

Forensic Science Queensland Bill 2023

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, Shannon Fentiman MP, Minister for Health, Mental Health and Ambulance Services and Minister for Women make this statement of compatibility with respect to the Forensic Science Queensland Bill 2023 (Bill).

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

Overview of the Bill

The final report of the 2022 Commission of Inquiry into Forensic DNA Testing in Queensland (Commission of Inquiry) recommended the Queensland Government pass legislation to create a forensic science institute within the Department of Justice and Attorney-General (DJAG) and related matters, such as the appointment of a director and a non-executive advisory body (recommendation 121). The Bill implements this recommendation.

The main purpose of the Bill is to ensure high quality, reliable, independent and impartial forensic services for the administration of criminal justice in Queensland. To achieve this, the Bill establishes the Director of Forensic Science Queensland (Director), a supporting Office of the Director of Forensic Science Queensland (Forensic Science Queensland) and the Forensic Science Queensland Advisory Council (Advisory Council).

Human Rights Issues

Human rights relevant to the Bill (part 2, divisions 2 and 3 of the *Human Rights Act*)

In my opinion, the human rights that are relevant to the Bill are the right to take part in public life (section 23) and the right to privacy and reputation (section 25).

An analysis of human rights that are limited by the Bill is provided below. This analysis includes instances of where the same rights are promoted.

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 of the *Human Rights Act*)

Right to take part in public life

(a) the nature of the right

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. It also provides that every eligible person has the right, and is to have the opportunity, without discrimination, to have access to the public service and to public office on general terms of equality.

‘Discrimination’ within this right covers discrimination on the basis of an attribute protected by the *Anti-Discrimination Act 1991*. These attributes include sex, race, age, impairment, religious and political beliefs, sexuality and gender identity. The right also interacts with the general right to equality under section 15 of the Human Rights Act.

The right to take part in public life therefore calls for objectivity and reasonableness within criteria and processes relating to appointments. It also requires consideration of whether the criteria and processes affect people with particular characteristics.

The Bill may limit the right to take part in public life by setting eligibility criteria for appointments. The Minister may only recommend a person for appointment as the Director of Forensic Science Queensland if they have certain qualifications and experience (clause 7). A person cannot be appointed as Director if they have a conviction for an indictable offence, other than a spent conviction, or are an insolvent under administration. If the Minister appoints an Acting Director, the Acting Director must meet the same eligibility criteria as the Director (clause 12). In addition, Advisory Council members other than the mandatory members must hold qualifications or experience in one or more fields listed in the Bill (clause 29).

The Bill may further limit the right to take part in public life by providing for vacancy of the office of Director and Advisory Council positions, which includes provisions authorising termination and suspension of appointments in specific circumstances (clauses 10 and 34). The Bill also places limitations on the Director performing paid work and acting on conflicts of interest or possible conflicts (clause 20 and 21), which may limit the activities they can perform while holding office.

The right to take part in public life includes an internal limitation because the right, as it relates to access to the public service and public office, only applies to ‘eligible persons’. Given this, eligibility criteria for appointments or criteria that result in a person becoming ineligible from continuing in an appointment do not necessarily constitute a limitation to the right.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on appointments is to ensure the Director and Advisory Council are suitably qualified and experienced. The purpose of the provisions regarding vacancy of

office, restriction of paid work and management of conflict of interests is to ensure that the Director and Advisory Council maintain the ability and integrity to support high quality, reliable, independent and impartial forensic services for the criminal justice system.

These purposes are consistent with a free and democratic society based on human dignity, equality, and freedom because they contribute to fair and proper criminal justice processes for the benefit of the community, including accused persons and persons impacted by crime. The limitations on appointment do not result in discrimination on the basis of particular attributes protected under the Anti-Discrimination Act.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on appointments will ensure persons appointed as Director or to the Advisory Council have suitable qualifications and experience. Clause 7 of the Bill requires the Director to have a tertiary qualification in a scientific discipline relevant to forensic services and at least ten years of practical experience. Clause 29 of the Bill requires Advisory Council members, other than the members that are mandatory for the Minister to appoint, to have experience in forensic services, policing, law, support for victims of crime or another field the Minister is satisfied is necessary or relevant to support the Council's functions.

The limitations regarding vacancy of office will ensure the Director and Advisory Council maintain the ability and integrity to support high quality forensic services. The circumstances regarding vacancy of office in clauses 10 and 34 have a direct link to the ability, skills, performance and accountability of the Director and Advisory Council.

Clause 10 of the Bill provides for circumstances where the office of Director becomes vacant or where the Director may be suspended. These include the Director being convicted of an indictable offence, becoming an insolvent under administration, engaging in misconduct, being incapable of performing their duties, neglecting their duties, demonstrating incompetency or being absent from duty without approved leave.

Clause 34 of the Bill allows termination of Advisory Council appointments in similar circumstances, for example, being convicted of an indictable offence, becoming an insolvent under administration, being incapable of satisfactorily performing their functions or having prolonged absences without the Council's permission and without reasonable excuse.

Similarly, the limitations on paid employment and conflict of interest provisions will ensure the Director maintains the ability to support independent and impartial forensic services. Clause 20 of the Bill prohibits the Director from performing paid work other than under the Bill unless the Minister consents. Similarly, clause 21 of the Bill prevents the Director from acting on actual or potential conflicts of interest without the Minister's consent. These clauses ensure the Minister, not the Director, is responsible for deciding whether a matter may create issues with bias, accountability or public confidence. These provisions mitigate the risk of influence and corruption.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The provisions are necessary to achieve the Bill's purpose, which is to ensure high quality, reliable, independent and impartial forensic services for the administration of criminal justice in Queensland.

The Bill takes a least restrictive approach. For example, in relation to appointments, the eligibility criteria are not overly prescriptive and do not prevent other skills and experience being considered. In relation to suspensions of the Director while termination or reinstatement is being considered, suspensions are limited to six months. In relation to restrictions on paid work or activities that may constitute a conflict, there are no blanket prohibitions. The Minister is able to approve the Director engaging in other employment or activities. No less restrictive and reasonably available options have been identified.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Bill's main purpose, as stated in clause 3, is to ensure high quality, reliable, independent and impartial forensic services for the administration of criminal justice in Queensland. It is essential for the Director and Advisory Council members to be suitably qualified and to maintain actual and perceived integrity. Their suitability and integrity supports the effective provision of forensic services as well as public confidence.

Any limitations on a person's right to take part in public life are considered reasonable and justifiable. Similar provisions for statutory offices, boards and advisory bodies are common in Queensland legislation.

(f) any other relevant factors

Section 23(2) of the Human Rights Act, which prohibits discrimination in relation to access to public office, only applies to 'eligible' persons. Where a person is eligible for appointment, the Bill does not create any inequities in terms of different persons' or different groups of persons' ability to be considered.

Privacy and reputation

(a) the nature of the right

Section 25 of the Human Rights Act states that a person has the right not to have their privacy unlawfully or arbitrarily interfered with. The scope of the right to privacy is very broad. The right covers personal information and a person's private life more generally. Any interference with the right that is inconsistent, unreliable, unreasonable, unnecessary, or disproportionate is relevant.

The Bill allows the disclosure and use of information in specific circumstances, which engages the right to privacy and reputation. The disclosure and use of confidential information will enable the Director or staff of Forensic Science Queensland with a delegation from the Director to handle forensic material, conduct testing and report findings to the Queensland Police Service, Director of Public Prosecutions, coroners, entities that perform functions related to the administration of criminal justice and other entities that may request forensic services or scientific testing from time to time.

The right to privacy and reputation is also engaged by the provisions of the Bill that allow the Minister to request criminal history information about the Director or a person proposed for appointment as the Director (clause 15) and which require the Director to disclose charges and convictions for indictable offences (clause 16) and insolvency (clause 11) to the Minister.

The Bill may also limit the right to privacy and reputation by prohibiting the Director from engaging in actual or potential conflicts of interest without the Minister's consent (clause 21). To obtain the Minister's consent the Director will have to disclose information about the matter, which may be a private matter.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

There are two main purposes of allowing confidential information to be disclosed and used. The first is to ensure Forensic Science Queensland can provide expert evidence to the criminal justice system that informs decisions such as whether to prosecute, findings of guilt and findings in coronial investigations and inquiries. The second is to ensure the Advisory Council has sufficient information to perform its functions of monitoring and reviewing policies and procedures of Forensic Science Queensland and providing advice and recommendations to the Minister and Director.

Allowing confidential information to be disclosed and used also ensures Forensic Science Queensland can provide other scientific testing from time to time. For example, the Director may require Forensic Science Queensland to assist with civil law matters under a fee-for-service arrangement, assist other jurisdictions with the administration of criminal justice or identify victims of natural disasters.

The purpose of authorising the Minister to obtain criminal history information about the Director, and requiring the Director to disclose charges, convictions and insolvency to the Minister, is to ensure a clear and transparent process for the Minister to obtain information regarding matters that may affect a person's suitability to be appointed as, or continue to be appointed as, the Director. These factors also impact public confidence in Forensic Science Queensland.

The purpose of requiring the Director to disclose actual and potential conflicts of interest to the Minister is to ensure the Director has the ability and integrity to support high quality, reliable, independent and impartial forensic services for the criminal justice system.

These purposes are consistent with a free and democratic society based on human dignity, equality and freedom as they support the administration of criminal justice in Queensland.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Clause 40 of the Bill makes it lawful to disclose or use confidential information in connection with functions under the Bill, under an arrangement regarding the provision of forensic services, with the consent of the person to whom the information relates, for a proceeding in a court or tribunal, if authorised by a court or tribunal in the interests of justice or where required or permitted by law. The purpose of the Bill, which relates to supporting the administration of criminal justice through the provision of forensic services, cannot be achieved without this information being shared. Clause 40 ensures there are no information sharing barriers that prevent support for the criminal justice system. It ensures that if non-forensic testing is performed under the Bill on occasion this can also occur.

Clause 15 of the Bill allows the Minister to request that the Commissioner of the Queensland Police Service provide a written report about the criminal history of a person and a brief description of the circumstances of a conviction mentioned in the criminal history. The Commissioner must comply with the request.

Clause 16 of the Bill requires the Director to give immediate notice to the Minister about any new charges or convictions for indictable offences. This is an offence provision that carries a maximum penalty of 100 penalty units. Similarly, clause 11 of the Bill requires the Director to give immediate notice to the Minister if they become an insolvent under administration. Non-compliance with the insolvency disclosure requirement attracts the same maximum penalty of 100 penalty units.

As a person cannot be appointed as Director, or continue in the role of Director, if they have a conviction for an indictable offence or if they are an insolvent under administration, clauses 11, 15 and 16 achieve their purpose of ensuring the Minister can obtain information relevant to the Director's suitability for office. While a charge for an indictable offence is not itself grounds for disqualification as Director, it may be still relevant to the Director's ability to perform their role, as one of Forensic Science Queensland's main roles is to test DNA samples of persons suspected of committing offences.

The limitation relating to the Director's obligation to disclose conflicts of interest will ensure that the Director maintains the ability to support high quality, reliable, independent and impartial forensic services. Clause 21 of the Bill requires the Director to disclose conflicts as soon as practicable and to refrain from acting on an affected or potentially affected matter unless and until the Minister consents. Similar to the purpose of the limitation to the right to take part in public life, this clause mitigates the risk of influence, bias and corruption.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the Bill. To achieve the provision of forensic services to support the administration of criminal justice, the Director, Forensic Science Queensland and Advisory Council need to be able to communicate information about forensic services. The circumstances in which information can

be disclosed and used are as narrow as possible to achieve the purpose. If they were narrowed further, the purpose of the Bill could not be achieved.

In addition, the Bill includes protections that make the provisions allowing the disclosure and use of information less restrictive on human rights. Clause 40 of the Bill establishes an offence for the unauthorised disclosure and use of confidential information and applies a maximum penalty of 200 penalty units. The offence supports the right to privacy and reputation by acting as a safeguard and deterrent against the unlawful disclosure and use of information.

Where clause 40 authorises the disclosure or use of information to perform a function under the Act, or where the disclosure or use is required or permitted by law, information can only be disclosed or used to the extent necessary.

Criminal history information, including information obtained from the Commissioner and information notified by the Director, is protected by a similar confidentiality offence at clause 17 of the Bill. The unauthorised disclosure of confidential information attracts a maximum penalty of 200 penalty units, in line with the penalty for the offence at clause 40. The clause 17 offence supports the right to privacy and reputation by creating a safeguard and deterrent against the disclosure and use of information other than to support suitability assessments for the Director or a prospective Director. Clause 17 also requires criminal history information to be destroyed when it is no longer required.

Further supports for the right to privacy and reputation are offered by the provisions of the Bill that clarify that spent convictions are irrelevant to criminal history (clauses 7 and 15) and which make criminal history checks subject to the Director's consent (clause 15).

In relation to conflicts of interest, the obligation at clause 21 for the Director to disclose conflicts of interest to the Minister is the most direct, most private, and least restrictive way of identifying whether the Director can carry out their role effectively and impartially.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, any limitations to the right to privacy and reputation are considered reasonable and justifiable. As above, Forensic Science Queensland's main role is to support the administration of criminal justice in Queensland through high quality, reliable, independent and impartial forensic services and advice. The Bill's functions, and public confidence in forensic services, cannot be achieved if information cannot be appropriately disclosed, if the Director's suitability for appointment cannot be determined or if conflicts of interests are not managed.

Provisions restricting privacy rights to allow disclosure of personal information for a purpose permitted or required by law are common in Queensland legislation. Such provisions effectively balance the individual right to privacy and public interest factors.

(f) any other relevant factors

Section 25 of the Human Rights Act prohibits arbitrary interference with the right to privacy and reputation. For the reasons outlined above, the limitations to the right to privacy and

reputation are not arbitrary. It is also noted that because the Bill does not require disclosure of spent convictions, the convictions covered by the Bill may not form part of a person's private life.

Conclusion

In my opinion, the Bill is compatible with human rights under the Human Rights Act because it limits the identified human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE SHANNON FENTIMAN
MINISTER FOR HEALTH, MENTAL HEALTH and AMBULANCE SERVICES
and MINISTER FOR WOMEN

© The State of Queensland 2023