

Victims' Commissioner and Sexual Violence Review Board Bill 2024

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*, I, Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence make this statement of compatibility with respect to the Victims' Commissioner and Sexual Violence Review Board Bill 2024 (Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

Three separate recent inquiries conducted by the Women's Safety and Justice Taskforce (Taskforce), the Independent Commission of Inquiry into Queensland Police Service's responses to domestic and family violence (Commission of Inquiry) and the Legal Affairs and Safety Committee (LASC) have all supported the establishment of an independent Victims' Commissioner that promotes and protects the needs and rights of victims of crime. The Queensland Government response to the Taskforce's report, *Hear Her Voice – Report 2 – Women and girls' experience in the criminal justice system* (the Second Taskforce Report), provided support in principle for the recommendation to establish a victims' commissioner in Queensland.

The Second Taskforce Report also recommended the establishment of a sexual violence case review board, to be chaired by the Victims' Commissioner, with the function to review sexual violence matters that do not progress (recommendation 46). This recommendation was supported in principle.

To support the implementation of the recommendations made by the Taskforce, the Commission of Inquiry and the LASC, the Bill provides for the establishment of:

- the Victims' Commissioner (and Office of the Victims' Commissioner) to promote and protect victims' rights; and
- the Sexual Violence Review Board (the Board) with a main function of identifying and reviewing systemic issues in relation to the reporting, investigation and prosecution of sexual offences.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human rights under the *Human Rights Act 2019* (Human Rights Act) that are relevant to the proposal contained in the Bill are:

- Taking part in public life (section 23);
- Privacy and reputation (section 25); and
- Liberty and security of person (section 29).

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13, Human Rights Act)

Taking part in public life

Section 23 of the Human Rights Act provides that every person in Queensland has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. The right protected by section 23 of the Human Rights Act includes a right for every eligible person to have access on general terms of equality, to the public service and to public office.

To ensure access to positions in public office on general terms of equality, the criteria and process of appointment, promotion, suspension and dismissal must be objective and reasonable. In relation to this right, it is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The right in section 23 is limited to 'eligible persons', which provides for the prescribing of matters such as eligibility for membership to a body or statutory office.

The right to take part in public life will be limited by proposed requirements on the eligibility of a person to be appointed to and to hold the public offices of the Victims' Commissioner or a member of the Board.

The purpose of the limitation

The purpose of the limitation is to ensure the person appointed as the Victims' Commissioner and persons appointed as members of the Board have the appropriate expertise and integrity to perform the proposed functions of the roles.

Whether the limitation will achieve the purpose

The limitation will achieve the purpose by requiring the Minister to consider and be satisfied of certain grounds before recommending or making an appointment. It is proposed that the Minister will only be able to recommend the appointment of a person as the Victims' Commissioner if the Minister is satisfied the person has the skills, knowledge and experience working with victims of crime and an understanding of victims of crime in the criminal justice

process. This is intended to ensure that the person appointed as the Victims' Commissioner will fulfil the proposed functions of the role effectively and efficiently.

Similarly, in relation to the Board, it is proposed that in appointing non-government members, the Minister must be satisfied a person is appropriately qualified to ensure the board performs its functions under this Act effectively and efficiently. This is intended to ensure that the Board operates effectively and that members are able to provide the relevant expertise to ensure the functions of the Board are performed.

In addition, it is proposed that the Victims' Commissioner and members of the Board will not be eligible for appointment, or continue to be appointed, where they have been convicted of an indictable offence, are insolvent under administration, have been disqualified from managing corporations under the *Corporations Act 2001* (Cth) (Corporations Act) or refuse to provide consent for the Minister to obtain a criminal history check. This is intended to ensure that the Victims' Commissioner and members of the Board are of high public standing and integrity and uphold principles of good governance.

Less restrictive, reasonably available alternatives

There are no less restrictive or reasonably available alternatives to prescribing the eligibility requirements for the role of the Victims' Commissioner or the members of the Board. The requirements are objective and reasonable in that they require persons appointed to have skills, expertise or knowledge in areas that are relevant to the functions of the Victims' Commissioner or the Board. Further, it is noted that similar provisions apply to many statutory bodies across the Queensland statute book and are intended to ensure that any significant appointments are of persons of appropriate standing and with relevant expertise.

Fair balance

The limitation of the right is reasonable and demonstrably justified as the eligibility requirements are not considered to impose arbitrary requirements and achieve an appropriate balance to ensure that persons appointed to the proposed public offices of the Victims' Commissioner or as a member of the Board are suitable and hold appropriate standing.

Privacy and reputation – Criminal history information of the Victims' Commissioner and members of the Board

Nature of the right

Section 25 of the Human Rights Act protects a person's privacy and reputation and provides that a person has the right not to have the person's privacy, family, home or correspondence (written and verbal) unlawfully or arbitrarily interfered with and not to have the person's reputation unlawfully attacked.

The right protected by section 25 is modelled on article 17 of the *International Covenant on Civil and Political Rights*. Under this section, the scope of the right to privacy is broad and may include matters such as personal information, data collection and correspondence. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation.

Request for information

The Bill provides that the Minister will be able to request and receive from the Police Commissioner the criminal history of a person who is, or who is seeking to be appointed as, the Victims' Commissioner or a member of the Board with the consent of that person. In addition, the Bill outlines that the Victims' Commissioner or a member of the Board will be required to disclose to the Minister if the person has been charged or convicted of an indictable offence, is insolvent under administration or is disqualified from managing corporations because of the requirements of the Corporations Act.

This will limit the right to privacy in that applicants for the Victims' Commissioner role or membership of the Board will be required to allow their personal information to be accessed to be considered for appointment. Similarly, the Victims' Commissioner or a member of the Board will be required to disclose personal information as part of their terms of employment.

The purpose of the limitation

The purpose of the limitation on the right to privacy and reputation is to provide the Minister with information that is relevant to determine the appointment of the Victims' Commissioner and members of the Board and to ensure the integrity of the position of the Victims' Commissioner and the Board.

Whether the limitation will achieve the purpose

The limitation in relation to access to, and disclosure of, an individual's confidential information will achieve the purpose by allowing the Minister to independently verify a person's suitability to hold public office by having access to relevant information. The limitation on the right to privacy and reputation imposed is necessary for such information to be obtained and for a person's suitability for appointment to be evaluated.

Less restrictive, reasonably available alternatives

There are no less restrictive, reasonably available alternative ways to achieve the purposes of the limitations on the right to privacy.

The Bill provides the Minister with the power to request a person's criminal history and require a member to disclose certain information which is necessary to ensure the integrity of statutory appointments. Without the power to obtain a person's criminal history information, there is no other way for the Minister to independently verify whether the person is suitable for appointment.

The limitation on an individual's right to privacy will be mitigated by the proposed requirement that the Minister may only exercise their power if the person has given the Minister written consent for the request. While a person will not be eligible for appointment or their appointment will end if they fail to consent to the request, there is no power of compulsion and there is no compulsion on a person who is not the Victims' Commissioner or a member of the Board to consent to the request.

In addition, the Bill includes safeguards to protect the person's criminal history and any criminal history information that the person discloses. The Bill provides that a person's criminal history information is confidential and must not be used or directly or indirectly disclosed to another person, unless the use or disclosure is permitted under the Bill. Clause 96 provides that the penalty for failing to comply with this requirement is 200 penalty units.

The Bill only allows a person to use or disclose the criminal history information for: the performance of a function or exercise of a power under the Bill; if the use or disclosure is otherwise required or permitted by law; or with written consent of the person to whom the criminal history information relates. In addition, the Bill will require that a document containing criminal history information provided must be destroyed as soon as practicable after it is no longer needed.

Fair balance

It is important for the Minister to have the power to obtain information about a person's criminal history, and for it to be a requirement for a person to disclose certain matters that would disqualify them from being appointed as the Commissioner or a member of the Board, in order to ensure the integrity of this public body. It is in the public interest for membership of public bodies to be open to scrutiny by the Minister to whom the public body is responsible, and that obligations are imposed on the Commissioner or members to disclose matters that would disqualify them from appointment to these statutory roles. Such provisions are common in Queensland legislation and strike a fair balance between the importance of ensuring an individual's right to privacy, and the integrity of membership and appointments to statutory agencies..

Privacy and reputation – Requests for information by the Victims' Commissioner and Chairperson, Sexual Violence Review Board

Nature of the right

Section 25 of the Human Rights Act protects a person's privacy and reputation and provides that a person has the right not to have the person's privacy, family, home or correspondence (written and verbal) unlawfully or arbitrarily interfered with, and not to have their reputation unlawfully attacked.

The right protected by section 25 is modelled on article 17 of the International Covenant on Civil and Political Rights. Under this section, the scope of the right to privacy is broad and may include matters such as personal information, data collection and correspondence. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation.

Request for information

The Bill provides that the Victims' Commissioner and the Board will be able to request, and have access to, information that may include confidential information from government agencies and non-government entities, such as organisations who receive funding to provide services to victims of crime, that is relevant to the functions of the Victims' Commissioner or

the Board. The types of confidential information may include recordings and recorded statements under the *Evidence Act 1977* (Evidence Act), special evidence under the *Criminal Code 1899* and health information protected under the *Hospital and Health Boards Act 2011* (Hospital and Health Boards Act) and the *Mental Health Act 2016* (Mental Health Act). It is proposed that the Victims' Commissioner and the Board may disclose confidential information to an entity if it assists the entity to fulfil a request for information, except for any confidential information that it receives that is specifically protected against further disclosure under the Bill.

The powers provided to the Victims' Commissioner and the Board will limit the right to privacy and reputation in that an individual's confidential information may be disclosed to the Victims' Commissioner or Board or disclosed by the Victims' Commissioner or the Board to another entity without their consent.

The purpose of the limitation

The purpose of the limitation on the right to privacy in relation to proposed powers of the Victims' Commissioner and Chairperson of the Board to request, receive and disclose confidential information is to ensure the Victims' Commissioner and the Board can access all relevant information to fulfil their functions.

Whether the limitation will achieve the purpose

Limiting an individual's right to privacy in relation to accessing and disclosing their confidential information will achieve the purpose by ensuring the Victims' Commissioner and the Board has access to all relevant information to assist both entities in fulfilling their functions. Access to a wide range of information, including confidential information, will assist the Board in identifying systemic issues in sexual offence matters that may need to be addressed through recommendations. Similarly, access to confidential information will assist the Victims' Commissioner in conducting inquiries and reviews, or fulfilling its complaint function.

Extending powers to access specific types of confidential information is also necessary to ensure that the Victims' Commissioner and the Board can appropriately perform their functions and be informed of any information that may be referred to as part of proceedings within the criminal justice system, such as section 93A statements under the Evidence Act or health information captured under the Hospital and Health Boards Act or the Mental Health Act. These types of information may assist the Victims' Commissioner or the Board in their role in conducting inquiries to identify systemic issues on matters that are impacting on victims of crime or matters that are impacting on the investigation and prosecution of sexual offences. Safeguards are included in the Bill to ensure that any confidential information is not able to be further disclosed by the Victims' Commissioner or the Board.

Disclosure of confidential information by the Victims' Commissioner or the Board to entities is necessary to ensure entities can effectively respond to a request for information by the Victims' Commissioner or the Board.

Less restrictive, reasonably available alternatives

There are no less restrictive, reasonably available alternative ways to achieve the purposes of the limitations on the right to privacy. Access to a wide range of information, including confidential information, is integral to the effective performance of the functions of the Victims' Commissioner and the Board.

In relation to access to a person's confidential information, it is proposed that confidential information may only be requested or disclosed if it is relevant to the functions of the Victims' Commissioner or the Board. This limits the type of confidential information that may be disclosed.

There are a number of safeguards in the Bill that will mitigate the limitations on the right. Clause 95 of the Bill outlines confidentiality provisions which prevent the use or disclosure of confidential information unless it is permitted by clause 95(3). This allows for disclosure or use in a limited range of circumstances, including where the person to whom the information relates has consented to it being used or disclosed, or where disclosure is necessary to perform the functions of the Victims' Commissioner or the Board. Clause 96 of the Bill also prevents any further disclosure of confidential information by a person who has received confidential information under clauses 31(1), 88(1) or 95(3). Clauses 95 and 96 impose a maximum penalty of 200 penalty units for unlawful disclosure of confidential information.

The Bill also outlines that any reports prepared by the Victims' Commissioner or the Board must not contain confidential information (clauses 36 and 93).

Fair balance

The ability of the Victims' Commissioner and the Board to have access to confidential information is integral to the effective performance of functions of the Victims' Commissioner and the Board and it is in the public interest that the Victims' Commissioner and the Board can perform their functions effectively.

The safeguards in the Bill will mitigate the limitation of the right to privacy in that confidential information will only be sought or provided that is relevant to the functions of the Victims' Commissioner or the Board. In addition, the proposed confidentiality requirements will limit the disclosure of any confidential information that is accessed through the administration of the legislation.

Liberty and security of person

Nature of the right

Section 29 of the Human Rights Act protects a person's right to liberty and security of person. The right protects personal liberty and is focused on the requirement that due process be followed when state authorities exercise their powers of arrest and detention. The right protects against the deprivation of liberty that is arbitrary or unlawful. The right is relevant whenever a person is placed at a risk of imprisonment. The right is only enlivened in the Bill due to the insertion of several new offence provisions, which may lead to the deprivation of liberty where

a person does not pay the relevant monetary penalty and other enforcement action is taken against the person.

The purpose of the limitation

The Bill will require the Victims' Commissioner and members of the Board to disclose to the Minister if they are disqualified from managing corporations under the Corporations Act or where they are convicted of an indictable offence. Failing to disclose such matters to the Minister will be considered an offence and subject to a penalty unless the person has a reasonable excuse.

Whether the limitation will achieve the purpose

The limitations in the Bill which establish new offences will achieve their intended purpose by establishing an appropriate deterrent for a person to fail to disclose information about their eligibility with a view to continuing to act in their statutory office.

Less restrictive, reasonably available alternatives

The requirements to ensure that a person discloses their personal information relating to their ability to manage corporations or where they have been convicted of an indictable offence cannot be achieved through any less restrictive or alternative means. As it is proposed to make it an offence where a person fails to disclose their disqualification to manage a corporation or their conviction of an indictable offence, it is also necessary to prescribe these offence provisions in the primary legislation rather than an alternative legislative or legal mechanism.

The offence does provide less restrictive and reasonably available alternatives to a person being deprived of liberty where they have been convicted of an offence. As such, it is noted that this human right will only be enlivened where a person fails to pay a relevant fine and an alternative enforcement approach is taken.

Fair balance

The offence provisions for failing to disclose information affecting a person's eligibility, achieve a reasonable balance as it places an onus on the relevant person to disclose their change in eligibility for appointment to the Minister, but also allows for a reasonable excuse to not comply with the obligation to disclose information. As such, the person will not be liable for an offence where there are reasonable grounds for not disclosing the information to the Minister.

Conclusion

In my opinion, the Victims' Commissioner and Sexual Violence Review Board Bill 2024 is compatible with human rights under the Human Rights Act because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Human Rights Act.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Minister for the Prevention of Domestic and Family Violence

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