

Justice and Other Legislation Amendment Bill 2023

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Office of the Information Commissioner
Queensland

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Committee Secretary
Legal Affairs and Safety Committee
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Inquiry into Justice and Other Legislation Amendment Bill 2023

The Office of the Information Commissioner (**OIC**) welcomes the opportunity to make a submission to the Legal Affairs and Safety Committee's (the **Committee**) inquiry the Justice and Other Legislation Amendment Bill 2023 (the **Bill**).

About the OIC

OIC is an independent statutory body that reports to the Queensland Parliament. We have a statutory role under the *Right to Information Act 2009* (**RTI Act**) and the *Information Privacy Act 2009* (**IP Act**) to facilitate greater and easier access to information held by government agencies. We also assist agencies to understand their obligations under the IP Act to safeguard personal information they hold.

OIC's statutory functions include mediating privacy complaints against Queensland government agencies, issuing guidelines on privacy best practice, initiating privacy education and training, and conducting audits and reviews to monitor agency performance and compliance with the RTI Act and the IP Act. Our office also reviews agency decisions about access to and amendment of information.

OIC's Submission

OIC notes that the Bill proposes various amendments that may have privacy implications; OIC's submission is addressed to perhaps the most significant of those, being proposed amendments to the *Criminal Law (Sexual Offences) Act 1978* (**CLSO Act**).

Relevant amendments would remove restrictions in the CLSO Act prohibiting identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceedings. This will, in turn, impact a defendant's privacy – as the Statement of Compatibility¹ (**SoC**) accompanying the Bill observes, the '*proposed amendments will limit the right to privacy by allowing the publication of personal information that identifies a person accused of a prescribed sexual offence before a committal order is made in the proceedings.*'²

OIC notes, however, that the amendments will remove a restriction that does not apply to other criminal offences,³ which '*historical distinction... is grounded*

¹ Justice and Other Legislation Amendment Bill 2023 - Statement of Compatibility prepared in accordance with Part 3 of the *Human Rights Act 2019*, p. 9.

² As above.

³ The SoC noting that relevant '*... amendments will also ensure prescribed sexual offences are subject to the same rules regarding publication as other criminal offences in Queensland.*' (Page 10.)

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*in a historical context where it was thought that scrutiny of a complainant's evidence by committal proceedings were required to confirm its reliability before any details of it could be published'; a 'distinction [which] is not justified.'*⁴

Further, we note that removal of the restriction will promote open justice,⁵ and is 'hoped to improve media reporting on sexual offences which may, in turn, encourage other victim-survivors of sexual assault to come forward and report.'⁶ Finally, we understand that removal of the restriction will align Queensland with most other Australian jurisdictions,⁷ and that it will remain open to a court to order non-publication of a defendant's identity in appropriate circumstances.⁸

Accordingly, while acknowledging the privacy impact the amendments will have on adult defendants charged with relevant offences, OIC also observes that there are a range of competing public interest considerations weighing in favour of those amendments. This is a balancing exercise appropriately left to Government and, ultimately, the Parliament.

Yours sincerely

A solid black rectangular box redacting the signature of Paxton Booth.

Paxton Booth
Privacy Commissioner

⁴ As above.

⁵ Justice and Other Legislation Amendment Bill 2023 Explanatory Notes (**Explanatory Notes**), pp. 8-9.

⁶ Explanatory Notes, p. 8.

⁷ SoC, p. 13.

⁸ As above, p. 11.