

Queensland Food Farmers' Commissioner 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, Mark Furner MP, Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities, make this statement of compatibility with respect to the Queensland Food Farmers' Commissioner Bill 2024 (the Bill).

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

Overview of the Bill

The Bill establishes the Queensland Food Farmers' Commissioner (the QFF Commissioner). In establishing the QFF Commissioner, the Bill provides for the operational aspects of the QFF Commissioner including appointment, Ministerial expectations and direction, and reporting requirements.

The Bill proposes that the main functions of the QFF Commissioner are to:

- provide a primary point of contact for matters affecting farmers;
- to provide information and advice to help farmers understand and manage arrangements that govern relationships between supermarkets and their suppliers;
- to work collaboratively with State and Commonwealth entities and other persons responsible for regulating farmers, including, for example:
 - the commissioner for fair trading;
 - the Australian Competition and Consumer Commission; and,
 - Food Standards Australia New Zealand.
- to monitor and advise the Queensland Government on developments in national arrangements that govern the relationships between supermarkets and their suppliers;
- to report to the Minister about a particular issue or general matter affecting farmers or consumers, including, for example, improper behaviours and business practices adversely impacting farmers or consumers;
- to prepare reports about particular issues or general matters affecting farmers or consumers, or the commissioner's functions;
- to publish reports about particular issues or general matters affecting farmers or consumers, or the commissioner's functions, if the commissioner and the Minister consider publication appropriate; and,
- to perform any other function given to the commissioner under this Act or another Act.

Human Rights Issues

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

In my opinion, the Bill engages one human right under the HR Act, the right to privacy (section 25).

The clauses that are relevant to the right to privacy are:

- clause 5 – function of the QFF Commissioner to publish particular reports where appropriate; and,
- clause 26 – power for the QFF Commissioner to enter into information-sharing arrangements with a relevant agency.

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*)

Right to privacy – Publication of reports

(a) the nature of the right

The ***right to privacy*** in section 25 protects an individual from unlawful or arbitrary interferences and attacks on their privacy. An arbitrary interference is conduct that is capricious, unpredictable or unjust, or an unreasonable interference in that it is disproportionate to the aim. Accordingly, any limitation on the right to privacy must be proportionate. The scope of the right is broad, and the underlying value of the right is the importance of protecting a person's freedom from the unjustified involvement of public authorities in their private sphere.¹

The concept of 'privacy' is not defined in the HR Act. It has been interpreted to encompass information privacy, including personal information and health records and correspondence, and extends to an individual's private life, including a person's identity and physical and mental integrity.² Privacy can also include an individual's geographical or spatial privacy and property.

(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

Clause 5 of the Bill provides that the QFF Commissioner's functions include to publish reports on particular issues or general matters affecting farmers or consumers, or the commissioner's functions, where the commissioner and the Minister consider publication is appropriate.

The publication of reports where appropriate, particularly into broad issues affecting farm businesses or consumers will be crucial to ensuring public confidence in the QFF Commissioner.

Clause 5 of the Bill will limit the ***right to privacy*** to the extent that a report may contain private information relating to individuals or farm businesses and could be published.

(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

There is a rational connection between the limitation on the ***right to privacy***, and the purpose of authorising the publication of reports by the QFF Commissioner. Inherent in the nature of publishing reports generally is the engagement and potential limit of a person's right to privacy.

It is not possible to achieve this purpose without limiting the ***right to privacy***; the broad nature of the right to privacy means even the publication of de-identified personal information could be seen to limit a person's right to privacy.

¹ *Director of Housing v Sudi* [2010] VCAT 328 [29].

² *Kracke v Mental Health Review Board* (2009) 29 VAR 1; [2009] VCAT 646 [619]

- (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 alternatives to sharing this type of information. While the *Information Privacy Act 2009* makes provision for the use of information and provides safeguards for the handling of personal information in the public sector, these provisions are limited and not designed for the proactive sharing of information without consent.

Clause 5 contains appropriate limitations including that both the QFF Commissioner and the Minister must consider publication to be appropriate, and only about particular issues or general matters affecting farmers or consumers, or the commissioner's functions.

- (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 for the QFF Commissioner to publish of reports where appropriate, particularly into broad issues affecting farm businesses or consumers will be crucial to ensuring public confidence in the QFF Commissioner.

It is expected that in most cases reports would not need to contain any identifying personal information and that the nature and extent of any personal information contained in a report, and whether the relevant person had consented to publication would be relevant considerations for the QFF Commissioner and the Minister in deciding whether publication is appropriate.

On balance, the benefits of empowering the QFF Commissioner to publish reports where appropriate are considered to outweigh the limit on a person's privacy where the shared information relates to them.

- (f) any other relevant factors

Nil.

Right to privacy – Information-sharing arrangements

- (a) the nature of the right

The *right to privacy* in section 25 protects an individual from unlawful or arbitrary interferences and attacks on their privacy. An arbitrary interference is conduct that is capricious, unpredictable or unjust, or an unreasonable interference in that it is disproportionate to the aim. Accordingly, any limitation on the right to privacy must be proportionate. The scope of the right is broad, and the underlying value of the right is the importance of protecting a person's freedom from the unjustified involvement of public authorities in their private sphere.³

The concept of 'privacy' is not defined in the HR Act. It has been interpreted to encompass information privacy, including personal information and health records and correspondence, and extends to an individual's private life, including a person's identity and physical and mental integrity.⁴ Privacy can also include an individual's geographical or spatial privacy and property.

³ *Director of Housing v Sudi* [2010] VCAT 328 [29].

⁴ *Kracke v Mental Health Review Board* (2009) 29 VAR 1; [2009] VCAT 646 [619]

- (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

Clause 26 of the Bill provides that the QFF Commissioner may enter into an information-sharing arrangement with a relevant agency for the purpose of sharing information held or able to be accessed by the commissioner or relevant agency that assists the commissioner or relevant agency to perform their functions.

The Bill further provides that the QFF Commissioner and the relevant agency can ask for and receive information and disclose information to the other party. A relevant agency for this clause includes a chief executive of a department, a local government, or another entity established for a State government purpose that performs functions or administers matters relevant to farmers or consumers.

To adequately perform its role and support farmers, and consumers, it is anticipated that the QFF Commissioner may need to share information with other agencies to engage with and represent the interests of farmers. This may include sharing industry information with relevant Commonwealth or interstate agencies or bodies that also support farmers, and consumers.

Clause 26 of the Bill will limit the *right to privacy* to the extent that the type of information shared may be sensitive in nature, such as identifying details of farmers.

- (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

There is a rational connection between the limitation on the *right to privacy*, and the purpose of authorising information-sharing arrangements with other departments or relevant bodies. Inherent in the nature of information sharing generally is the engagement and potential limit of a person's right to privacy.

It is not possible to achieve this purpose without limiting the *right to privacy*, as even sharing information with other agencies only to the extent authorised under the *Information Privacy Act 2009* or other legislation would engage the right to privacy by nature of the information sharing. Clause 26 is intended to ensure the QFF Commissioner is appropriately empowered to share information to achieve the purposes of the role in supporting Queensland farmers, and consumers.

- (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 alternatives to sharing this type of information. While the *Information Privacy Act 2009* makes provision for the use of information and provides safeguards for the handling of personal information in the public sector, these provisions are limited and not designed for the proactive sharing of information without consent.

- (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 for the QFF Commissioner to enter into productive information-sharing arrangements with relevant agencies, including proactive sharing, will support the commissioner and other relevant agencies to undertake their functions and support Queensland farmers, and consumers.

Effective and efficient information-sharing is expected to support the QFF Commissioner, relevant agencies, and Queensland farmers, and consumers, including those whose information may be shared.

On balance, the benefits of information-sharing arrangements are considered to outweigh the limit on a person's privacy where the shared information relates to them.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Queensland Food Farmers' Commissioner 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 accordance with section 13 of the Act.

MR MARK FURNER
MINISTER FOR AGRICULTURAL INDUSTRY DEVELOPMENT AND FISHERIES
AND MINISTER FOR RURAL COMMUNITIES

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