



Office of the Information Commissioner
Queensland

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Committee Secretary
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Dear Ms Easten

Youth Justice and Other Legislation Amendment Bill 2019

The Queensland Office of the Information Commissioner (**OIC**) appreciates the opportunity to provide a brief submission to the Legal Affairs and Community Safety Committee (**the Committee**) on the Youth Justice and Other Legislation Amendment Bill 2019 (**the Bill**).

OIC was consulted by the Department of Child Safety, Youth and Women during the drafting of the Bill. OIC's comments focus on the following amendments to the *Youth Justice Act 1992 (YJ Act)* contained in the Bill:

- Clause 30 of the Bill which introduces a new information sharing framework to enable 'prescribed entities' and 'service providers' to share information with each other for specified purposes; and
- Clause 5 of the Bill which introduces a new section 263A to authorise the use of body worn cameras and the capture of audio recordings through CCTV technology in youth detention centres.

Information Privacy Act 2009

Queensland's *Information Privacy Act 2009 (IP Act)* recognises the importance of protecting the personal information of individuals. It creates a right for individuals to access and amend their own personal information and provides rules or 'privacy principles' that govern how Queensland government agencies collect, store, use and disclose personal information. OIC has regulatory oversight of Queensland Government agencies' compliance with requirements under the IP Act.

Clause 30 of the Bill - new information sharing framework

OIC appreciates that a key aim of the amendment is to allow the sharing of information between government entities and non-government service providers to facilitate a multi-disciplinary, cross-agency problem solving approach to meet the needs of children in the youth justice system. As such, the Bill contemplates broader sharing of an individual's personal information than is currently permitted under the existing legislative framework.

OIC notes the right to privacy is not absolute. An appropriate balance must be struck between privacy and other legitimate rights and interests. While the right to privacy can be limited, any interference must be reasonable, necessary and proportionate to achieving a legitimate policy goal.

The Office of the Information Commissioner is an independent statutory authority.

The statutory functions of the OIC under the Information Privacy Act 2009 (Qld) (IP Act) include commenting on the administration of privacy in the Queensland public sector environment.

This submission does not represent the views or opinions of the Queensland Government.

The Bill includes a number of limitations and safeguards that apply to the sharing of information without consent. As outlined in the Explanatory notes, these limitations and safeguards include:

- obtaining consent before sharing a person's private information is specifically identified as the best practice approach within the new principles for sharing information
- Information can only be shared for the specified purposes under the arrangements and to the extent that the holder reasonably believes that it may help the receiver do particular things, such as participating in case planning or delivering services, programs or support to a child who has been charged with an offence; and
- the circumstances in which prescribed entities and service providers can share information for the purposes of the arrangement will be further limited by regulation.

As noted earlier, OIC was consulted during the drafting of the Bill and is supportive of measures, such as the safeguards and limitations provided for in the Bill, which seek to strike an appropriate balance between the right to privacy and the legitimate aim of responding to the needs of children in the youth justice system.

Given the legislative information sharing scheme deals with personal information of a very sensitive nature, OIC would welcome the opportunity to be further consulted in the development of the regulations, prescribing the circumstances which further limit the sharing of information between prescribed entities and service providers.

Clause 5 of the Bill – Body worn cameras and capture of audio recordings

As noted previously, Clause 5 of the Bill introduces a new section 263A into the YJ Act which will authorise use of body worn cameras and the capture of audio recordings through CCTV technology in youth detention centres. As outlined in the Explanatory notes, the amendments provide that these practices are exempted from the recording of private conversations offence under the *Invasion of Privacy Act 1971* and protect the inadvertent recording of these communications by a body worn camera.

OIC understands the 2016 *Independent Review of Youth Detention Centres* and the 2019 Queensland Ombudsman *The Brisbane Youth Detention Centre report* recommended that CCTV coverage in youth detention centres should be enhanced and body worn cameras used by staff, to better protect both staff and young people. OIC also understands the aim of the amendment (as outlined in the Explanatory notes) is to achieve greater protection and safety for young people, as well as increasing accountability for staff, within detention centres.

The use of body worn cameras poses a number of privacy risks to an individual. Further, the information generated by the use of body worn cameras will include personal information and the privacy obligations in the IP Act and rights of access and amendment under the IP Act and *Right to Information Act 2009* will apply. As part of its statutory functions, OIC has produced guidelines for agencies outlining the privacy impacts and information access obligations agencies must consider when implementing or extending a camera surveillance system (which includes body worn cameras).¹ I note that a number of OIC audits have found Queensland government

¹<https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/privacy-compliance/camera-surveillance-and-privacy>

agencies continue to need to improve maturity of systems, processes and practices for video surveillance to ensure compliance with the RTI and IP Acts and good practice.²

OIC notes the limits and safeguards provided in the Bill regarding use of CCTV and body worn cameras. As outlined in the Explanatory notes, these are:

- requiring the chief executive to ensure that detainees, staff and visitors to detention centres are advised that sounds and images may be recorded (new section 263B)
- requiring the chief executive to prepare guidelines about the recording of images and sounds in detention centres and the use of body worn cameras by detention centre employees (new section 263B)
- penalties for the inappropriate use or disclosure of information (section 288 of the YJ Act); and
- protecting prescribed communications between a child and a relevant oversight, legal representative, advocate, or law enforcement agency from deliberate recording.

While OIC supports the additional safeguards provided for in the Bill, the impact on an individual's privacy by the use of surveillance technologies will, to some extent, be determined by the manner in which body worn cameras and CCTV are deployed in youth detention centres. As such, OIC considers it is imperative that robust guidelines which seek to enhance transparency and accountability are implemented to mitigate risks and minimise the privacy invasive nature of these technologies in youth detention centres. Accordingly, OIC would welcome being further consulted about the development of the guidelines for the use of body worn cameras and CCTV in youth detention centres.

I note the Queensland Law Reform Commission (**QLRC**) is currently reviewing Queensland's laws relating to civil surveillance and the protection of privacy in the context of current and emerging technologies. The QLRC is due report on the outcomes of the review by 31 October 2019.

OIC remains available to the Committee to provide any further assistance in its consideration of the Bill.

Yours sincerely

Rachael Rangihaeata
Information Commissioner

² *Camera surveillance and privacy*, Office of the Information Commissioner Queensland, Report No. 2 of 2012/13 to the Queensland Legislative Assembly; *Camera surveillance and privacy – follow-up review*, Office of the Information Commissioner Queensland, Report No.1 of 2015-16 to the Queensland Legislative Assembly; *10 years on: Queensland government agencies' self-assessment of their compliance with the Right to Information Act 2009 (Qld) and the Information Privacy Act 2009 (Qld)*, Office of the Information Commissioner Queensland, Report No. 5 to the Queensland Legislative Assembly for 2018-19.