

Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity

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 amendments to be moved during consideration in detail of the Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025 (the Bill).

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

Overview of the amendments

Firstly, amendments to be moved during consideration in detail will affect the operations of the Crime and Corruption Commission (CCC).

Further amendments will amend the *Forensic Science Queensland Act 2024* (FSQ Act), the *Police Powers and Responsibilities Act 2000* (PPR Act), the *Evidence Act 1977* (Evidence Act), and the *Youth Justice Act 1992* (YJ Act). These miscellaneous amendments are intended to support the administration of criminal justice in Queensland.

In addition, amendments to the *Respect at Work and Other Matters Amendment Act 2024* (RAW Act) and the *Anti-Discrimination Act 1991* (AD Act) will delay the commencement of the remaining uncommenced provisions in the RAW Act to a date to be fixed by proclamation and rectify the inadvertent commencement of new burden of proof provisions in the AD Act.

Amendments relating to the operations of the CCC

The CCC is Queensland's primary corruption watchdog. It is imperative that it is subject to the highest integrity standards, starting with its senior leadership. The most senior officials of the CCC are its commissioners. Together, the commissioners provide strategic leadership and direction for the performance of the CCC's functions and the exercise of its powers by its officers.

The amendments will provide that commissioners of the Crime and Corruption Commission (CCC) may be appointed for a non-renewable period of up to 7 years.

Other amendments ensure the administrative efficiency of the CCC's operations through the electronic service of notices. The objectives of these amendments are to:

- establish a framework for the CCC to enter agreements to serve particular types of notices by email across multiple investigations or operations, or functions;
- ensure that the categories for which a person or a lawyer representing a person may nominate email addresses for service are the same; and
- ensure the validity and ongoing valid operation of agreements entered into before the new framework commences and related actions.

Amendments to the FSQ Act

The amendments to be moved relating to the FSQ Act will clarify that the existing transitional provisions in Part 7:

- do not apply to senior Forensic Science Queensland (FSQ) employees; and
- do not limit the application of public sector directives made after 1 July 2024 to FSQ employees.

FSQ (consisting of the Director and staff) was established as an independent office within the now Department of Justice (DoJ) on and from 1 July 2024, replacing the former Forensic and Scientific Services in Queensland Health (QH). FSQ delivers forensic services to support the administration of criminal justice in Queensland.

Part 7 of the FSQ Act contains transitional provisions regulating the terms and conditions of employment for employees who transferred to FSQ from QH and for new employees appointed on or after 1 July 2024 within DoJ during the initial transition period.

The amendments to be moved during consideration in detail of the Bill are intended to clarify the operation of these provisions.

The amendments will resolve uncertainty regarding the applicable terms and conditions of employment for senior staff (particularly those appointed on or after 1 July 2024) by providing that Part 7 does not apply to these staff with retrospective effect. This will ensure that senior FSQ staff are appropriately treated as public service employees with conditions as determined by relevant public sector directives.

The amendments will also ensure that a public sector directive made on or after 1 July 2024 applies to any FSQ employee who falls within the scope of a directive's application clause and to validate the past application of public sector directives in line with this intended policy objective. At present, section 50 of the FSQ Act requires a directive of this type to expressly state that it applies to initial FSQ employees. These amendments will remove any ambiguity in cases where a public sector directive applies broadly to a class of employees that includes FSQ employees, but the directive does not explicitly state that it applies to initial FSQ employees.

Amendments to the PPR Act

The PPR Act provides for taking and analysing DNA samples, including samples obtained from crime scenes, victims, and suspects.

Section 490 of the PPR Act provides for the destruction of DNA samples taken from a person suspected of having committed an indictable offence and results of the DNA sample analysis (collectively, 'DNA material'). These samples must be destroyed within a reasonably practical time after the end of one year from the day the arrest or a proceeding for the offence is discontinued under the relevant provisions, the day the person is found not guilty of the offence, or the day the sample is taken, if a proceeding for the indictable offence is not started within one year after the sample was taken.

FSQ has experienced a substantial backlog in crime scene sample processing and reporting following the Commission of Inquiry into Forensic DNA Testing in Queensland and Commission of Inquiry to examine DNA Project 13 concerns (together 'Commissions of Inquiry'). In the absence of these crime scene samples being processed, the reference samples collected from persons suspected of committing an indictable offence cannot be compared against the crime scene samples for elimination or comparative analysis purposes.

Additionally, in accordance with recommendations from the Commissions of Inquiry, a review of historical cases affected by potential sub-optimal DNA analyses remains ongoing. The purpose of the review is to determine whether further DNA information is available that may be probative to the affected cases. The comprehensiveness of the review of historical cases may be compromised if historical DNA material is destroyed.

To address the impact of testing delays and the review of historical cases, amendments to the PPR Act were made in 2023 to extend the retention period for DNA material. Generally, these amendments provided that samples must be destroyed within a reasonably practical time after the end of three years in cases where proceedings for an indictable offence have not been started within this time.

It has been identified that a further extension of the retention period is required to ensure delays in processing crime scene samples do not adversely impact investigations, and the review of historical cases is not compromised by the destruction of historical DNA material. The amendments to be moved during consideration in detail will extend the current retention periods from three to seven years and permit the retention of new DNA material taken from suspects between 14 June 2025 and 14 June 2027 for three years.

Amendments to the Evidence Act

The amendments to be moved during consideration in detail will amend the Evidence Act to clarify the transitional approach in section 162 to reflect that preliminary complaint evidence is admissible in sexual offence proceedings relating to charges laid both after and prior to the commencement of section 94A.

Amendment to the YJ Act

The amendments to the YJ Act will clarify that restorative justice agreements made as a consequence of a court diversion referral (under section 163 of the YJ Act) are not included on the criminal history of a child where the referral was made before commencement of the *Making Queensland Safer Act 2024* (the MQS Act). The amendments also provide that breaches and variations of community-based orders which occurred prior to commencement will be captured on a child's criminal history. The transitional approach to breaches of supervised release orders which occurred before commencement not being included in a child's criminal history is retained. Further, the amendments will also clarify that interim orders are not captured by the new criminal history provisions.

Amendments to the RAW Act

The amendments to the RAW Act establish a new date for commencement of a number of provisions which amend the AD Act from 1 July 2025 to a day to be fixed by proclamation. Further, the amendments provide that section 15DA of the *Acts Interpretation Act 1954* (AI Act) does not apply, which will ensure the provisions do not automatically commence under that section. The changes to commencement will allow for further consideration and consultation on the reforms implemented by the RAW Act.

Amendments to the AD Act

The RAW Act introduced new burden of proof provisions into the AD Act on 1 December 2024. However, it is apparent that the new provisions were commenced unintentionally, noting that a relevant transitional provision relating to the new burden of proof provisions currently does not commence until 1 July 2025. The amendments to the AD Act will rectify this error by providing that the old burden of proof provisions should continue to apply, and be taken to always have applied, until the commencement of related reforms to the definitions of discrimination by proclamation.

Human rights issues

Human rights relevant to the Bill (part 2 divisions 2 and 3, HR Act)

The amendments engage a range of rights protected by the HR Act, namely:

- the right to recognition and equality before the law (HR Act s 15)
- the right to take part in public life (HR Act s 23)
- the right to privacy (HR Act s 25).

The amendments to service by email, the FSQ Act, the Evidence Act and the YJ Act do not limit human rights.

Human rights that are limited by the proposals (part 2 divisions 2 and 3, HR Act)

Tenure of commissioners

Recommendation 4 of the Parliamentary Crime and Corruption Committee's (PCCC) Report No. 106, *Review of the Crime and Corruption Commission's activities* (Report No. 106) was that consideration be given to amending the CC Act to provide for a single non-renewable appointment for the chairperson and ordinary commissioners of the CCC, not exceeding 7 years.

The amendments are designed to fully implement this recommendation and will provide that commissioners of the CCC, which include the chairperson, may be appointed for up to 7 years. These appointments are non-renewable and a commissioner may not be reappointed in the future.

(a) the nature of the right

The *right to take part in public life* under section 23(2)(b) of the HR Act provides a right of equal access to the public service and public office.

The “public service” is defined by reference to the *Public Sector Act 2022*,¹ which includes departments and prescribed public service entities.² The CCC is not a public service entity. However, the position at human rights law may be broader and include the CCC.

While the *right to privacy* under section 25 of the HR Act does not expressly include a right to work, analogous rights have been interpreted in a like way in overseas jurisdictions.³ The right to privacy will only be limited if the interference with privacy is unlawful or arbitrary. This means conduct that is capricious, unpredictable or unjust, or interferences which are unreasonable in the sense of not being proportionate to a legitimate aim. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary.

A tenure limit may limit these rights by limiting the range of people who may access the positions.

¹ *Acts Interpretation Act 1954* sch 1 (definition of ‘public service’).

² *Public Sector Act 2022* s 9, sch 1.

³ See discussion in *ZZ v Secretary, Department of Justice* [2013] VSC 267, [82]-[95].

- (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 tenure limits for commissioners, including the chairperson, is to retain high-calibre, vibrant and independent leadership of the CCC in order to maintain public trust and confidence in the CCC.

An effective anti-corruption and major crime body, in which people place high levels of trust, contributes to the maintenance of the rule of law, ensuring a free and democratic society based on human dignity, equality and freedom. This is particularly so given the serious threat corruption poses to the stability and security of societies.⁴

- (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

There is a strong rational connection between the imposition of tenure limits and maintaining public trust and confidence in the CCC.

Tenure limits achieve the stated purpose of maintaining public trust and confidence in the CCC by reducing corruption risks. In recommending a change to the tenure limits for commissioners, the PCCC noted concerns raised about the terms of commissioners being subject to renewal on the initiative of the government of the day. By removing the option of reappointment, the potential for a commissioner to be influenced, or to be seen to be influenced, on this basis is eliminated.

In addition, tenure limits avoid the negative impacts that can arise from long-term appointments which are not subject to regular renewal where this may perpetuate harmful or unhealthy cultural and organisational aspects within an organisation.

Therefore, imposing a tenure limit will achieve the stated purpose.

- (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.

The option of imposing no tenure limit raises a host of perils. It risks organisational capture and stagnation within the CCC. It may also lead to inefficiencies, reduced accountability and increased perceptions of, or actual, political influence. This option would not achieve the purpose of maintaining public trust and confidence in the CCC.

Alternatively, a fixed period of appointment will also not appropriately achieve the purpose. An important feature of commissioner appointments is that they are made with bipartisan support through the PCCC.⁵ This bipartisanship is essential to ensure appointments are not made at the sole discretion of the government of the day. This ensures the independence of the CCC, without which public trust and confidence in the CCC will be eroded.

The shared responsibility for appointments should extend beyond the nominee to include the term length. There may be circumstances where bipartisan support is provided in respect of a nominee for a period shorter than a fixed term allows. All members of the PCCC, which has responsibility for monitoring and reviewing the performance of the CCC, are best placed to determine the length of a term of appointment. Removing the ability of the PCCC to make such determinations would not be as effective in facilitating bipartisan support for appointments. This is therefore not a reasonably available alternative.

- (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 one side of the scales, the proposed amendment limits the rights as it reduces, in a small way, the range of people who are eligible to be appointed to the position of commissioner.

On the other side of the scales, the importance of ensuring exceptional, independent and effective leadership for the CCC is fundamental to engendering public trust and confidence in the CCC as a whole.

On balance, it is considered that the importance of achieving the purpose of maintaining public trust and confidence in the CCC outweighs the potential that the proposed tenure limit may prevent certain individuals from accessing a commissioner position, thereby limiting the right to take part in public life and the right to privacy (to the extent that this right may encompass a right to work).

Accordingly, the amendment is compatible with human rights.

- (f) any other relevant factors

The amendment will not operate in respect of the current commissioners. Under the existing transitional provision which will be inserted by the *Crime and Corruption and Other Legislation Amendment Act 2024*, any incumbent commissioner will continue to be subject to the provision as was in force before the commencement. The effect of this

⁵ *Crime and Corruption Act 2001* s 228.

is that incumbent commissioners may be reappointed for up to a maximum tenure of 10 years in total.

Amendments to PPR Act

(a) the nature of the right

Right to privacy

The right to privacy protects a person from against unlawful or arbitrary interference with their privacy. family, home, or correspondence. The scope of the right is broad, encompassing an individual's physical and mental integrity, legal personality, identity, sexuality, family, personal information, data and correspondence, and home. In the context of the right to privacy, an interference is unlawful if it is not authorised by law. A lawful interference may nonetheless be arbitrary if it is capricious, unpredictable, unreasonable, or disproportionate.

A DNA sample is a sensitive form of data. A sample contains unique personal information about a person, including information about physical attributes, ancestry, familial relationships, and health. The results of DNA analysis may also disclose information about a person's past movements, presences at certain locations, and alleged offending behaviour.

The amendments to the PPR Act will limit the right to privacy as they will extend the retention period for DNA material associated with persons suspected of having committed an indictable offence and permit the use of the DNA material in accordance with chapter 17 of the PPR Act, including the recording of the results in QDNA (the approved DNA database).

(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 limiting the right to privacy is to preserve the integrity of the criminal justice system by ensuring indictable offences can be properly investigated and prosecuted. The limitation balances the right of persons suspected of committing an indictable offence with the rights and interests of victims of crime and the community.

(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 will achieve its purpose by ensuring DNA material is not required to be destroyed before crime scene samples are processed or the review of historical cases is completed, ensuring indictable offences can be properly investigated and prosecuted.

- (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 and reasonably available way to achieve the identified purpose given the current backlog in crime scene sample processing and the status of the review of historical cases. While a shorter extension could have been adopted, it would not have been as effective in achieving its purpose, in particular with respect to reviewing historical cases.

- (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 importance of preserving the integrity of the criminal justice system by ensuring that indictable offences can be properly investigated and prosecuted outweighs the limitations on the right to privacy.

The amendments are reasonably adapted to mitigate the impacts on human rights as much as possible, by limiting the DNA material to which the extended retention periods apply and retaining the requirement for the destruction of the DNA material at the end of the retention period unless otherwise authorised.

- (f) any other relevant factors

Nil.

Amendments to RAW Act to delay commencement

- (a) the nature of the right

Right to recognition and equality before the law

The rights to equality and non-discrimination protected under section 15 of the HR Act are of fundamental importance to the enjoyment of human rights more broadly. At its heart, the principle of non-discrimination recognises the equal dignity of all persons, regardless of their personal characteristics.

The amendments which delay the commencement of the RAW Act limit these rights insofar as it would not prohibit certain conduct that would otherwise be unlawful from 1 July 2025, such as unfavourable conduct on the basis of new protected attributes, or public acts which are considered to be hateful, reviling, seriously contemptuous of, or seriously ridiculing of a person or group of persons who have a protected attribute.

- (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

Reforms to discrimination law can be complex, and often involve competing rights and interests. It is critical, then, that an appropriate balance is struck where rights come into conflict which appropriately reflects community values and expectations.

The purpose of delaying the commencement to the RAW Act is to allow sufficient time to undertake consultation to ensure that the reforms to the AD Act achieve an appropriate balance between competing rights.

- (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

Delaying the commencement to a time to be fixed by proclamation helps achieve the purpose by providing the most flexibility for consultation to occur.

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

Alternative approaches considered include:

- Only delaying the commencement of provisions which involve contentious or clear competing rights and interests and allow other, less contentious provisions to commence. This alternative was not pursued as the nature of discrimination law is such that any reforms will involve competing interests to some degree, and whether a provision is indeed less contentious, or represents an adequate balance, requires further consultation.
- Delaying for a set period of time, or otherwise not disapplying section 15DA of the *Acts Interpretation Act 1954*. This approach would not necessarily be less restrictive on human rights, nor would it be as effective in achieving the purpose as any time limit may impact the adequacy of consultation that is able to occur.

Accordingly, I do not consider that there are any less restrictive alternatives available which are as effective in achieving the purpose.

- (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

It is crucial that Queensland's anti-discrimination laws remain fit for purpose and are effective in achieving their purpose in protecting all Queenslanders from discrimination. While the delay to the commencement of the reforms will result in some limitation to non-discrimination rights, the importance of ensuring that these important

reforms get the balance right and appropriately reflects community values and expectations is of greater importance.

(f) any other relevant factors

Nil.

Amendments to AD Act to rectify commencement of shared burden

Amendments also rectify the inadvertent commencement of the shared burden provisions in the AD Act. It is clear that the new shared burden was intended to commence with related changes to the definitions of discrimination, which is supported by the fact the relevant transitional provision regarding the new burden provisions has not been commenced.

The impact of the amendments to the Bill, then, will be that the new shared burden provisions will be taken to have never commenced, and will instead commence at the same time as the new definitions to discrimination. It is possible that this may have a minor impact on the complaints which are before the Tribunal in circumstances where the Tribunal has applied the new burden. However, as these changes are procedural in nature (and do not impact underlying substantive rights or liabilities), and the Tribunal remains empowered to ensure procedural fairness and natural justice, it is not considered that the amendments limit fair hearing rights under section 31 of the HR Act.

Conclusion

In my opinion, the amendments to be moved during consideration in detail of the Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025 are compatible with human rights under the HR Act because they limit human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

DEB FRECKLINGTON MP

Attorney-General and Minister for Justice and Minister for Integrity

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