

Arts (Statutory Bodies) and Other Legislation Amendment 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, Leeanne Enoch MP, Minister for Treaty, Minister for Aboriginal and Torres Strait Islander Partnerships, Minister for Communities and Minister for the Arts make this statement of compatibility with respect to the Arts (Statutory Bodies) and Other Legislation Amendment Bill 2024.

In my opinion, the Arts (Statutory Bodies) and Other Legislation Amendment Bill 2024 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

The Bill enshrines a greater recognition of First Nations peoples into the Arts Statutory Bodies legislation for our arts and cultural institutions. The Bill also provides the opportunity to modernise governance provisions, including increasing the range of best practice accountability and integrity changes, and removing a number of operational challenges experienced through Acts which have been largely unchanged since enactment (average 30 years ago).

Human Rights Issues

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

Privacy and reputation (s 24 *Human Rights Act 2019*)

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*)

(a) the nature of the right

The right to *privacy and reputation* provides that a person has the right –

- (a) not to have the person’s privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) not have the person’s reputation unlawfully attacked.

The Bill engages with this right with regards to the criminal history checking provisions with regards to:

- determine suitability of proposed nominees of government bodies;

- the requirement for members to disclose changes in criminal history (which includes an offence for failing to give the Minister notice unless with reasonable excuse; and for
- the treatment of a proposed nominees' criminal history information.

The Bill potentially limits this right by providing a legislative basis for the Minister to seek (with the person's consent) a criminal history report to determine whether a person is disqualified from becoming or continuing as a member. This goes to support that the rights of privacy are provided a narrow potential limitation and the inclusion of an offence for a person listed who does not handle such information with regard to the proposed nominees' privacy and reputation, potentially commits and offence.

(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 Bill contains the provisions for seeking criminal history reports as well as the requirement for a person to disclose any changes in criminal history in order to provide a direct legislative basis for these reports to be sought.

While the Cabinet Handbook does not specifically require criminal history reports, it notes that 'formal checks of criminal history, bankruptcy and eligibility to manage corporations should be conducted as relevant and where legislation specifies conditions for eligibility for appointment' (5.1.7 Cabinet Handbook).

Consistent with recent amendments across the Queensland Statute Book, these criminal history checking provisions provide a clear basis for the criminal history reports to be sought, as there is no formal basis for which they are being undertaken.

There is a need for the provision to provide this formal basis for criminal history reports to be undertaken, in order to fulfil the level of detail of a prospective appointee required by Cabinet Handbook, in order to manage the risks associated with appointments to Government bodies. Without a criminal history report, it is unlikely that a judgement on suitability would be able to be made.

The Cabinet Handbook notes where there are no legislative requirements, a statement from nominees should be sought. This has been deemed insufficient for the appointment board members to Arts Statutory Bodies, given their significant Statewide roles and State Budgets they receive, manage and administer.

(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 potential limitation helps achieve the purpose outlined above, noting that it:

- provides a clear legislative basis for reports to be sought, to achieve the requirements of the Cabinet Handbook; and
- is consistent with the Queensland Statute Book including recent legislation (eg. *Brisbane Olympic and Paralympic Games Arrangements Act 2021*)

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

The alternative outlined in the Cabinet Handbook (where there are no legislative requirements) is for the relevant Department to seek a statement from proposed nominees to confirm their suitability for appointment. This may not provide the sufficient detail to manage the risks associated with appointments to government bodies.

Therefore, there is no other effective mechanism which provides the same degree of risk management, which results in the potential limitation being necessary.

The alternatives include:

- continuing to conduct criminal history reports (without a legislative basis); or
- seek a statement of suitability from proposed nominees.

As outlined above, these alternatives do not sufficient manage the risks associated with appointments to government bodies, with the former potentially creating the opportunity for additional risks to be arise.

To provide some level of safeguards to the potential limitation on human rights, the provisions include:

- the requirement for the proposed nominee to consent to the criminal history report;
- limited for the purposes of using the criminal history information to determine a person's suitability as a member;
- for an offence to be made where an officer, employee or agent of the department directly or indirectly discloses another person's criminal history information obtained for the purposes of determining a person's suitability to be a member; and
- for a criminal history report to be destroyed as soon as practicable after it is no longer needed for the purpose given (determining suitability as a member)

These limitations to the provisions provide safeguards to the potential nominee in protecting their information and privacy.

(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 the basis of managing the potential risk of appointments to government boards, alongside the rights of a proposed nominee to privacy and reputation, there is a fair balance between the benefits gained by the public (assurance of suitability) with that of the rights of the individual.

The potential limitations of these rights are balanced by the above listed safeguards, which include an offence and penalties for individuals who do not respect these rights of privacy and reputation.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Arts (Statutory Bodies) and Other Legislation Amendment 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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