

Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill 2025

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* (HR Act), I, Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity make this statement of compatibility with respect to the Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill 2025 (the Bill).

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

Overview of the Bill

The objectives of the Bill are to:

- implement four recommendations from the Queensland Sentencing and Advisory Council (QSAC) report, *Sentencing of Sexual Assault and Rape: The Ripple Effect* (the Report);
- introduce a new offence for false representations in relation to government agencies;
- realign the Queensland *Crimes at Sea Act 2001* (CS Act) with the Commonwealth *Crimes at Sea Act 2000* (Commonwealth CS Act); and
- ensure the blue card system operates as intended.

QSAC Report recommendations

The Bill amends the *Penalties and Sentences Act 1992* (PS Act) to implement four recommendations from the Report. The amendments to the PS Act:

- expand the purposes of sentencing to include recognition of harm caused to a victim of an offence;
- qualify the court's treatment of good character in sentencing offenders convicted of offences of a sexual nature by providing that in determining the appropriate sentence:
 - the court may treat the offender's good character, to the extent it has been established by a character reference, standing in the community, or contributions to the community (each a 'restricted form of character evidence'), as a mitigating factor only if the good character is relevant to the offender's prospects of rehabilitation or risks of reoffending; and
 - the court may, having regard to the nature and seriousness of the offence, decide not to treat the offender's good character, to the extent it has been established by a restricted form of character evidence, as a mitigating factor;
- provide that in determining the appropriate sentence for an offender convicted of rape or sexual assault against a child aged 16 or 17 years, the court must treat the child's age as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case; and
- clarify that the absence of a victim impact statement or other details of harm at sentencing, does not give rise to any inference the offence caused little or no harm to the victim.

False representations in relation to government agencies

The Bill inserts new section 97A into the Criminal Code to establish a new offence for false representations in relation to government agencies. The Bill provides that it is an offence for a person to falsely represent that they are a government agency or are acting on behalf, or with the authority, of a government agency. The offence is a misdemeanour punishable by up to three years imprisonment. However, a person does not commit the offence if they have a reasonable excuse.

Crimes at sea

The Bill amends the CS Act to realign that Act with relevant provisions of the Commonwealth CS Act. Specifically, the Bill amends the CS Act to omit redundant references to *Area A of the Zone of Cooperation*, and to replace references to the repealed *Petroleum (Submerged Lands) Act 1967* (Commonwealth) with references to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Commonwealth).

Blue card system

The Bill amends the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act) to maintain existing safeguards for children by ensuring the chief executive can continue to issue a suspension notice to a blue card holder on the grounds currently included in the WWC Act, updating terminology to enhance clarity and correcting several cross-references.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 HR Act)

I have considered each of the rights protected by part 2 of the HR Act. In my opinion, the human rights limited by the Bill are:

- freedom of expression (section 21);
- right to liberty and security of person (section 29);
- right to a fair hearing (section 31); and
- rights in criminal proceedings (section 32).

The amendments to the PS Act to expand the purposes of sentencing and clarify that the court cannot draw any inference about the harm suffered by a victim from the absence of a victim impact statements do not limit human rights. The amendments to the CS Act and WWC Act also do not limit human rights.

QSAC Report recommendations

The amendments in the Bill to qualify the court's treatment of an offender's good character and to introduce a statutory aggravating factor will operate retrospectively to the extent the qualified treatment of good character and statutory aggravating factor will apply to sentencing proceedings occurring on or after commencement irrespective of whether the offence or conviction occurred before or after commencement of the relevant provisions. However, it is my opinion that these provisions of the Bill do not limit section 35 of the HR Act, which provides for a right to protection against retrospective criminal laws.

Section 35 of the HR Act prohibits the retrospective application of criminal liability, protecting people from being found guilty of an offence for an action that was not an offence at the time the action occurred, and from being unfairly penalised in situations where a penalty has increased after they committed an offence. The right does not, however, prevent retrospective changes that do not form part of the criminal liability, penalty or punishment, such as changes to trial practice or methods of calculating a sentence. The qualified treatment of good character and statutory aggravating factor do not change criminal liability, rather they alter the court's consideration of specific factors in the determination of a sentence. Therefore, the Bill does not interfere with the right to be protected from the retrospective application of criminal liability.

(a) the nature of the right

The right to liberty and security protects people from unlawful or arbitrary arrest or detention. In the context of human rights, an arrest or detention is unlawful if it is not authorised by law or occurs other than in accordance with procedures established by law. A lawful arrest or detention may be arbitrary if it is unpredictable, unreasonable, or disproportionate to a legitimate aim.

The amendments in the Bill qualifying the court's treatment of good character in sentencing offenders convicted of offences of a sexual nature will limit the right to liberty and security as they may result in a term of imprisonment or a longer term of imprisonment being imposed by the court. The amendments introducing a statutory aggravating factor will similarly limit the right to liberty and security as they may result in the court imposing a term of imprisonment or a longer term of imprisonment when sentencing offenders convicted of rape or sexual assault against a child aged 16 or 17 years.

However, the deprivation of liberty associated with the amendments would not be unlawful or arbitrary. The amendments do not alter the maximum term of imprisonment an offender is liable to as a result of conviction. A more severe sentence, within the sentencing range, may be imposed as a result of qualifying the court's treatment of good character as a mitigating factor or introducing the statutory aggravating factor, but the sentence in either circumstance would not exceed the maximum period prescribed for the relevant offences.

(b) nature of the purpose of the limitation 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 of the right to liberty and security, by qualifying the court's treatment of good character as a mitigating factor, is to ensure sentences appropriately reflect the seriousness of the offending behaviour and offender culpability. Qualifying the court's treatment of good character as a mitigating factor allows the court to impose sentences at the higher end of the sentencing range for offences of a sexual nature, whilst preserving the court's general discretion in sentencing.

Similarly, the purpose of the limitation of the right to liberty and security, by requiring the court to treat the victim's age as an aggravating factor, is to ensure sentences imposed for rape or sexual assault offences against children aged 16 or 17 appropriately reflect the seriousness of the offences, impacts of the criminal conduct and offender culpability, and meet community expectations. Requiring the court to treat the victim's age as an aggravating factor, allows the court to impose sentences at the higher end of the sentencing range for rape or sexual assault against children aged 16 or 17 and ensures a consistent approach to sentencing for these offences, whilst preserving the court's discretion in relation to sentencing decisions.

- (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 of the right to liberty and security in relation to qualifying the court's treatment of good character in sentencing will achieve the purpose of ensuring sentences imposed for offences of a sexual nature appropriately reflect the seriousness of the offending behaviour and offender culpability, by allowing the court to treat good character established by a restricted form of character evidence as a mitigating factor only if it relates to the offender's prospects of rehabilitation or risk of reoffending, and providing discretion to not treat that good character as a mitigating factor.

The limitation of the right to liberty and security in relation to the new statutory aggravating factor will achieve the purpose of ensuring sentences imposed for rape and sexual assault against a children aged 16 or 17 appropriately and transparently account for the seriousness of the offending, impacts of the criminal conduct, and offender culpability, by requiring the court to treat the victim's age as an aggravating factor in determining the appropriate sentence.

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

There is no less restrictive alternative reasonably available.

- (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 limitation of the right to liberty and security in relation to qualifying the court's treatment of good character in sentencing will be authorised by law and is appropriate to ensure sentences imposed appropriately reflect the seriousness of the offending behaviour and offender culpability. The amendments are reasonably adapted to ameliorate the impact on human rights by limiting the application of the amendments to offences of a sexual nature, allowing the court to treat good character established by a restricted form of character evidence as a mitigating factor if it is relevant to assessing the offender's prospects of rehabilitation or risks of reoffending, and retaining general judicial discretion in sentencing. The amendments are not intended to restrict the court's ability to take into account any other matter listed in section 9 of the PS Act, including aggravating factors and other mitigating factors.

Similarly, the limitation of the right to liberty and security in relation to the new statutory aggravating factor will be authorised by law and is appropriate to ensure sentences imposed for rape and sexual assault committed against children aged 16 or 17 account for the seriousness of the offending, impacts of the criminal conduct and offender culpability, and meet community expectations. The amendments ameliorate the impact on human rights as much as possible by limiting the application of the aggravating factor to offenders convicted of rape and sexual assault against children aged 16 or 17, allowing the court to disapply the aggravating factor in exceptional circumstances, and retaining judicial discretion in sentencing. The amendments are not intended to restrict the court's ability to take into account any other matter listed in section 9 of the PS Act, including mitigating factors and other aggravating factors.

- (f) any other relevant factors

Nil.

False representations in relation to government agencies

(a) the nature of the right

Right to freedom of expression

The right to freedom of expression is a fundamental human right, recognised as foundational for a free and democratic society. It protects an individual's right to hold opinions without interference and seek, receive, and impart information and ideas. Information and ideas may be sought, received, or imparted orally, in writing, by way of art, or any other medium. The forms of protected expression are broad and may include newspapers, posters, books, advertising, spoken or sign language, objects of art, and visual, audio-visual, and internet-based expressions.

Clause 10 of the Bill will limit the right to freedom of expression to the extent that an individual will be prohibited from imparting information or ideas in circumstances where that person makes a false representation that they are a government agency or are acting on behalf or with the authority of a government agency.

Right to liberty and security

The right to liberty and security protects people from unlawful or arbitrary arrest or detention. In the context of human rights an arrest or detention is unlawful if it is not authorised by law, or occurs other than in accordance with procedures established by law. A lawful arrest or detention may be arbitrary if it is unpredictable, unreasonable, or disproportionate to a legitimate aim.

Clause 10 of the Bill will limit the right to liberty and security to the extent a person convicted of the new offence is liable to up to three years imprisonment.

Right to a fair hearing and rights in criminal proceedings

The right to a fair hearing guarantees all individuals procedural fairness when coming before a court or tribunal. It entitles individuals to a fair and public hearing before a competent, impartial, and independent court or tribunal. Rights in criminal proceedings are closely related to the right to a fair hearing, and protect the right of persons charged with a criminal offence to certain minimum guarantees, including the right to be presumed innocent until proven guilty according to law. A key characteristic of the presumption of innocence is to place the burden of proof on the prosecution to prove a defendant's guilt beyond a reasonable doubt.

Clause 10 of the Bill limits these rights as the new offence contains a reasonable excuse provision, which is generally considered to reverse the onus of proof. A reversal of the onus of proof shifts the burden of proof from the prosecution to the defendant.

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

Right to freedom of expression

The purpose of the limitation of the right to freedom of expression is to safeguard the legitimacy of government communications and protect public order. A person making a false representation that they are a government agency or are acting on behalf or with the authority of, a government agency could undermine public confidence in the integrity and authority of government agencies. Queensland departments and other public sector entities cannot function effectively unless the public trusts the legitimacy and lawfulness of representations made by or for them.

Right to liberty and security

The purpose of the limitation of the right to liberty and security is to ensure sentences imposed for the new offence appropriately reflect the seriousness of the offending and the impacts of the criminal conduct.

Right to a fair hearing and rights in criminal proceedings

The purpose of the limitation of the right to a fair hearing and rights in criminal proceedings is to ensure individuals are afforded an opportunity to raise an appropriate excuse for making a false representation and that evidence of the reasonable excuse is provided by the party best positioned to provide the evidence.

- (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

Right to freedom of expression

The limitation of the right to freedom of expression will achieve its purpose of safeguarding the legitimacy of government communications and protecting public order by ensuring persons engaging in government impersonation scams, deliberately disseminating false information, or otherwise making a false representation that they are, or are acting on behalf or with the authority of, a government agency can be appropriately prosecuted.

Right to liberty and security

The limitation of the right to liberty and security will achieve its purpose of ensuring sentences for the new offence appropriately reflect the seriousness of the offending by allowing the court to impose a term of imprisonment of up to three years. A person making a false representation that they are a government agency or are acting on behalf or with the authority of a government agency has the potential to confuse the public and undermine legitimate government communications and public order; a term of imprisonment is considered appropriate to deter and punish this behaviour.

Right to a fair hearing and rights in criminal proceedings

The limitation of the right to a fair hearing and rights in criminal proceedings will achieve its purposes of ensuring individuals are afforded an opportunity to raise a reasonable excuse and that evidence of the excuse is provided by the party best positioned to provide it. The limitation acknowledges the substance of a reasonable excuse is likely within the particular knowledge of the defendant, rather than the prosecution, and the evidential onus is therefore justifiably placed on the defendant.

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

There is no less restrictive alternative reasonably available.

- (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, it is considered that the benefits of safeguarding the legitimacy and integrity of official communications and protecting public order outweigh the human rights limitations associated with the new offence.

Right to freedom of expression

The limitation of the right to freedom of expression is appropriate to protect Queenslanders from misrepresentations and false statements purportedly made by or on behalf of or with the authority of a government agency. The extent of the limitation is ameliorated by the scope of the offence, which restricts only the expression of information in a way that falsely represents that the person is a government agency or is acting on behalf or with the authority of a government agency. Individuals will continue to be able to disseminate information or ideas in ways that do not involve false representations.

Right to liberty and security

The limitation of the right to liberty and security will be authorised by law and is appropriate to ensure sentences imposed for the offence appropriately reflect the seriousness of the offence and the impacts of the criminal conduct. The offence provision is reasonably adapted to ameliorate the impacts on human rights as much as possible, by imposing a maximum term of three years imprisonment for the most serious form of offending behaviour. The court retains discretion to determine the appropriate sentence up to the maximum penalty considering all relevant circumstances of the offence.

Right to a fair hearing and rights in criminal proceedings

The limitation of the right to a fair hearing and rights in criminal proceedings is appropriate to ensure the offence does not apply in circumstances where the individual has a reasonable excuse. The provision of a reasonable excuse to avoid criminal liability is balanced against the reversal of the onus of proof, which acknowledges that the substance of the reasonable excuse is likely to be within the particular knowledge of the defendant.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Bill is compatible with human rights under the HR Act because it limits 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.

DEB FRECKLINGTON MP
Attorney-General and Minister for Justice
Minister for Integrity