



Office of the Information Commissioner Queensland

23 November 2018

Level 7
133 Mary Street
Brisbane Q 4000

PO Box 10143
Adelaide Street
Brisbane Q 4000

Phone (07) 3234 7373
www.oic.qld.gov.au

ABN: 70 810 284 665

Ms Renee Easten
Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Ms Easten

Human Rights Bill 2018

The Office of the Information Commissioner (**OIC**) would like to thank the Legal Affairs and Community Safety Committee (**Committee**) for the opportunity to provide a submission on the Human Rights Bill 2018 (**the Bill**). OIC welcomes the introduction of the Bill to strengthen human rights protections, including protection of privacy and right to seek information, in Queensland.

Existing and emerging technologies pose implications for an individual's privacy. Significant gaps exist in the current legislative framework regarding intrusions into the privacy of an individual. Concerns regarding the adequacy of Queensland's legislation to protect the privacy of individuals with the emergence of new technology is noted in the Queensland Drones Strategy released in June 2018.¹ The Queensland Law Reform Commission is currently reviewing and investigating Queensland's laws relating to civil and workplace surveillance and the protection of privacy in the context of current and emerging technologies. The report of the review of the *Information Privacy Act 2009* (Qld) (**IP Act**) made a number of recommendations to strengthen the legislated information privacy framework in Queensland.²

OIC notes that the Bill is modelled on the *Victorian Charter of Human Rights and Responsibilities Act 2006*. The Bill protects 23 human rights drawn primarily from the International Covenant on Civil and Political Rights, including the right to privacy and reputation. The Bill also protects the right to freedom of expression, including the freedom to seek and receive information.

OIC further notes that the primary aim of the Bill is to ensure that respect for human rights is embedded in the culture of the Queensland public sector by placing obligations on public entities to act and make decisions in a way that is compatible with human rights.

The *2017 Report on the operation of the Charter of Human Rights and Responsibilities* in Victoria notes that many public authorities made proactive efforts to embed human rights in their work with the support of the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**).³

¹ <https://www.premiers.qld.gov.au/publications/categories/plans/queensland-drones-strategy.aspx>

² Report on the review of the *Right to Information Act 2009* and *Information Privacy Act 2009* October 2017 viewed at <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T2014.pdf>

³ Viewed at <https://www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/charter-reports/item/1740-2017-report-on-the-operation-of-the-charter-of-human-rights-and-responsibilities>

The Office of the Information Commissioner is an independent statutory authority.

The statutory functions of the OIC under the *Right to Information Act 2009* (Qld) and *Information Privacy Act 2009* (Qld) include commenting on the administration of right to information and privacy in the Queensland public sector environment.

This submission does not represent the views or opinions of the Queensland Government.

Examples cited by VEOHRC include Corrections Victoria trained staff on how to balance human rights with security and 'good order' needs in the prison context and the Inspector-General for Emergency Management's Human Rights Action Plan aims to ensure decisions are consistent with Charter obligations.

In Queensland, the *Right to Information Act 2009 (RTI Act)* and the IP Act have had a significant impact on cultural change in relation to information rights and responsibilities for the public sector. Information privacy is now protected under a legislative framework that plays a key role in safeguarding the rights of community members' personal information and provides clear principles and rules to guide appropriate behaviour by public sector agencies. The RTI and IP Acts form part of the suite of administrative law obligations and oversight mechanisms to hold the government accountable.

I note that the right to access information, or right to know, forms part of the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas orally, in writing, in print, by way of art, or in another medium, within or outside of Queensland [Clause 21, subclause (2) of the Bill]. The Brisbane Declaration on Freedom of Information reaffirmed that the 'right to information is an integral part of the right to freedom of expression, and that both are fundamental underpinnings of democracy and all other rights and freedoms'.⁴ The RTI Act reflects this fundamental premise by requiring government agencies to make information available to the public unless, on balance, it is contrary to the public interest to do so.

OIC considers that the Bill will provide enhanced opportunities for generating greater awareness, public debate and dialogue about human rights in the community leading to improvements in government policy, legislation, decision-making and service delivery. Earlier identification and consideration of the implications for human rights will help ensure better outcomes, including privacy enhancing features in legislation and significant technology projects affecting the broader community. An informed and educated community is also more likely to hold government accountable for its actions, aiding transparency.

The Bill also introduces a complaints mechanism, allowing individuals to make a complaint about public entities acting in a way that is not consistent with human rights. If a complaint cannot be resolved with the public entity, a person may then make a complaint to the Human Rights Commission. OIC's statutory functions are set out in the RTI and IP Acts. OIC's functions include mediating privacy complaints and monitoring agency performance of, and compliance with, the RTI Act and the IP Act. Clause 66 of the Bill does not preclude OIC from dealing with the human rights component of a privacy complaint received under the IP Act. Clause 66 also provides that OIC may, with the consent of the person, refer the complaint to the Human Rights Commissioner.

⁴Viewed at <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/previous-celebrations/2010/brisbane-declaration/>

As outlined in the Explanatory notes, the intent of this provision is to avoid individuals having to deal with multiple bodies in respect of the one matter. OIC will also continue to deal with external review applications where a person is not satisfied with the decision of a Minister or agency about their application to access documents under the RTI Act or IP Act.

OIC looks forward to working with the Human Rights Commission to promote greater awareness of privacy and information access rights and responsibilities, and facilitate effective and timely management of privacy complaints comprising a human rights component.

OIC remains willing to assist the Committee in its consideration of the Bill.

Yours sincerely



Rachael Rangihaeata
Information Commissioner