

Information Privacy Regulation 2025

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity provide this human rights certificate with respect to the *Information Privacy Regulation 2025* (IP Regulation 2025) made under the *Information Privacy Act 2009* (IP Act).

In my opinion, the IP Regulation 2025, as tabled in the Legislative Assembly, 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 Subordinate Legislation

The IP Regulation 2025 remakes the *Information Privacy Regulation 2009* (IP Regulation 2009) to support the effective operation of the IP Act, to make amendments as a result of the sunset review of the IP Regulation 2009 and the *Right to Information Regulation 2009* and to facilitate amendments to the *Information Privacy Act 2009* (IP Act) under the *Information Privacy and Other Legislation Amendment Act 2023* (IPLA Act).

The IPLA Act received Royal Assent on 4 December 2023.

The IPLA Act, among other things, amends the IP Act and the *Right to Information Act 2009* (RTI Act). It implements or responds to recommendations for legislative change to Queensland's information privacy and right to information frameworks from a number of reports including:

- the report on the *Review of the Right to Information Act 2009 and Information Privacy Act 2009*, tabled in the Legislative Assembly on 12 October 2017;
- the Crime and Corruption Commission's report (CCC'S Report), *Operation Impala, A report on misuse of confidential information in the Queensland public sector*, tabled in the Legislative Assembly on 21 February 2020;
- the CCC's report, *Culture and Corruption Risks in Local Government: Lessons from an investigation into Ipswich City Council*, tabled in the Legislative Assembly on 4 August 2018;
- the *Strategic Review of the Office of the Information Commissioner*, tabled in the Legislative Assembly on 11 May 2017; and
- *Let the sunshine in: Review of culture and accountability in the Queensland public sector*, provided to the former Premier and Minister for the Olympic and Paralympic Games on 28 June 2022.

The IP Regulation 2025 facilitates the effective operation of the IP Act and amendments under the IPLA Act by remaking the IP Regulation 2009 to:

- prescribe the matters to be included in the report of the Information Commissioner under section 193 of the IP Act for both the 2025-2026 and 2026-2027 financial years;

- prescribe the matters to be included in the report of the Information Commissioner under section 194 of the IP Act (for both the 2025-2026 and 2026-2027 financial years);
- prescribe a ‘disclosing agency’ (which may provide certain personal information to another agency in limited circumstances under section 54(1) of the IP Act);
- declare ‘principal offices’ for public authorities under schedule 5 of the IP Act;
- include consequential amendments to ensure alignment with changes under the IPOLA Act; and
- include transitional provisions to clarify the requirements for the annual reports.

The IP Regulation 2025 commences on 1 July 2025 concurrently with the amendments to the IP Act under the IPOLA Act.

The IP Regulation 2025 continues existing annual reporting requirements for the 2025-2026 financial year, subject to minor drafting changes and changes required as a result of the IPOLA Act.

There will be additional annual reporting requirements for the 2026-2027 financial year and thereafter.

Human Rights Issues

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

In my opinion, the rights under the HR Act that are relevant to the IP Regulation 2025 are:

- privacy and reputation under section 25 of the HR Act.

Consideration of reasonable limitations on human rights (section 13 HR Act)

(a) the nature of the right

Section 25 of the HR Act protects individuals against unlawful or arbitrary interferences with their privacy, and not to have their reputation unlawfully attacked. The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law. An unlawful or arbitrary interference would be one not permitted by law or that would be capricious, unpredictable or unjust. Further, the right to privacy can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The IPOLA Act introduces Chapter 3A of the IP Act implementing a new scheme for the mandatory reporting of data breaches of personal information held by Queensland Government agencies (the Mandatory Notification of Data Breach (MNDB Scheme). Under the MNDB Scheme, Queensland Government agencies must notify individuals and the Office of the Information Commissioner (OIC) of certain data breaches involving personal information they hold, so that individuals can take steps to reduce the risk of harm arising from the breach.

Section 54(1) of the IP Act will, after commencement, enable particular agencies that are the subject of an eligible data breach to collect personal information from, and disclose personal information to, other particular agencies where it is reasonably necessary to confirm the name and contact details of a notifiable individual or whether an individual is deceased.

The provision limits the right to privacy in section 25 of the IP Act by authorising the collection, use and disclosure of personal information (names, dates of birth, contact details, identifiers and dates of death) for the purpose of confirming contact details and individuals' date of death.

Section 3 of the IP Regulation 2025 prescribes the Registrar under the *Births, Deaths and Marriages Registration Act 2023* (the Registrar) as a 'disclosing agency' and all agencies as 'receiving agencies'. This gives effect to section 54 and will allow the Registrar to provide information confirming that an individual is deceased to any agency where requested, engaging and limiting the right to privacy.

- (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 purpose of the limitation is to increase the effectiveness of notification to living individuals and minimise distress to friends and families of deceased individuals.

Notification under the MNDB Scheme is intended to allow individuals to promptly take steps to mitigate harm that may arise from a data breach, including potential further interferences with privacy. These purposes are consistent with a free and democratic society based on human dignity, equality and freedom.

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

The limitation will support the purpose by facilitating the disclosure to the Registrar, an entity that holds the repository of information to enable an effective cross-check.

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

There are no reasonably available, less restrictive alternatives to ensure that information can appropriately be shared. The collection, use and disclosure may only occur only if it is reasonably necessary for the purpose of confirming name and contact details or whether an individual is deceased. The Registrar is the only agency prescribed for the purposes of disclosing information.

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

The Regulation limits the right to privacy by authorising the collection, use and disclosure of certain types of personal information in specified circumstances. However, this may only occur in the circumstances outlined in the Act and where entities are prescribed by regulation. The purpose of the limitation, which is both to ensure that agencies are able to effectively and accurately notify individuals affected by a data breach, and to avoid distress to friends and family inadvertently notified of matters relating to people who are deceased, also extends to supporting the effectiveness of the MNDB Scheme, which allows individuals to protect their personal information, thereby supporting the right to privacy.

On balance, the minor limitation on the right to privacy by permitting collection, use and disclosure for defined purposes, by a single agency, is reasonable and justified in a democratic

society, given the importance of accurate notification of potential breaches to enable corrective action, and the need to minimise any distress caused by this process.

Conclusion

I consider that the IP Regulation 2025 is compatible with 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

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