

**Queensland Productivity Commission Bill 2024**

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**Submitted by:** Queensland Law Society  
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Committee Secretary  
Governance, Energy and Finance Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By email: [GEFC@parliament.qld.gov.au](mailto:GEFC@parliament.qld.gov.au)

Dear Committee Secretary

### **Queensland Productivity Commission Bill 2024**

Thank you for the opportunity to provide feedback on the Queensland Productivity Commission Bill 2024 (**the Bill**). Queensland Law Society (**QLS**) appreciates the opportunity to provide input to support the Committee's consideration of the Bill.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide.

This response has been compiled with input from the Privacy, Data, Technology and Intellectual Property Law Committee, whose members have substantial expertise in this area.

QLS supports the creation of legislation and policy which is evidence based and subject to scrutiny by all relevant stakeholders.

As such, QLS supports the Bill which will establish the Queensland Productivity Commission (**the Commission**) as an independent statutory body whose main functions will include undertaking inquiries or research into economic and social issues, regulatory matters or legislation.

QLS relies heavily on the input of our expert volunteer policy committees to inform our submissions. On this occasion we have not had the opportunity to consider the Bill in its entirety. This submission is limited to the power to require information under clause 35 which may have an unintended impact on the protection of personal and confidential information.

### **Executive summary**

Whilst we acknowledge the proposed protections in the Bill, each time personal information is disclosed, the existence or otherwise of mandatory constraints on uses and disclosures comes into sharp focus. Without a clear statutory delineation of prohibited purposes, of limited permissible exceptions and of mandated protective and complaints measures for those whose personal or confidential information is involved, there are elevated risks of inappropriate uses and disclosures and attendant fairness concerns and reputational risks for the collecting agency. Therefore, it is essential that sufficient privacy measures are embedded within the Bill to ensure:

- a relevant entity is required to identify, remove or redact personal, confidential or sensitive information, *before* disclosure of such information to the Commission, unless
- there is a specific decision or justification that such information is directly relevant to the inquiry or research under consideration i.e. that such disclosure is both reasonable and necessary.

**Clause 35 Power to require information for inquiries and research**

Clause 35 gives the commission the power to require information from relevant entities with 'information' broadly defined to include a document or other information that is (a) in the possession or under the control of the entity and (b) relates to the entity or a business carried out by the entity and (c) is relevant to the matter the subject of the Ministerial direction.

The relevant entity may refuse to comply with the notice to the extent the information is subject to legal professional privilege, parliamentary privilege or public interest immunity, or complying with the notice is prohibited under an Act or complying with the notice could reasonably be expected to prejudice the investigation of a contravention, or possible contravention, of a law.

**Disclosure should be reasonable and necessary**

Whilst perhaps unintended, our concern with the current drafting in clause 35 is the potential for disclosure of personal, confidential or sensitive information, without sufficient safeguards to preserve privacy and confidentiality.

We acknowledge that there may well be circumstances under which it is appropriate to disclose such information. However, QLS submits that the scope of the power to require information in clause 35 should be revisited to ensure the protection of personal and confidential information is appropriately considered at the time of the request and that personal and confidential information may only be disclosed where it is reasonable and necessary to do so.

We also query if the confidentiality protections in clause 39 sufficiently protect personal information. This is because whether the identity of the person can be 'reasonably ascertained' will depend on the specific context and circumstances and not on whether the person's identity can be known from the specific information. This underlies the importance of a framework in the Bill which considers protection of personal information and reasonable and proportionate disclosure before the information is disclosed, especially in the absence of individual consent.

Lastly, where personal information is received by the Commission, the Commission should be required to put in place reasonable protective data security measures.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED].

Yours faithfully,



Rebecca Fogarty  
President