powers to require personal details, information or attendance being exercisable only where there is a reasonable suspicion or reasonable belief that a person has committed an offence and/or they may be able to give information about the offence (clauses 89(1), 91(1));
- offences for failing to provide personal details, failing to provide information or attendance, applying unless a person has a reasonable excuse (clauses 90(1), 92).

Where information obtained by an authorised officer exercising powers to compel information disclosure from a person may tend to incriminate a person, the Bill provides further safeguards under clause 97 which are analysed below.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The use of investigative powers by the Commission strikes a fair balance between the right to privacy and reputation, and the public benefit gained by protecting children from harm in institutional settings through the enforcement and proper administration of the CSS and RCS. In ensuring appropriate and proportionate responses to identified concerns of non-compliance with the Act, the Commission (and authorised officers) can further protect children by taking a responsive, graduated approach to addressing risk of harm.

The Commission must be enabled to effectively oversee compliance with obligations under the CSS and RCS, and against breaches of other offences (such as those relating to confidentiality of information, publication of particular sensitive information, or taking reprisals). On balance, it is considered that the purpose of these enforcement powers outweighs the limitation of the rights.

(f) any other relevant factors

Nil.

## **Abrogation of privilege against self-incrimination**

### (a) the nature of the right

#### ***Right to a fair hearing***

Section 31 of the HR Act provides that a person charged with a criminal offence or party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The right affirms the right to procedural fairness when coming before a court, including proceedings of tribunals and administrative decision-makers.<sup>10</sup>

The offences provided under clause 87 (Offence to contravene help requirement) and clause 92 (Offence to contravene information or attendance requirement) provide that it is not a reasonable excuse for a person to fail to provide information that may tend to incriminate them or expose them to a penalty.

A person's right to a fair hearing will be limited where they are not excused from answering questions or providing information or a document to an authorised officer upon request, even where such information may tend to incriminate them or expose them to a penalty under the Bill (see clauses 87(2), 92(3)).

### (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of this limitation is to promote the safety of children in institutions and protect children from harm, by ensuring a person is not excused from providing relevant information to an investigation to identify potential non-compliance with the Act or as part of the Commission's investigation under the RCS, even where it is incriminating. This ensures the protection of other human rights, including the protection of children's safety, wellbeing and best interests (protected under section 26, HR Act) and security of person (protected under section 29, HR Act) through the identification of risk of harm or occurrence of harm against a child within an organisation. This is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

### (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will help to achieve the purpose by providing that an authorised officer, and therefore the Commission, can receive and access all information it reasonably believes is necessary to assess compliance with the CSS and Universal Principle or RCS. If a person fails to answer questions or provide information on the basis that they may be exposed to a penalty, this will hamper an investigation by the Commission as it relates to whether the child safe entity or reporting entity has failed to uphold their obligations, or a finding as to whether a worker has exhibited reportable conduct.

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<sup>10</sup> See *Kracke v Mental Health Review Board* [2009] VCAT 646, [415].

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive or reasonably available ways to achieve the purpose of ensuring an authorised officer can effectively investigate compliance with the Bill, and thereby support the Commission's functions to provide effective oversight of the CSS and Universal Principle, and RCS. Without the provisions, individuals will not be required to inform the Commission of potential or actual non-compliance that may create a risk to a child or children in a child safe or reporting entity.

However, the Bill provides a safeguard under clause 97 so that, if an individual gives or produces information or a document to an authorised officer that may tend to incriminate the person, evidence of the information or document and other evidence directly or indirectly derived from the information, is not admissible against the individual in any proceeding to the extent it may incriminate the person or expose them to a penalty. This immunity does not apply to proceedings about the false or misleading nature of the information or documents where the false or misleading nature of the information or document is relevant evidence to the proceeding. This is intended to reasonably balance the limitation against the protection of the right to ensure individuals are encouraged to provide accurate information to authorised officers exercising their powers.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the limitation of the right to a fair hearing is reasonable and demonstrably justified to ensure the protection of children within Queensland organisations. The Commission will be able to receive accurate information through investigations into compliance with the Bill that seek to ultimately protect children from harm in institutional settings. The provision strikes a fair balance in providing that a person must provide information that may tend to incriminate them, while also ensuring that the information cannot be used against them in a proceeding. On this basis, it is considered the safety and wellbeing of children outweighs the limitation on the right to a fair hearing.

(f) any other relevant factors

Nil.

### **Offence for concealing, destroying or altering documents**

(a) the nature of the right

#### ***Right to a fair hearing***

As noted above, section 31 of the HR Act provides that a person charged with a criminal offence or party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The

right also includes a right to procedural fairness and may consider the underlying value of the State in proving its case without recourse to the defendant.<sup>11</sup>

The right will be limited where clause 103(3) creates a reverse onus of proof, where the defendant bears the evidential and legal burden to prove in a proceeding for an offence against that section that the defendant did not act with the intent to defeat the purpose of chapters 2 or 3 or delay or obstruct an investigation by the Commission or an authorised officer under the Bill.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the provision is to promote the safety of children in institutions and protect children from harm, by protecting the accuracy and integrity of investigations into compliance with the Bill. It further ensures that documents requested by an authorised officer or the Commission are not concealed, destroyed, mutilated or altered by a person, particularly where the documents may be evidence of an offence against the Bill.

The reverse onus is also for the purpose of acknowledging that the matter to be proved is within the particular knowledge of the defendant, rather than the prosecution, and the evidential onus is therefore justifiably placed on the defendant.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation helps achieve the purpose by providing that the defendant is to prove that they did not intend to conceal information or a document with the intent to obstruct an investigation. This would be within the particular knowledge of the defendant, as the owner or possessor of the information or document, and would be unduly onerous for the prosecution to investigate and establish where any evidence of the offence has been allegedly tampered with or altered by the defendant.

In its Final Report, the Royal Commission noted research that some institutional structures and hierarchies are particularly likely to operate in ways that conceal child sexual abuse.<sup>12</sup> The Royal Commission found widespread under-reporting of known or suspected abuse of children within institutions which had profound negative consequences.<sup>13</sup>

Clause 103(3) is intended to facilitate appropriate handling of information or documents by entities, to ensure accountability and transparency is maintained to achieve compliance with the Bill. This is integral to an effective CSO system, with the offence seeking to address any instances of non-compliance with these obligations where there is an intent to conceal relevant information or offences from the Commission.

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<sup>11</sup> See *Knight v Wise* [2014] VSC 76 [36].

<sup>12</sup> *Royal Commission* (Final Report, December 2017) vol 7, 55 <[Improving institutional responding and reporting | Royal Commission into Institutional Responses to Child Sexual Abuse \(childabuseroyalcommission.gov.au\)](#)>.

<sup>13</sup> *Ibid* 9.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive or reasonably available ways to achieve the purpose of ensuring transparency of entities subject to obligations under the Bill and providing for the integrity of investigations by the Commission and authorised officers. Without the reverse onus on the defendant to prove they did not intend to conceal, destroy, mutilate or alter information or a document necessary for an investigation, the prosecution may have a substantial burden to establish non-compliance on the balance of probabilities. This is particularly in circumstances where the defendant has particular knowledge of their conduct and the relevant document or evidence, and conduct that contravenes this provision may delay and obstruct an investigation under the Bill.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Clause 103(3) seeks to ensure the purpose of effective and accurate investigations into potential or actual non-compliance with obligations of entities under the Bill, while also considering the intent to conceal any information or documents is within the particular knowledge of the defendant.

On balance, it is considered that the purpose of the provision, to ensure compliance with the Bill to protect the safety of children, outweighs the limitation on the right considering the defendant would have appropriate knowledge of the matter in a proceeding.

(f) any other relevant factors

Nil.

### **Other reports**

(a) the nature of the right

#### ***Privacy and reputation***

Section 25 of the HR Act provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with, and not to have the person's reputation unlawfully attacked.

The Bill provides that the Commission may, at any time, prepare a special report on any matter relating to the performance of its functions (clause 104). The Commission may publish these reports; however, this requires appropriate consideration and tabling of the report by the Minister in the Legislative Assembly.

Such reports may include adverse information about an entity (clause 105), which will limit the right to privacy and reputation of individuals involved with the entity.



- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to promote the safety, wellbeing and best interests of children engaging with child safe entities and reporting entities. It will enable the Commission to prepare and provide reports on the operation of the CSS or RCS in Queensland, identifying systemic trends and investigating systemic issues as appropriate. This is intended to support the Commission's role in overseeing implementation of, and compliance with, CSS and RCS obligations under the Bill to ensure regulatory approaches remain responsive to entities providing child safe environments.

This purpose is consistent with the right to the protection of children and families (section 26, HR Act) in promoting children's safety through transparency and guidance provided within reports prepared by the Commission. This is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will help to achieve the purpose where the Commission may fulfill its functions in providing oversight of the CSO system through the preparation of reports, including where it may include information relating to entities in scope of the Act. By preparing reports, including where the Minister approves such reports for tabling in the Legislative Assembly, the Commission is able to provide further advice and guidance in relation to the CSO system in Queensland, including with examples or case studies where appropriate.

Where the Commission may include adverse information about an entity within these reports, such information is intended to be carefully considered to ensure inclusion further promotes transparency and accountability, provided it is in the public interest for the report to be tabled or published. The reports also promote evaluations of the effectiveness of the Act and monitoring activities by the Commission, including by focusing on the systemic operation of the schemes.

In 2017, the Royal Commission noted reports from public inquiries, such as the 1997 Human Rights and Equal Opportunity Commission *Bringing Them Home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* and 2004 Senate Community Affairs Reference Committee *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children* report, were catalysts for raising community awareness of child harm and prompting the development of policies and other initiatives to improve child safety.<sup>14</sup>

Where adverse information relating to entities is proposed to be included within reports to be considered for tabling by the Minister, such information is intended to prompt further community awareness of systemic issues relating to child safe environments.

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<sup>14</sup> *Royal Commission* (n 9), 135.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive or reasonably available ways to achieve the purpose of ensuring the Commission may seek the publication of reports that support its role in oversight and monitoring of the operation of the CSO system. The Bill provides for adverse information to be considered within a report, with additional safeguards to mitigate the limitation on the right to privacy and reputation and provide procedural fairness for entities to respond to the comments made.

The Bill requires that, for a report to be tabled and thereby published, the Commission must give the report to the Minister with a recommendation as to whether it should be tabled in the Legislative Assembly (clause 104(1)). The Minister must consider multiple factors to ensure that publication of the report is in the public interest, including:

- whether it contains confidential information;
- information that may prejudice an investigation; and
- anything else relating to the public interest (clause 104(2)).

This ensures publication is in the public interest, particularly where the report may contain adverse information about an entity that is identifiable from the report. Where the Commission includes adverse information in the report, the Commission must provide the entity with a reasonable opportunity to respond to the report. If the entity provides a submission to the Commission in relation to the report, the Commission must have regard to the submission and include the submission or a summary of it in the report (clause 105(2)). This reflects procedural fairness principles in providing entities with the opportunity to respond and for that response to be appropriately considered by the Commission.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Clauses 104 and 105 strike a fair balance between enabling the Commission to prepare reports that promote the safety of children through guidance, transparency and accountability of the CSO system, and the right to privacy and reputation. The Bill includes safeguards to ensure any confidential or adverse information about an individual entity is carefully considered in decision-making as to the publication of reports.

On balance, it is considered that the benefit of publishing reports to promote the safety of children in the public interest outweighs the limitation on the right to privacy and reputation where reports achieve the purpose mentioned above.

(f) any other relevant factors

Nil.

## Conclusion

In my opinion, the Child Safe Organisations Bill 2024 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

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