Criminal Code (Non-consensual Creation of Intimate Images and Audio Material) Amendment Bill 2026

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* (HR Act), I, Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity, make this statement of compatibility with respect to the Criminal Code (Non-consensual Creation of Intimate Images and Audio Material) Amendment Bill 2026 (the Bill).

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

Overview of the Bill

The objectives of the Bill are to strengthen the criminal justice response to intimate material related offending, ensure Queensland laws keep pace with rapidly evolving technology, and enhance protections for victims by:

- introducing a new offence to criminalise the non-consensual creation of an intimate image or intimate audio material, including threats to create such material;
- modernising and clarifying the definition of an 'intimate image';
- introducing a new definition of 'intimate audio material' to ensure the intimate material legislative framework captures audio-only sexualised material;
- enabling a rectification order to be made upon charge of an intimate image or prohibited recording offence, and without a requirement for conviction, allowing appropriate action to be taken sooner to delete or remove material; and
- clarifying the application of non-contact orders under the *Penalties and Sentences Act 1992* (PS Act) to protect victims of intimate material or prohibited recording offences.

The Bill also makes amendments to:

- the *Police Powers and Responsibilities Act 2000* (PPR Act), to enable judicial orders for access to digital devices in relation to the new offence for the non-consensual creation of intimate images or intimate audio material; and
- the *Working with Children Check Act 2000* (WWCC Act) and the *Disability Services Act 2006* (DS Act), to prescribe the new offence of non-consensually creating an intimate image or intimate audio material as a *serious offence*, when committed in relation to a child, or child or vulnerable person, for the purposes of screening under those Acts.

Human Rights Issues

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Criminalising the non-consensual creation of an intimate image or intimate audio material

(a) the nature of the right

The right to freedom of expression (section 21(2) of the HR Act) protects the right to seek, receive and impart information and ideas through any medium within or outside of Queensland, including where that expression might be offensive or disturbing. The proposed new offence limits this right by prohibiting the creation of certain depictions which are capable of imparting information or ideas to others.

The right to liberty and security (section 29(1) of the HR Act) protects people from arbitrary or unlawful arrest or detention. The right is directed at all deprivations of liberty and will be relevant whenever a person is placed at risk of imprisonment. The Bill limits this right as the proposed offence carries a maximum penalty of three years imprisonment.

(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 advancement of digital technologies, including artificial intelligence, has contributed to a normalisation of creating sexualised imagery and audio without the depicted person's consent. This is a form of abuse which may result in deep emotional and psychological trauma to the targeted individual. The creation of sexualised images or audio without consent represents a significant violation of a person's right to privacy, and as this conduct primarily targets women and girls, also undermines the right to equality and non-discrimination.

The purpose of the amendments is to protect individuals from this harm, appropriately reflect the seriousness of the conduct, and to express society's condemnation of this form of sexual abuse.

(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

Creating a new criminal offence which is targeted to this specific conduct helps to protect victims by facilitating the prosecution of those who engage in the creation of sexualised images or audio without consent. Maximum penalties in line with other image-based abuse offences appropriately reflects the seriousness of the conduct, and the reforms as a whole denounce and condemn this form of sexual abuse.

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

Other less restrictive alternatives, such as relying on education campaigns, would not be as effective as deterring activities through the creation of a new criminal offence and are therefore

not true alternatives. Relying on existing offences would also not be effective at achieving the purpose of targeting this 'creation of content' conduct, which is facilitated by rapidly evolving technologies, for which existing provisions are not as effective. As such, there are no less restrictive, reasonably available alternatives which respond to the unique harm caused by creating sexualised material without a person's consent.

The Bill also includes safeguards by ensuring defences are available for reasonable conduct engaged in for a genuine purpose, such as for a genuine public benefit or legal 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

On balance, while the new offence of creating intimate images or intimate audio material without consent may limit the freedom of expression, this is only to the extent that it targets truly harmful conduct and expressions. This relatively minor limit on expression is readily justifiable given the impact the creation of these depictions may have on victims.

The non-consensual creation of sexually explicit intimate image or audio material may constitute a violation of the depicted person's sense of self and bodily autonomy and infringes upon their right to protection against arbitrary interference with their individual identity.

Further, any limitation on the right to liberty is justified as the proposed maximum penalty of three years imprisonment is proportionate. This aligns with the maximum penalty for other similar image-based offence provisions in the Criminal Code and reflects the seriousness of the proposed offence. On balance, the importance of the purpose of this reform outweighs the limited impacts upon the right to freedom of expression and the right to liberty.

(f) any other relevant factors

Nil.

Modernising the existing framework

Criminalising threats involving the creation of intimate image or intimate audio material without consent

(a) the nature of the right

The Bill limits the right to freedom of expression (section 21 of the HR Act), as described above, by criminalising the expression of threats to create an intimate image, or to create or distribute intimate audio material.

By expanding the existing offence against threats to capture these expressions and imposing a custodial penalty of three years imprisonment for this conduct, the amendments also limit the right to liberty and security (section 29 of the HR Act), as described above.

(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

Threatening behaviour is an attack on a person's safety and sense of security. In the context of intimate material related abuse, threats to create this material can be emotionally distressing for victims and may constitute sexual abuse, coercive control and/or domestic violence. It may also form part of an escalating pattern of criminal or abusive behaviour that may lead to further harm or violence.

The purpose of expanding the threats offence is to denounce this behaviour through a penalty that appropriately indicates the seriousness of this conduct, and to protect victims from this harm.

(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 currently no criminal offence or associated penalty for threats to create an intimate image or intimate audio recording. The expanded offence, carrying a maximum penalty of three years imprisonment, achieves the purposes identified above by clearly condemning this conduct and indicating society's intolerance for this form of abuse.

(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 the Bill.

Condemnation of this behaviour through other means, such as an education or community awareness campaign, is not as effective in protecting victims from this harm as, without the proposed amendments, there would be no recourse for the prosecution of those who engage in this conduct. This is therefore not a true alternative.

(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 important purpose of denunciation and protection of victims overwhelms any limitation on the right to liberty and security and freedom of expression. A person's freedom of expression is only limited to the extent that they are prevented from expressing threats which are truly harmful.

These limitations are further justified as the maximum penalty is proportionate and aligns with penalties for existing intimate image related offences in the Criminal Code and other Australian jurisdictions.

(f) any other relevant factors

Nil.

Rectification orders

(a) the nature of the right

The Bill allows a rectification order to be made for an intimate material or prohibited recording offence as soon as a person is charged with that offence and without a requirement for conviction. This expands the circumstances in which these orders may be made.

The right to freedom of expression (section 21 of the HR Act), as described above, may be limited in circumstances where the person subject to the order has posted the relevant material on a social media or communication platform and removal is ordered. The maximum penalty of two years imprisonment for non-compliance may limit the right to liberty and security (section 29 of the HR Act), as described above.

If an order is considered on an interlocutory basis, or without a conviction, evidence considered, submissions or admissions made in the rectification order proceeding may be prejudicial to the accused. For example, through subsequent investigations, or where, subject to the rules of evidence, information or evidence obtained in the civil proceedings is later relied upon in the associated criminal proceedings. This limits the rights of an accused to a fair hearing as it infringes upon the privilege against self-incrimination (sections 31 and 32(k) of the HR Act).

(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 removal of content is often the most important remedy sought by a victim of image related abuse. Under existing provisions, rectification orders may only be made upon conviction, which may take place several months or years following the offence. This delay may increase a victim's apprehension and harm. The purpose of this limitation is to promote a victim's bodily autonomy and dignity by making rectification orders more readily available and decreasing delay in taking down the relevant material.

(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 amendments will help achieve the stated purpose by allowing rectification orders to be made on an interlocutory basis (at an earlier stage in the proceeding), and without a requirement for conviction, where currently an order can only be made following conviction.

These amendments are necessary to enable more frequent and earlier orders for removal of material which achieves the purpose of promoting bodily autonomy and privacy.

(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 would be to provide that any evidence considered in, or derived from, a proceeding for a rectification order is not admissible in a criminal proceeding or is only admissible with leave of the court. This would not as effectively achieve the purpose as it may cause delay in criminal proceedings or frustrate the investigation or prosecution of the offence through limiting evidence that can be admitted.

Other less restrictive alternatives, such as retaining the existing operation of rectification orders only after conviction would allow the offending conduct and the ensuing harm to continue for

the duration of the prosecution and would therefore not be as effective in achieving the purpose of the reform.

(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

What is 'fair' in the context of a criminal proceeding will involve a triangulation of the interests of the victim, the accused, and the community. Any prejudice to an accused as a result of the amendments is mitigated by safeguards provided in the Bill.

Importantly, the Bill provides that evidence that a rectification order was made, or evidence that a person complied, or did not comply, with a rectification order, is not admissible in any proceeding other than for an offence of failing to comply with an order. This ensures that evidence that is most at risk of being prejudicial will not be admissible, striking an appropriate balance between the interests of the victim and the accused.

If a rectification order is made, an accused will only be required to take reasonable action in removing the relevant material and may establish a reasonable excuse for failing to comply with an order.

Any limitation on the rights to liberty and security, the rights of an accused to a fair hearing, and the rights to freedom of expression are justified when balanced against the purpose, and to address the ongoing distress a victim may suffer as a result of the availability of this content. This supports the intent of the existing offence of distributing an intimate image in the Criminal Code, which denounces this conduct.

(f) any other relevant factors

Nil.

Clarifying the application of non-contact orders

(a) the nature of the right

The right to freedom of movement (section 19 of the HR Act) may be engaged where the state actively curtails a person's freedom of movement within Queensland.

The right to peaceful assembly and freedom of association (section 22 of the HR Act) protects the right of individuals to gather to exchange, give or receive information, to express views, or to conduct a protest or demonstration.

The right to protection of families and children (section 26 HR of the Act) recognises families as the fundamental group unit of society and entitles families to protection by the state.

Cultural rights – Aboriginal and Torres Strait Islander (section 28 of the HR Act) explicitly protects the right to live life as an Aboriginal or Torres Strait Islander person who is free to practise their culture.

Clarifying that non-contact orders also apply to the intimate material framework in the Criminal Code may be perceived to limit these rights, as described above, given the restrictions on

movement and communication that can be imposed and enforced under a non-contact order, which can require an offender to not contact the victim or go to a stated place.

The restrictions under a non-contact order may prohibit or prevent a person from attending particular locations at particular times, expressing or seeking out the opinions of others, meeting other persons or forming groups with certain people, communicating with certain family members or participating in certain cultural traditions.

(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 existing scheme for imposing non-contact orders in the PS Act is established to address circumstances where victims and their associates may fear that an offender may injure them, harass them, damage their property or otherwise cause them detriment.

Non-contact orders are only available to offences against someone's person. The purpose of the amendments is to put beyond doubt that this scheme applies to intimate material-related offences and to ensure victims of this form of abuse can benefit from the availability of the protection that can be offered by non-contact orders. This reform promotes equality and fairness among victims by giving more victims access to this order and therefore protection.

(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

Clarifying the operation of this scheme to put beyond doubt it applies to intimate material related offences ensures victims are provided with appropriate protection. Any uncertainty regarding the applicability of this protection may leave some victims without support, with protections only available in certain circumstances (such as within the context of domestic and family violence or committed alongside other offences for which a non-contact order can be made).

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

Without clarifying the availability of non-contact orders to intimate material-related offences, victims of this offending may not be provided with the necessary legal protection available to other victims of a personal offence. Legislative amendments are required to put this beyond doubt, therefore there are no less restrictive, reasonably available alternatives.

(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

Any limitation on the identified rights is justified by the overwhelming importance of ensuring victims of intimate material related offending may benefit from the protection of non-contact orders. These orders are targeted towards preventing further harm and may only be made where the court is satisfied of unacceptable risk of certain matters, including injury or harassment of, or detriment to, a victim. The limitation on rights is therefore not overly onerous in the context of achieving the purpose.

Safeguards operate to limit the impacts on the identified human rights. For example, the court retains its discretion in deciding whether it is appropriate to impose a non-contact order when taking into account the circumstances of each case, and an offender may apply to amend or revoke a non-contact order after six months from the date the order was made.

(f) any other relevant factors

Nil.

Classifying the offence of non-consensually creating an intimate image or intimate audio material as a *serious offence* in the WWCC Act and the DS Act

(a) the nature of the right

The right to take part in public life (section 23 of the HR Act) protects an individual's right to access the public service, including the opportunity to secure a job subject to any legitimate qualifications.

This right is limited as committing the new offence against a child (for the purposes of the WWCC Act) or a child or vulnerable person (for the purposes of the DS Act) will be considered a serious offence, which may limit access to certain roles in the public service.

The right to privacy and reputation (section 25 of the HR Act) provides that a person has the right not to have their privacy unlawfully or arbitrarily interfered with, including in relation to personal information and data collection.

These amendments also limit an individual's right to privacy and reputation because additional personal information will be disclosed and relied upon when determining an individual's eligibility to obtain a clearance.

(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 amendments is to protect the rights, safety and wellbeing of people with disability, and of children and young people in Queensland, by ensuring that persons who are convicted of, or have an unresolved charge for this offence cannot engage in disability-related or child-related employment and activities, other than in exceptional cases.

(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 identified limitation on the right to take part in public life achieves the purpose because it reduces the likelihood that children or vulnerable persons may be exposed to individuals who present a risk to 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 are no less restrictive or reasonably available ways to achieve the purpose of the Bill as legislative amendments are required to ensure the offence is treated as a serious offence for the

purposes of worker screening under these frameworks, consistent with the treatment of other similar offences. The amendments still allow the affected person to make submissions to establish exceptional circumstances as part of the screening and assessment process.

(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

Ensuring children and people with disability are protected from persons who pose a risk to their safety or wellbeing is of fundamental importance. Any limitation on the right to take part in public life and the right to privacy and reputation is justified when balanced against this purpose.

(f) any other relevant factors

Nil.

Enabling judicial orders to require a person to give access information to a police officer for digital devices in relation to the new offence

(a) the nature of the right

The Bill limits the right to privacy and reputation (section 25 of the HR Act), as described above, by expanding the court's powers to make an order requiring a specified person, such as an accused person, to give a police officer access information for a device and to allow police officers to use that information in certain ways if there are reasonable grounds of suspecting that information may be evidence of the new creation offence. This may limit a person's right to privacy and reputation because information located in a device may include personal information.

(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 amendments is to facilitate the investigation and prosecution of the new creation offence by enhancing the ability of police to retrieve evidence that is stored on a digital device. It is in the public interest that effective police investigations are supported and not unduly frustrated through an offender denying police access to information held within a digital device suspected of being relevant to a criminal offence.

(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

Limiting the right to privacy to facilitate police access to and use of device information is directly relevant to supporting the investigation and prosecution of the new creation offence. Given the nature of the offence, access to device information is the only way a prosecuting body will be able to detect and confirm the offence has occurred. Allowing the court to make this order in relation to the new offence is entirely consistent with the purpose of this scheme under the PPR Act.

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

Given the nature of the offence, there are no less restrictive and reasonably available ways to achieve the purpose of the amendments, other than relying on identification of creation by admissions or statements by witnesses. These are not as effective as allowing a court to order for a specified person to facilitate access to a device and are therefore not true alternatives.

In line with existing powers under this scheme, a magistrate or judge may only make such an order where the magistrate or judge is satisfied there are reasonable grounds for suspecting that device information from the digital device may be evidence of the new creation offence. This is an appropriate safeguard to ameliorate the impacts on the right to privacy or reputation.

(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

These amendments are critical to support the effective prosecution of the new creation offence given the digital nature of the offence. The amendments are appropriately mitigated by judicial discretion in making the order and the limited actions a police officer may take with any device information located. Any limitation on the right to privacy and reputation is justified when balanced against this purpose and when taking into account the existing safeguards within this scheme.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Criminal Code (Non-consensual Creation of Intimate Images and Audio Material) Amendment Bill 2026 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.

DEB FRECKLINGTON MP
Attorney-General and Minister for Justice
Minister for Integrity

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