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The Research Director
Legal Affairs and Community Safety Committee
Parliament House
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Dear Mr Hastie

Submission on Safe Night Out Legislation Amendment Bill 2014

The Office of the Information Commissioner wishes to provide a submission on aspects of the Safe Night Out Legislation Amendment Bill 2014 that raise privacy considerations.

I would like to thank the Committee for the opportunity to comment. If the Committee would like further information or assistance to ensure that the Bill achieves its objectives while protecting and respecting individuals' personal information, please do not hesitate to contact me.

Please find attached our submission.

Yours sincerely

Clare Smith
Acting Privacy Commissioner

Encl OIC Submission



Submission to the Legal Affairs and Community Safety Committee
Inquiry into the Safe Night Out Legislation Amendment Bill 2014

July 2014

1. Preliminary comments

a. Background - The role of the Office of the Information Commissioner

The statutory functions of the Information Commissioner under the *Information Privacy Act 2009* (Qld) (**IP Act**) include commenting on issues relating to the administration of privacy in the Queensland public sector environment¹. This function forms the basis for this submission on the Safe Night Out Legislation Amendment Bill 2014 (**the Bill**) by the Office of the Information Commissioner (**OIC**).

b. Overview of submission

OIC notes that the Bill's provisions about ID scanning in Safe Night Precincts include mechanisms to address privacy considerations. Understandably, the Bill at times provides limited information about the technical and operational processes for approving ID scanning equipment, Regulated Premises, ID Scanning System Operators, and their staff. In OIC's view, the Committee may consider it necessary to obtain clarification about these aspects before it is possible to conclude that there are adequate safeguards to protect the personal information of the patrons of Regulated Premises in Safe Night Out precincts.

OIC notes the importance of determining whether there are adequate privacy safeguards, given the:

- value and sensitivity of personal information collected by ID scanners
- vulnerability of the information to breaches of the Australian Privacy Principles
- possibility that the personal information may be misused for criminal purposes – such as identity theft, fraud, blackmail, or finding out addresses of persons that are not publicly available².

2. The role of the Commonwealth

The Bill will not amend the *Information Privacy Act 2009* (Qld) (**IP Act**), nor alter the role or function of OIC or its Privacy Commissioner. Due to the nature of the Regulated Premises,³ the Bill requires⁴ that Regulated Premises using ID scanners and ID Scanning System Operators⁵ ensure⁶ that they are "organisations" subject to the *Privacy Act 1988* (Cth) (**Commonwealth Privacy Act**). OIC notes that a similar requirement is already in effect in New South Wales regarding its Kings Cross precinct⁷. As a result of this requirement, all Regulated Premises using ID scanners and ID Scanning System Operators will be subject to the Australian Privacy Principles in the Commonwealth Privacy Act, and complaints about any breaches of these Principles will be made to the Australian Privacy Commissioner. OIC has no jurisdiction with respect to the Australian Privacy Principles, nor private entities such as Regulated Premises or ID Scanning System Operators. The Australian Privacy Commissioner will be responsible for dealing with any breaches of the Australian Privacy Principles.

¹ Section 135(1)(b)(v) of the IP Act.

² For example, in domestic violence or witness protection contexts.

³ Generally, only Regulated Premises with turnover greater than \$3 million would be "organisations" subject to the Commonwealth Privacy Act (see sections 6C and 6D of that Act).

⁴ New sections 173EI(1) and 173EM(1) of the *Liquor Act 1992* (Qld) (**Liquor Act**), to be inserted by clause 74 of the Bill.

⁵ That are **not** already covered by the Commonwealth Privacy Act – that is, entities with a turnover of \$3 million or less that would be "small businesses", and therefore not "organisations" subject to the Commonwealth Privacy Act (see sections 6C and 6D of that Act).

⁶ By choosing, under section 6EA of the Commonwealth Privacy Act, to be subject to that Act if necessary.

⁷ See section 116AB(4)(c) and (d) of the *Liquor Act 2007* (NSW).

3. Requirements for ID scanning equipment

The Bill indicates that the Commissioner for Liquor and Gaming will consider certain requirements before approving ID scanners and ID scanning systems equipment. The Bill provides that these **requirements** will be published on the department's website⁸.

OIC submits that the Committee consider requesting further information about these requirements, in order to be satisfied that equipment used to collect and store personal information has adequate safeguards against misuse and unlawful access. OIC also has three specific comments about equipment requirements:

a. What personal information will Regulated Premises and their staff be able to access?

On the information available to OIC, the ability for Regulated Premises or their staff to access other types of personal information, to search the system for particular personal information, or to copy any personal information, appears unnecessary to give effect to the Bill's policy objectives⁹.

OIC submits that the Committee consider clarifying whether the requirements will limit the amount of personal information that can be accessed by Regulated Premises and their staff who operate ID scanners. In OIC's view, an ID scanning system only needs to indicate three possible responses to Regulated Premises' staff after scanning an ID – namely:

- no ban regarding the person in question;
- a banning order in force with details; or
- a licensee order issued with details.

In OIC's view, limiting the personal information made available to Regulated Premises' staff to the three responses specified above would substantially reduce the risk of privacy breaches and misuse for criminal purposes.

b. Will IDs be 'read' only – or will images of them be recorded?

OIC submits that the Committee consider clarifying to what level of detail will ID scanners read and extract information and what electronic format will information be stored in. An image of an ID may be more useful for some types of criminal activity (for example identity theft and fraud) as opposed to specific personal information collected from the ID. OIC further notes that recording and storing the image of IDs would, in many instances, be inconsistent with the Bill's provision that only certain types of personal information will be recorded¹⁰.

4. Approval of Regulated Premises and their staff using ID scanners

The Bill specifies that ID scanning obligations will apply in certain licensed premises¹¹. It does not include processes for approving "Regulated Premises", or their staff, to use ID scanners¹².

⁸ New sections 173EN(7) and 173EO(7) of the Liquor Act, to be inserted by clause 74 of the Bill.

⁹ As noted at page 1 of the Explanatory Notes regarding the Bill.

¹⁰ That is, name, address, date of birth; photo of person; details of banning order in force; and details of licensee ban – see new sections 173EJ(1) of the Liquor Act, to be inserted by clause 74 of the Bill.

¹¹ New sections 173EF and 173EG of the Liquor Act, to be inserted by clause 74 of the Bill.

¹² Page 23 of the Explanatory Notes regarding the Bill states that '*staff members of licensed premises whose role it is to scan photo IDs using an approved ID scanner linked to an approved ID scanning system will not be required to obtain approval*'.

OIC notes that the Bill, suggests that the criteria for approving an applicant for a licence under the Liquor Act is considered adequate for determining the suitability of the licensee to use an ID scanner; and that processes to approve¹³ or train¹⁴ staff using ID scanners are unnecessary.

OIC submits that limiting the amount of information available to Regulated Premises and their staff – as discussed at 2.a. above – is a practical measure that substantially increases the protection of personal information collected by ID scanners.

5. Approval of ID Scanning System Operators and their staff

The Bill indicates that, in order to approve an applicant as an ID Scanning System Operator, the Commissioner for Liquor and Gaming must be satisfied that an applicant is not a licensee or associate of a licensee, and is a “suitable person”¹⁵. The Bill provides that determining whether the applicant is a “suitable person” may include consideration of the applicant’s criminal history and *other matters*¹⁶. However, the Bill is silent on the nature of these other matters.

Given the value and sensitivity of personal information stored on an ID scanning system, and the possible consequences of its mismanagement or misuse, OIC views the Commissioner’s approval processes for potential ID Scanning System Operators to be important. Consequently, **OIC submits** that the Committee consider requesting further information about other matters that the Commissioner will examine, in order to be satisfied that there are adequate checks.

The Bill does not provide for the approval of ID Scanning System Operators’ staff. However, OIC notes that many staff of ID Scanning System Operators will manage the personal information collected by ID scanners as part of their duties and, as part of doing so, will be able to access, search and copy it. Given this level of access, **OIC submits** that the Committee consider whether the Bill should include a process for approving ID Scanning System Operators’ staff. Alternatively, if this is not considered appropriate, **OIC submits** that the Committee consider whether the Bill should make privacy training a mandatory requirement for such staff¹⁷.

6. Ensuring that the Commonwealth Privacy Act applies to ID Scanning System Operators

New section 173EJ(1) of the Liquor Act provides that a *condition of a licence* for a Regulated Premises that the licensee ensure that it is treated as an organisation under the Commonwealth Privacy Act. In contrast, new section 173EM(1) provides simply that an ID Scanning System Operator “*must*” ensure that it is treated as an organisation under the Commonwealth Privacy Act.

OIC submits that new section 173EM(1)’s requirement could be strengthened if, in order to approve an applicant as an ID Scanning System Operator, the Commissioner for Liquor and Gaming must be satisfied that the applicant has chosen to be treated as an organisation under the Commonwealth Privacy Act (in

¹³ Page 23 of the Explanatory Notes regarding the Bill states that ‘staff members of licensed premises whose role it is to scan photo IDs using an approved ID scanner linked to an approved ID scanning system will not be required to obtain approval’.

¹⁴ Cf. sections 40A(2) and 41A of the *Liquor Regulation 2008* (NSW).

¹⁵ New section 173EQ(4) of the Liquor Act, to be inserted by clause 74 of the Bill.

¹⁶ New section 173EQ(5) of the Liquor Act, to be inserted by clause 74 of the Bill.

¹⁷ Similar to sections 40A(2) and 41A of the *Liquor Regulation 2008* (NSW).

addition to being satisfied that the applicant is a “suitable person” and not an licensee or associate of a licensee¹⁸).

7. Improving ID Scanning System Operators’ obligation to “unlink”

New section 173EM(2) of the Liquor Act provides if the approved operator ‘*knows the ID scanner is used other than in regulated premises*’ (emphasis added), the approved operator must not allow the ID scanner be linked to the ID scanning system. In OIC’s view, the word “knows” imposes a high threshold.

Further, it does not take into account when other types of misuse might occur (for example, if the ID scanner is used outside regulated hours, or Regulated Premises staff use or disclose information obtained from the ID scanning system in a way that breaches the Australian Privacy Principles. These might be circumstances where the approved operator should be required to unlink from the ID scanning system or take some other action.

For these reasons, **OIC submits** that the Committee give consideration to lowering the criteria of “knows”, and expanding the obligation on the Operator to act in response to other misuse.

8. Attaching “reasonable conditions” to the distribution of banning orders

Section 602U(2)¹⁹ of the *Police Powers and Responsibilities Act 2000* (Qld) (**PPR Act**) enables a police office to distribute an imaged order.²⁰ This distribution may be subject to “reasonable conditions” decided by the Police Commissioner.²¹

OIC submits that the Committee consider clarifying the meaning of reasonable conditions to be satisfied that there are suitable privacy protections²².

The Police Commissioner may also distribute information about other types of banning orders - that is, court banning orders²³ and special conditions of bail.²⁴ However, there are no provisions in existing legislation or the Bill²⁵ to enable these types of distribution to be made subject to “reasonable conditions”²⁶.

OIC submits that the Committee consider amendments to enable reasonable conditions to be imposed by Police Commissioner or court, as appropriate. Doing so would afford consideration to appropriate privacy protections.

¹⁸ New section 173EQ(4) of the Liquor Act, to be inserted by clause 74 of the Bill.

¹⁹ To be inserted by clause 118 of the Bill.

²⁰ That is, a banning order to which a person’s image is attached – new section 602T(2) of the PPR Act, to be inserted by clause 118 of the Bill.

²¹ New section 602U(3) of the PPR Act, to be inserted by clause 118 of the Bill.

²² OIC further notes that it was unable to identify a provision authorising the distribution of police banning orders to which images are **not** attached in new part 5A of the PPR Act, to be inserted by clause 118 of the Bill.

²³ That is, orders under existing part 3B of the *Penalties and Sentences Act 1992* (**PS Act**), as amended by clauses 85 to 88 of the Bill.

²⁴ That is, orders under existing section 11(3) of the *Bail Act 1980* (Qld) (**Bail Act**).

²⁵ See existing section 34F of the Bail Act, as amended by clause 6 of the Bill, and existing section 43N of the PS Act, as amended by clause 88 of the Bill.

²⁶ Cf. new section 602U(3) of the PPR Act, to be inserted by clause 118 of the Bill.

Conclusion

Consideration of the matters set out above will contribute to the protection of patron's personal information collected by ID scanners in the Safe Night Precincts. OIC would welcome any opportunity to provide further information or assistance with respect to achieving the Bill's objectives²⁷ in accordance with the requirements of the *Information Privacy Act 2009* (Qld).

²⁷ As noted at page 1 of the Explanatory Notes regarding the Bill.