

Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Amanda Camm MP, Minister for Families, Seniors and Disability Services and Minister for Child Safety and the Prevention of Domestic and Family Violence

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, Amanda Camm MP, Minister for Families, Seniors and Disability Services and Minister for Child Safety and the Prevention of Domestic and Family Violence make this statement of compatibility with respect to the amendments to be moved during consideration in detail (the amendments) of the Domestic and Family Violence Protection and Other Legislation 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

The Bill progresses legislative amendments to the *Domestic and Family Violence Protection Act 2012* (DFVP Act) that will improve productivity for operational police officers when responding to domestic and family violence (DFV), give victim-survivors immediate protection against respondents, support delivery of DFV related election commitments and make other technical amendments to DFV legislation.

This will be achieved in part through amendments to the DFVP Act that:

- establish a framework for police protection directions (PPDs) to improve efficiencies for police responding to DFV and reduce the operational impacts of the current DFV legislative framework; and
- support an electronic monitoring pilot for high-risk DFV perpetrators, by inserting a new monitoring device condition available to judicial officers to impose on a respondent to a domestic violence order (DVO) in certain circumstances.

Amendments to electronic monitoring and PPD provisions in the Bill

Amendments to the electronic monitoring and PPD provisions in the Bill to be moved during consideration in detail will:

- ensure a court seeking to inform itself about monitoring device conditions considers whether the information is likely to be in a prescribed entity's possession; and clarify that the prescribed entity is only required to provide information in the entity's possession, or to which the entity has access;
- enable evidence derived from the imposition or use of a monitoring device to be admissible in a proceeding for a criminal offence that is not a domestic violence offence, in which the court considers it is in the interests of justice to admit the evidence;
- require the police commissioner to provide a copy of the PPD and the grounds for the PPD to the court where an application for a protection order is made, and the applicant is named in the PPD as either a respondent or the aggrieved;
- clarify that the dismissal or adjournment of an application for a protection order will only end a PPD where the applicant is the aggrieved named in the PPD;
- expand the orders a court may make when reviewing a PPD to include an order that ends a PPD on a stated day, to enable reference to the PPD to be included on the respondent's domestic violence history; and
- allow the police commissioner to file documents when notified by the clerk of the court of a court review of a PPD 'within 1 business day or as soon as practicable' to provide flexibility in the case of legitimate delays.

The human rights implications for the PPD framework and monitoring device conditions established by the Bill have been addressed within the statement of compatibility accompanying the Bill. The amendments proposed for the Bill are mostly procedural in nature and intended to ensure police efficiencies arising from the implementation of the Bill and community safety is maintained.

Admissibility of monitoring device evidence

Clause 15 of the Bill inserts new part 3, division 5, subdivision 3 into the DFVP Act (new sections 66A to 66H). Under the new provisions, a court issuing a domestic violence order may impose a condition requiring a respondent to wear a monitoring device for a stated period.

Under new section 66G as introduced, evidence of the imposition of a monitoring device condition or the use of a monitoring device or safety device, and other evidence directly or indirectly derived from the imposition or use, is not admissible in any proceeding other than a proceeding for a domestic violence offence.

Amendments to section 66G will provide an exception to the restriction, to allow for the admissibility of evidence related to a monitoring device in any proceeding for a criminal offence, where the court considers that it would be in the interests of justice to admit the evidence.

Amendment to new section 100ZD - Decision of court about police protection direction

New section 100ZD of the DFVP Act outlines the orders that may be made by a court that has reviewed a PPD. A court may, on application, review a PPD at any time during its duration (to

a maximum of 12 months). In addition to the range of orders a court may make, a court may also make an order setting aside the PPD. If the PPD is set aside, the direction is taken to have never been issued and the PPD does not form part of the respondent's domestic and family violence history.

The proposed amendment to the new section 100ZD expands the orders a court may make when reviewing a PPD to include an order ending the PPD on a stated day. This amendment further provides that a respondent's domestic violence history that relates to the PPD that has ended must include information about the court order and the day the PPD ended. This amendment recognises that there may be circumstances where it would be warranted for a respondent's domestic violence history to reflect the PPD, although the PPD should end.

Recording the existence of a PPD on a respondent's domestic violence history is not the equivalent of recording a conviction of a criminal offence. However, this information may be used to determine the character of a respondent through the operation of a range of Acts including the *Child Protection Act 1999*, the *Disability Services Act 2006*, the *Penalties and Sentences Act 1992* and the *Working with Children (Risk Management and Screening) Act 2000*.

Amendments to the *Family Responsibilities Commission Act 2008*

The objective of the amendments to the Bill to be moved during consideration in detail is to amend the *Family Responsibilities Commission Act 2008* (FRC Act). The amendments will provide for the Family Responsibilities Commission (FRC) to receive a notice from the police commissioner following the issue of a PPD in relevant circumstances. This includes the issue of a PPD in response to DFV occurring in a welfare reform community area, or to a respondent who lives, or has lived, in a welfare reform community area. This will also include a PPD issued following police review (under new section 100Y).

The FRC is a statutory body established under the FRC Act. The role of the FRC is to support the restoration of socially responsible standards of behaviour and local authority in welfare reform community areas (Aurukun, Coen, Doomadgee, Mosman Gorge and Hope Vale) and to help people in those areas ('community members') resume primary responsibility for their community, families and individuals.

The FRC's jurisdiction relates to 'community members', which is defined in section 7 of the FRC Act as a person who is a welfare recipient; who either usually resides in a welfare reform community area, or has lived in a welfare reform community area for at least three months since the commencement of the FRC Act.

Amendments to the *Forensic Science Queensland Act 2024*

The amendments will amend the eligibility criteria in section 7 of the *Forensic Science Queensland Act 2024* (FSQ Act) for appointment as the director of Forensic Science Queensland (FSQ). A person who is appropriately qualified to perform the functions of director will be eligible for nomination by the Minister and appointment by the Governor in Council.

The amendments will permit the Minister to recommend the removal of the director for any reason or none. Additionally, the Minister will be able to suspend the director for up to 6 months for any reason or none.

The amendments will omit existing section 19 of the FSQ Act. This section gives the director independence. A new section 19 will provide a power for the Minister to give a direction to the director. However, a direction may not be about a particular person or matter. New section 19A of the FSQ will empower the Minister to ask for information from the director. The director must comply with a direction given under new section 19 or a request made under section 19A. Other clauses remove references elsewhere in the FSQ Act to the word “independent”.

The amendments provide for the appointment by the Minister of deputy directors of FSQ and also provide other provisions related to the position of deputy director including the suspension and removal of a deputy director. A deputy director may be removed from office for any reason or none.

The amendments will also provide that the appointment of a member of the FSQ Advisory Council may be terminated for any reason or none.

The amendments will amend the FSQ Act by inserting a new section 43A, which applies in relation to reports about Forensic Science Queensland that were obtained by the State and tabled in Parliament before the new section commenced.

New section 43A will provide certain legal protections to persons involved in the preparation of the report, including the State.

The State commissioned and obtained reports in relation to the operation of FSQ. Those reports were subsequently tabled in the Legislative Assembly.

Human Rights Issues

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

In my opinion, the amendments to be moved during consideration in detail engage the following human rights under the HR Act:

- the right to equal protection of the law without discrimination (section 15(3) HR Act)
- the right to freedom of expression (section 21(2) HR Act)
- the right to take part in public life (section 23 HR Act)
- the right not to be arbitrarily deprived of one’s property (section 24(2) HR Act)
- the right not to have one’s privacy, family, home or correspondence unlawfully or arbitrarily interfered with (section 25(a) HR Act)
- the right not to have one’s reputation unlawfully attacked (section 25(b) HR Act)
- the protection of families and children (section 26 HR Act)

- cultural rights – distinct cultural rights of Aboriginal and Torres Strait Islander peoples (section 28 HR Act)
- the right to a fair hearing (section 31 HR Act)

Amendments to electronic monitoring and PPD provisions in the Bill

Privacy and reputation (section 25)

Section 25(a) of the HR Act protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence. Privacy captures personal information but extends to a person's private life more generally, including their mental and bodily integrity. The amendments will engage the right to privacy as follows:

- (a) the proposed amendment to section 66G will allow authorities to use evidence of the imposition of a monitoring device condition or the use of a monitoring device to be admitted as evidence for offences unrelated to the reason for which the data was collected; and
- (b) the proposed amendment to section 100ZD will allow a court that has reviewed a PPD to make an order to end the PPD and for the existence of the PPD to be recorded on the respondent's domestic violence history.

The right to privacy will only be limited if the interference with privacy is unlawful or arbitrary. The interference with privacy will be authorised under the DFVP Act and will therefore be lawful. Arbitrary means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

Admissibility of monitoring device evidence

As noted in the Statement of Compatibility for the Bill, electronic monitoring can have deep impacts on the person being monitored. GPS monitoring allows authorities to systematically collect and store data showing a person's habits and movements in their daily life. By continuously monitoring the person's location, the authorities can build up a picture of the person's religious, political, sexual, and other personal affiliations and associations.

The Statement of Compatibility for the Bill considered the limitations of the electronic monitoring provisions on a number of rights including the right to privacy and reputation. However, it did not specifically contemplate new section 66G. This is because, as originally drafted, section 66G limited the admissibility of monitoring device evidence to proceedings involving domestic violence offences.

The explanatory notes for the Bill provide that the restriction in section 66G ensures that the existence of a monitoring device condition and any information related to or obtained from a monitoring device is not used as evidence in proceedings that are not related to a domestic violence offence. This also recognises that monitoring device conditions are being used in a civil context, and that information gathered in the civil context should not be used to pursue unrelated criminal proceedings.

As such, limiting the admissibility of the evidence minimised the potential human rights impacts of admitting the data in criminal proceedings unrelated to the DFVP Act. In relation to limitations on the right to privacy, the Statement of Compatibility considered that, as any impacts on privacy were proportionate, and thus not arbitrary, the right to privacy was not limited.

Amendment to new section 100ZD - Decision of court about police protection direction

As noted in the Statement of Compatibility for the Bill, amendments that alter matters recorded on a person's criminal history or domestic violence history will limit the right to privacy. While police cautions take place in private and are therefore an aspect of the right to a private life, convictions, which take place in public, become part of a person's private life as they recede into the past. Ordinarily, a conviction recedes into the past at the point that it becomes spent under the spent convictions regime.¹

A PPD is not a criminal conviction that takes place in public. When police officers issue a PPD to a respondent, it is more like a warning that forms part of the respondent's private life. Disclosure and use of the PPD to make decisions about the respondent therefore interferes with their privacy. At some point, the right to privacy protects the ability of respondents to move on from their history of domestic and family violence if they do not present an ongoing threat.

If human rights may be subject to limitation if the amendments are enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any limits on the right to privacy and reputation are considered reasonable and justified under section 13 of the HR Act as follows.

Admissibility of monitoring device evidence

(a) the nature of the right

Section 25(a) of the HR Act, as discussed above, protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence.

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

Without the proposed amendment, section 66G may prevent evidence from monitoring device data from being used in proceedings for potentially serious criminal offences such as murder. Conversely, a suspect could not use evidence derived from their monitoring device to alibi them from an offence that was not a domestic violence offence.

It is in the public interest that courts are not precluded from receiving evidence about serious offences. The proposed amendment balances the importance of maintaining community safety through allowing an exception to the admissibility restriction, while recognising that

¹ *R (T) v Chief Constable of Greater Manchester Police* [2014] UKSC 35; [2015] AC 49, 65-6 [18]; *R (L) v Commissioner of Police of the Metropolis* [2009] UKSC 3; [2010] 1 AC 410, [27].

monitoring device conditions are being used in a civil context, and that information gathered in the civil context should not be routinely used to pursue unrelated criminal proceedings.

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

The amendment achieves its purpose by allowing a court to consider evidence of the imposition of a monitoring device condition, or the use of a monitoring device, and other evidence directly or indirectly derived from its use, in a proceeding for a criminal offence if the court considers it is in the interests of justice to admit the evidence. This, by necessity, will unavoidably impact upon a respondent's right to privacy.

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

There are no less restrictive ways to achieve the purpose. It should be noted that the proposed amendment allows evidence to be admissible if the court considers 'it is in the interests of justice' to admit the evidence. This allows the court to consider the facts and circumstances of each individual matter and determine whether it is appropriate for the relevant evidence to be admissible.

- (e) the balance between the importance of the purpose of the amendment, 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 considered that the importance of allowing courts to receive evidence arising from the imposition of a monitoring device condition or the use of a monitoring device in proceedings for criminal offences outweighs the interference with the respondent's privacy. It is in the public interest that people who commit serious offences are brought to justice. The impact of this amendment is mitigated as otherwise the rules of evidence are not further affected. The court maintains its inherent ability to receive evidence and apply its discretion to exclude evidence that would be unfair to the defendant.

As the impact on privacy is proportionate, and thus not arbitrary, the right to privacy is not limited.

- (f) any other relevant factors

Nil.

Amendment to new section 100ZD - Decision of court about police protection direction

- (a) the nature of the right

Section 25(a) of the HR Act, as discussed above, protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence.

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

The purpose of including PPDs in a person's domestic violence history generally is to ensure a consistent approach with domestic violence orders and police protection notices, which are reflected on a person's domestic violence history.

The purpose of including reference to a PPD where a court makes an order to end the PPD under proposed new section 100ZD(3A) is to acknowledge there was a previous need for protection of the aggrieved from the risk of domestic violence, and ensuring that a respondent remains accountable for their previous actions in committing domestic violence.

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

The amendment achieves that purpose by providing a court may order that a PPD should end, which allows the existence of a PPD to form part of a respondent's domestic and family violence history. This will also allow the existence of the PPD to be considered in any application or screening processes conducted under the Acts listed above.

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

There is no reasonably available and less restrictive way to achieve the purpose identified. Concerns about the impact of this amendment are mitigated by safeguards within the *Child Protection Act 1999*, the *Disability Services Act 2006* and the *Working with Children (Risk Management and Screening) Act 2000* which ensure that information about a person's domestic and family violence history is only used for an authorised purpose under the relevant Act. In addition, the *Penalties and Sentences Act 1992* allows a court to be closed for the purposes of receiving a person's domestic and family violence history

- (e) the balance between the importance of the purpose of the amendment, 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 considered that the importance of protecting vulnerable people from the risk of harm outweighs the interference with the respondent's privacy.

As the impact on privacy is proportionate, and thus not arbitrary, the right to privacy is not limited.

- (b) any other relevant factors

Nil.

Amendments to the *Family Responsibilities Commission Act 2008*

Privacy and reputation (section 25)

Section 25(a) of the HR Act, as discussed above, protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence. The amendments to provide for notice of the issue of a PPD to be provided to the FRC will engage both the

respondent and aggrieved's right to privacy by allowing for personal information to be shared with the FRC.

The right to privacy will only be limited if the interference with privacy is unlawful or arbitrary. The interference with privacy will be authorised under the FRC Act and will therefore be lawful. Arbitrary means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

Protection of families and children (s 26)

Section 26 of the HR Act recognises that families are the fundamental group unit of society and are entitled to be protected by society and the State. Further, this right provides that every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child. DFV threatens the enjoyment of these rights.

In supporting the objectives of the FRC Act and ensuring the FRC is notified of relevant domestic and family violence, the amendments will promote the protection of children and families in welfare reform communities. The proposed amendments will ensure the ability for the FRC to receive notices in relation to PPDs in particular circumstances, which will support families and children in their communities by enabling the FRC to engage with them.

In response to receipt of these notices, the FRC has a range of options including making decisions in relation to income management and referral to support services. However, these decisions are made only when necessary and proportionate, in order to promote the rights of children or vulnerable people living in these communities.

Cultural rights – distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28).

Section 28 of the HR Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. Section 28(2) sets out particular rights which Aboriginal peoples and Torres Strait Islander peoples, with other members of their community, must not be denied. This includes protection of rights to enjoy, maintain, control, protect and develop identity, cultural heritage, and kinship ties among other things.

The proposed amendments will support the main objectives of the FRC, which are to support the restoration of socially responsible standards of behaviour and local authority in welfare reform community areas; and to help people in welfare reform community areas to resume primary responsibility for the wellbeing of their community and the individuals and families of the community. In particular, section 5(2)(c) of the FRC Act obliged the FRC to take into account Aboriginal tradition and Island custom when administering the Act. As such, the amendments will promote the cultural rights of Aboriginal peoples and Torres Strait Islander peoples by supporting welfare reform communities.

If human rights may be subject to limitation if the amendments are enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the *Human Rights Act 2019*)

Privacy and reputation (section 25)

Any limits on the right to privacy and reputation are considered reasonable and justified under section 13 of the HR Act as follows.

(a) the nature of the right (s13(a))

Section 25(a) of the HR Act, as discussed above, protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence.

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

The overall purpose of the FRC Act is to support the restoration of socially responsible standards of behaviour and local authority, and to help people resume primary responsibility for the wellbeing of their community and the individuals and families of the community.

The purpose of the PPD notice is to ensure the FRC is provided with timely information about PPDs issued where the respondent lives or has lived in a welfare reform community area, or where the DFV in relation to which the PPD was issued, occurred in a welfare reform community area. This will enable the FRC to engage with the person to support them and their family.

The support and wellbeing of community members is a proper purpose and will promote the human rights of community members and their families.

(c) the relationship between the limitation, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to privacy through the operation of the PPD notice ensures that the FRC can fulfil its role and achieve the overall objectives of the FRC Act. It does this by ensuring the FRC has access to information required to assess, engage and support a respondent to a PPD who is a community member.

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

The FRC and the FRC Act have safeguards in place to ensure the confidentiality and security of information received by the FRC. The FRC is a Public Service Entity under the *Public Sector Act 2022* and therefore subject to the *Information Privacy Act 2009*, the *Public Records Act 2002* and the Queensland Government's Information Security Policy, which provides strict guidelines in relation to the handling of confidential information.

The FRC Act also has provisions governing the exchange of information with other entities (Part 8). Section 147 of the FRC Act has confidentiality provisions that protect the recording, disclosure and use of confidential information gained by a person involved in the administration of the FRC Act. It provides further protection to ensure the confidentiality of the details of the PPD and details of the respondent provided to the FRC, and relevant entities that it provides this information to.

If the FRC determines, after conducting a search of a person's residential history and social security status, that they do not fall within the FRC's jurisdiction, the FRC must destroy the PPD notice and any other related documents in compliance with section 141 of the FRC Act. The FRC will therefore 'filter out' notices received in relation to people who do not fall within their jurisdiction (i.e. are not '*community members*'), as they do with notices received from other agencies.

Consideration was given to whether there are alternative ways to achieve the purpose that would limit the impact on human rights.

Because PPDs may be issued instead of protection orders, this may significantly reduce the FRC's visibility of domestic and family violence in welfare reform community areas and reduce opportunities for early intervention. The FRC could rely on voluntary self-referrals from community members, however, this would require respondents to PPDs to be aware of the FRC's role and available supports.

It may be less restrictive to limit PPD notifications to only one trigger. For example, if notification was only required if the PPD was issued in a welfare reform community area. However, the two-pronged approach for notification either where the respondent lives or has lived, or where the DFV has occurred, in a welfare reform community area is necessary. This is because police cannot reliably identify who is a 'community member' based solely on where the PPD is issued.

As there is no other less-restrictive way to notify the FRC of the issue of a PPD, in order to allow them to engage with community members, the limits imposed on human rights are necessary to achieve that purpose.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Preservation of a person's right to privacy and reputation is important and any limitation must be balanced. This is particularly important given the FRC operates in small communities. While the provision of a PPD notice to the FRC has the potential to limit the right to privacy, any restriction on the right is mitigated by the safeguards identified above.

The provision of a PPD notice will allow the FRC to engage with community members to support their wellbeing (and that of their families). This will promote the human rights of families and children; and, enable overall purpose of the FRC Act to be achieved, thereby promoting cultural rights in welfare reform communities.

On balance, I consider the importance of notifying the FRC of the issue of PPD's to enable the provision of support to community members outweighs any potential limits on the respondent or aggrieved's right to privacy.

As any impacts on the right to privacy are proportionate, and thus are not arbitrary, those rights are not limited.

(f) any other relevant factors

A review of the PPD provisions inserted by the Bill into the DFVP Act will be undertaken within two years and PPD notices may be considered as part of this review.

Amendments to the *Forensic Sciences Queensland Act 2024*

The amendment in new clause 59W will prevent individuals the subject of adverse commentary in the reports or about whom adverse inferences may be drawn from the reports from:

- seeking declaratory, injunctive or other relief from a court or tribunal; and
- commencing legal proceedings against, and recovering damages or obtaining other relief from, the State or the authors of the reports, in connection with any failure to provide natural justice in preparing the report.

Natural justice is an important process and removing an individual's ability to seek a remedy for failure to be afforded it arguably limits the individual's right to equal protection of the law. However, section 15(3) of the HR Act provides for equal protection of the law *without discrimination*. 'Discrimination' is defined in the HR Act as including direct and indirect discrimination within the meaning of the *Anti-Discrimination Act 1991* (AD Act) on the basis of an attribute stated in section 7 of the AD Act. It may also extend to discrimination on the basis of an attribute analogous to those stated in section 7 of the AD Act.

I am satisfied that the decision to publish the reports without affording natural justice to persons against whom adverse comments are made or about whom adverse inferences may be drawn from the reports was not based on any attribute mentioned in section 7 of the AD Act or an analogous attribute. The decision was, rather, made based on an urgent need to provide transparency about FSQ's serious operational problems, and the associated consequences for victims of crime and the operation of the criminal justice system.

Section 21 of the HR Act recognises the right of individuals to hold an opinion without interference and to seek, receive and impart information and ideas of all kinds. For individuals the subject of adverse comment in the reports, they have not been given an opportunity to express their views on the content of the reports prior to them being published.

The right to participate in public life in section 23 of the HR Act may be promoted by the amendments by encouraging suitably qualified experts to undertake reviews on matters of public importance for government in the future.

'Property' has a broad meaning in the human rights context. The amendment will remove or sterilise any right an affected individual may have to seek relief from a court, including damages if the individual's reputation has been adversely affected by the publication of the reports. 'Property' has also been held to extend economic interests, such as practising one's profession. There is a possibility that persons against whom adverse comments have been made in the reports may find difficulty in practising their profession. Therefore, the amendment potentially limits section 24(2).

However, section 24(2) protects against *arbitrary* interference which means, in this context, interference that is unjust, capricious or unreasonable insofar as it is disproportionate to the intended objective. As acts and decisions that are proportionate to achieving their intended objective cannot be arbitrary, it is convenient to address this element of section 24(2) below,

when I consider whether any limitation caused by the amendment is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

The making of the amendment resolves any question about the unlawfulness that arises in the context of section 25(b) of the HR Act.

The right to privacy in section 25(a) of the HR Act protects individuals from unlawful or arbitrary interference with their privacy, family, home or correspondence. ‘Privacy’ captures personal information, but also extends to a person’s private life more generally. In this situation, the amendment will prevent individuals the subject of adverse commentary in the reports from instigating legal proceedings or seeking other relief. For the same reasons given in relation section 25(b) of the HR Act, I do not consider the amendment limits the right of the affected individuals under section 25(a) of the HR Act against unlawful interference with their privacy. The right to privacy also protects against ‘arbitrary’ interference and, for reasons stated above in relation to section 24(2), I address this below.

The right to a fair hearing in section 31(1) of the HR Act includes a right of access to a court or tribunal. Restrictions on a person’s ability to commence proceedings, as well as on their ability to continue or properly conduct proceedings already commenced, will limit the right. Here, individuals the subject of adverse commentary in the reports will be prevented from commencing proceedings or seeking relief.

I am satisfied the proposed amendment enhances the rights of the reports’ authors and of the general public to freely express ideas and participate in public life. Forensic Science Queensland’s ongoing difficulties are a matter of great public importance, given their effect on the functioning of the criminal justice system and public confidence in that system. The difficulties have also been distressing for victims of crime and their families and the publication of the reports enhances their ability to express that distress.

If human rights may be subject to limitation if the amendments are enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

(a) the nature of the right

For each of the relevant rights, the nature and underlying values are as follows:

- Recognition and equality before the law in section 15 of the HR Act recognises that everyone has the right to enjoy their human rights equally and is entitled to the equal protection of the law without discrimination. It is about human dignity.
- Freedom of expression in section 21 of the HR Act protects the right to hold an opinion and express oneself freely as a person. It is about freedom.
- Taking part in public life in section 23 is concerned with providing the opportunity for people to participate in public affairs.
- The right to property in section 24 of the HR Act protects the dignity of having the essentials of life and is necessary for the fulfilment of other rights.

- The right to privacy in section 25 of the HR Act is about having control over one's own life, including one's professional life, and being left alone.
- Right to a fair hearing in section 31(1) of the HR Act protects the rights of parties in criminal or civil proceedings to a fair hearing by a competent court or tribunal. This includes the right to access the court or tribunal. It is about procedural fairness.

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

The purpose of the amendments to broaden the qualifications required for recommendation or appointment is to increase the pool of candidates who may be eligible for appointment as the director of FSQ. The same qualification requirement will apply to the position of deputy director.

Changes to the basis upon which the director or a deputy director may be suspended or dismissed are to provide the Minister with adequate flexibility and oversight over the affairs and leadership of the agency. These amendments provide a mechanism through which the leadership of FSQ can be accountable for meeting the statutory objectives of the FSQ Act and providing proper governance for a public organisation.

Similarly, changes to the powers to terminate the appointment of an FSQ Advisory Council member will provide the Minister with adequate flexibility in respect of the FSQ Advisory Council and its role in monitoring and reviewing FSQ's policies.

Other matters relating to the appointment of deputy directors which already apply to the director, or appointment of director, such as limits upon taking other paid work and the avoidance of acting where a real or perceived conflict of interest exists ensure that the Minister has appropriate oversight of the deputy directors.

The purpose of each of the amendments are matters that go to the proper functioning of a government agency. Legislation that establishes eligibility criteria for appointment, conditions of appointment and powers of suspension and dismissal are all things that would be considered as being consistent with the values of a free and democratic society.

In relation to the insertion of new section 43A into the FSQ Act, the reports expose serious problems with the operation of the State's forensic lab, which affects the operation of the State's criminal justice system as well as the lives of victims of crime and their families.

One purpose of the amendment is to remove the risk of the reports being impeached or obfuscated because of legal challenges on procedural grounds. The other purpose of the amendment is to protect the State and the reports' authors from the risk of expensive legal proceedings and damages awards because the government acted to inform the public of these serious issues as soon as it became aware of their extent.

The amendment supports the ability of the government to provide immediate transparency and accountability about serious matters of public concern, which is necessary for a free and democratic society based on human dignity, equality and freedom.

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

Changes to the statutory criteria for recommendation for appointment or appointment is necessary to increase the pool of possible candidates eligible for appointment to the role.

The amendments relating to the powers to suspend and/or remove the Director or Deputy Director and in relation to limits upon taking other paid work and the avoidance of acting where a real or perceived conflict of interest are necessary to ensure accountability amongst the leadership of FSQ. The same considerations arise in relation to the changes to the power to terminate a Council member's appointment.

The amendment in relation to new section 43A will be effective to achieve its purpose. It ensures the reports cannot be challenged on the ground of a failure to provide natural justice, and that the State and the reports' authors have immunity from any potential legal action associated with the publication.

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

In respect of the amendments relating to qualifications, there are no less restrictive options. The option proposed is arguably less restrictive than the current statutory requirements.

It is noted that in other legislation, different approaches are taken with appointments to statutory offices. Without cause removal provisions enable timely and decisive action, ensuring statutory roles are fulfilled to the high standards expected by the public.

In respect of new section 43A, the reports have been published. It is not possible to afford the affected individuals natural justice before the potentially adverse comments in, and inferences from, the reports are known to the public. Legislative immunity is the only way to ensure the State and the individual authors are not exposed to liability as a result of acting transparently to ensure the public were immediately informed about the serious problems at Forensic Science Queensland.

(e) the balance between the importance of the purpose of the amendments, 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 amendments proposed will address issues with the statutory framework which currently underpins FSQ. The current framework excludes individuals who may otherwise be suitable candidates to lead FSQ. It also does not provide for adequate accountability mechanisms for FSQ's leadership or amongst the Council who exercises an important statutory function in respect of FSQ.

The limitation upon the right to take part in public life is slight. The importance of the amendments, in that they will contribute to the better performance of FSQ, is significant noting that FSQ's significantly hampered performance continues to affect or, in some cases, prevent access to justice for victims and accused people alike.

On that basis, the limitation upon the right to take part in public life is outweighed.

In respect of new section 43A, natural justice is a key element of proper decision-making process and any interference with it, and any justification for interference, cannot be taken lightly.

The reports exposed issues of critical importance to the State's criminal justice system and to victims of crime and their families. They showed that despite two commissions of inquiry into the operation of Forensic Science Queensland's predecessor, the enactment of new and bespoke governing legislation and significant public expenditure on equipment and personnel, Queensland's forensic laboratory is not operating to the standard the public is entitled to expect.

These are problems that extend well beyond the responsibility of affected individuals and show sustained and systemic failures. If the reports had been withheld from publication while a natural justice process occurred, the public would have been denied knowledge of these failures. Immediate publication was essential to ensure transparency and public confidence.

While I am conscious of the limitation on the rights of the affected individuals, the extraordinary circumstances of the reports' publication mean I am satisfied the importance of the purpose in this case outweighs the limitation on the human rights.

As I am satisfied the limitation on the rights in sections 24(2) and 25(a) are proportionate to the legitimate end sought to be achieved, I do not consider the amendment limits those rights.

To the extent the amendment limits the right to freedom of expression and a fair hearing, I am satisfied the limitation is reasonable and demonstrably justifiable.

(f) any other relevant factors

There are no additional relevant factors for the amendments that are proposed to amend the FSQ Act.

Conclusion

In my opinion, the amendments are compatible with human rights under the *Human Rights Act 2019* because they limit 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.

Amanda Camm MP
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