

Office of the Information Commissioner
Queensland

Youth Justice and Other
Legislation Amendment Bill 2014
Submission 006

Our Ref: Clare Smith / Lemm Ex

25 February 2014

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

lacsc@parliament.qld.gov.au

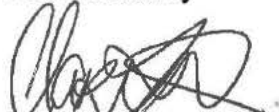
Dear Mr Hastie

Submission on Youth Justice and Other Legislation Amendment Bill 2014

The Office of the Information Commissioner (**OIC**) wishes to provide some comments with respect to the Youth Justice and Other Legislation Amendment Bill.

OIC has provided the attached submission discussing this issue for the consideration of the Legal Affairs and Community Safety Committee.

Yours sincerely



Clare Smith
Acting Privacy Commissioner



Level 8
Forestry House
160 Mary Street
Brisbane Q 4000

PO Box 10143
Adelaide Street
Brisbane Q 4000

Phone (07) 3405 1111
Fax (07) 3405 1122
www.oic.qld.gov.au

ABN: 70 810 284 665



**Office of the Information Commissioner
Queensland**

**Submission to the Legal Affairs and Community Safety Committee
Inquiry into the Youth Justice and Other Legislation Amendment Bill 2014**

February 2014

The Officer of the Information Commissioner

The statutory role of the Information Commissioner under the *Information Privacy Act 2009* (Qld) (IP Act) includes taking appropriate actions to promote understanding of, and compliance with, the privacy principles, providing best practice leadership and advice to relevant entities on the administration of the Act, and commenting on issues relation to the administration of privacy in the public sector environment¹. The Privacy Commissioner performs the role of deputy to the Information Commissioner and has delegated powers under the IP Act.

The Youth Justice and Other Legislation Amendment Bill 2014

This submission is focussed on the proposed amendments by the Youth Justice and Other Amendments Bill 2014 (Bill) to the *Youth Justice Act 1992* and the *Childrens Court Act 2000* which impact significantly on the privacy rights of children.

These amendments change the current presumption against the naming of children who come before the courts by amending the *Youth Justice Act 1992* to permit the publication of identifying information about children with one or more convictions who are the subject of court proceedings during and after the proceedings² and amending the *Childrens Court Act 1992* so that youth justice proceedings involving such children are no longer in closed court.³

The OIC considers that these amendments erode the accepted protections concerning the privacy of our children. They potentially breach fundamental legislative principles⁴ and are contrary to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (29 November 1985) in particular Rule 8, concerning the protection of the privacy of children.

OIC wishes to emphasise that it is critical that the Committee assures itself that the proposed amendments in their current form are necessary and achieve their purpose and “strike a balance between rehabilitating young offenders and ensuring communities are protected from **recidivist offenders**”. (my bolding)⁵

The Committee’s attention is drawn to the definition of “repeat offender” namely a child who had been found guilty of **an offence**. (my bolding)⁶

The support for the proposed measures reference the respondents to the Action Plan survey where 49.9% of the 4184 respondents agreed with removing barriers to the naming and shaming of child

¹ Section 135(1)(b) of the IP Act.

² Clauses 13 and 21-23 and 26 of the Bill. Currently, the Childrens Court can make an order allowing publication of identifying information about a child convicted of a particularly heinous and significant violent offence after the finalisation of proceedings and any appeal period – section 234 of the *Youth Justice Act 1992*.

³ Clauses 30 and 31 of the Bill. Currently, Childrens Court proceedings are only held in open court where a judge is exercising jurisdiction to hear and determine a charge on indictment – section 20(5) of the *Childrens Court Act 1992*.

⁴ Section 4(3)(a) and section 4(3)(g) of the *Legislative Standards Act 1992*.

⁵ Department of Justice and Attorney-General, *Brief for the Legal Affairs and Community Safety Committee – Youth Justice and Other Legislation Amendment Bill 2014* at page 1.

⁶ Repeat offenders are defined by default – i.e. ‘first time offender’ is defined, and all other children are repeat offenders (see clauses 26 and 31).

offenders.⁷ However, the Committee is referred to the numerous submissions made to the Department of Justice and Attorney-General in response to its “Safer Streets Crime Action Plan – Youth Justice” on which this Bill is based. These submissions raise concerns about the presumptions and foundations on which these proposed amendments are constructed.

OIC submits that the Committee must consider if there is sufficient evidence put forward and be satisfied that the proposed amendments which remove Queensland children’s privacy when they come before the youth justice system are justified, proportionate and contain adequate protections.

⁷ *Explanatory Notes – Youth Justice and Other Legislation Amendment Bill 2014* at page 14.