

Justice and Other Information Disclosure Bill 2008

Explanatory Notes

Objectives of the Bill

To provide a statutory basis for the sharing of criminal justice information between the Department of Justice and Attorney-General, the Queensland Police Service, Queensland Corrective Services and the Department of Communities (the criminal justice agencies) to facilitate the coordinated management of persons in the criminal justice system and improve collaboration between the agencies. Provision is also made for the sharing of child safety and criminal justice information between the Department of Justice and Attorney-General, the Queensland Police Service and the Department of Child Safety.

The Bill also provides for the position of District Court Judge Administrator.

Reasons for the Bill

The Bill is concerned with information sharing that will occur under the Integrated Justice Information Strategy (IJIS). IJIS is a cross-agency initiative to enable the electronic transfer of information across the criminal justice agencies and the Department of Child Safety.

Each agency has developed processes and systems to meet its own unique requirements. IJIS provides an opportunity to remove barriers to communication and information sharing through the construction of technical infrastructure, common terminology and language and the connection to enable information sharing to happen. Information will be seen as a resource to be captured once, validated at the time of capture and shared electronically. The aim of disclosure of criminal justice information between the criminal justice agencies is the co-ordinated management of defendants and offenders, for example through the electronic sharing of court orders and upcoming court appearance dates.

Legislation governing information sharing by the criminal justice agencies and the Department of Child Safety tends to be agency specific, that is, it was developed to meet the needs of the particular agency. Existing provisions focus on the disclosure of information for the aims of the agency disclosing the information, not with a view to the effective operation of the criminal justice system as a whole.

The Bill is intended to provide a clear statutory basis for information sharing in the criminal justice system under IJIS and to resolve any doubt about whether IJIS information sharing processes have a lawful basis.

To a more limited extent, the Bill provides for information sharing between the Department of Child Safety, the Department of Justice and Attorney-General and the Queensland Police Service. The Department of Child Safety is not directly involved in prosecuting and managing offenders through the criminal justice system. However, there will be clear benefits for strategic decision-making and policy and program development from being able to identify offenders who have come into contact with the child protection system and to being able to analyse trends in offending and life outcomes. The Department of Child Safety will also benefit from IJIS through improved access to information held by the Department of Justice and Attorney-General, in its court administration role, in relation to child protection applicants who are before the courts, juvenile defendants who are also in the child protection system, and adult defendants who are persons of interest to that department.

The Bill does not apply to sensitive information provided in certain applications under the *Police Powers and Responsibilities Act 2000*, nor information that may lead to the identification of an informer. Information that may lead to the identification of a person who has notified about harm or suspected harm to a child or unborn child under the *Child Protection Act 1999* and information that may lead to the identification of a detention centre employee who has reported harm or suspected harm to a child under the *Juvenile Justice Act 1992* are likewise excluded from the operation of the Bill.

The District Court is the largest trial court in Queensland and deals with 80% of all criminal matters which are prosecuted on indictment. The District Court hears all appeals from the Magistrates Courts as well as from decisions of a number of tribunals and other statutory bodies. Having regard to this the position of District Court Judge Administrator is being provided for in the Bill. The Judge Administrator will be responsible for

ensuring the orderly and expeditious hearing of matters by the District Court.

Achievement of the Objectives

The Bill achieves the objectives by way of the proposed new legislation and amendments to existing legislation described below.

Estimated Cost for Government Implementation

Nil.

Consistency with Fundamental Legislative Principles

A regulation making power

The Bill includes two identical Henry VIII provisions (that is, potentially inappropriate delegations of parliamentary power). The provisions concerned, clauses 5(m) and 8(j), involve a power to prescribe by regulation a further purpose for which information may be shared between the criminal justice agencies and the child protection agencies, for the reason that it is not possible to anticipate all purposes for which information may be shared. A regulation made pursuant to these provisions would not directly amend the proposed Act and could not be about *any* aspect of the Bill, but would extend the operation of the information sharing clauses. It is considered that this is an appropriate delegation of parliamentary power as it is required to facilitate the smooth staged commencement of the Government's information sharing projects designed to integrate the Queensland criminal justice system. The Bill and the projects it supports are an unprecedented and innovative initiative to coordinate the management of persons in the criminal justice system and improve collaboration between criminal justice agencies. As the exact detail of these projects may not be known until close to their delivery, unforeseen doubts over the lawful authority to share information under the Bill, could jeopardise the projects. A similar provision is contained in section 289 of the *Juvenile Justice Act 1992* (inserted by the *Juvenile Justice Amendment Act 2002*), under which regulations have been made. Unlike regulations made under that provision, regulations made under the Bill will sunset 12 months after their commencement. A regulation can only be made within one year of the commencement of the sunset provision (clause 17). The sunset provision expires the regulation making powers two years after the sunset provision commences.

Privacy implications

The general right to privacy by individuals is recognised by the Government. This right is supported by the introduction of the Information Privacy Principles (IPPs) as an administrative scheme pursuant to Information Standard 42 (IS 42), under the authority of the *Financial Management Standard 1997*. As an administrative scheme, IS 42 is subject to any overriding legislation.

IPP 11 is relevant to the disclosure of information in the possession of the agencies affected by this Bill. IPP 11 prohibits the disclosure of records containing personal information to a person, body or agency, other than the individual concerned unless certain circumstances exist, in particular where the disclosure is required or authorised by or under law.

An individual's criminal justice information (whether as defendant, offender, victim or witness) or child protection information would clearly be considered personal information and thus subject to disclosure requirements under IPP 11. However, there is justification for displacing this right. These restrictions have to be balanced against the community benefit that flows from enhanced community safety by improving information sharing and collaboration between the agencies.

Under the Bill, the authorisation to share information is for certain purposes only (see clauses 5 and 8). A "use provision" (clause 15) only permits use of the information by the receiving agency for the purpose for which it was received or for a purpose permitted or authorised under an Act.

The Government has sought to achieve a balance between the competing considerations of an efficient and cohesive criminal justice system and individual privacy. The Government ultimately formed the view that permitting the exchange of criminal justice and child safety information for limited purposes was an acceptable and desirable balance between the public interest in community safety and the public interest in protecting the privacy of individuals.

Consultation

A consultation copy of the draft Bill dealing with the statutory basis for criminal justice and child protection information sharing was sent to the Chief Justice, the Chief Judge, the Chief Magistrate, Legal Aid Queensland, the Queensland Law Society, the Bar Association Queensland

and the Queensland Council for Civil Liberties. Extensive consultation took place within Government with the agencies affected by the Bill.

The Chief Judge was consulted about the proposed amendments dealing with the position of District Court Judge Administrator.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides for the citation of the Bill.

Clause 2 provides that the definitions for the Bill are in the schedule.

Clause 3 provides for the purposes of the Bill.

Part 2 Disclosure of justice information between criminal justice agencies

Clause 4 defines the term *justice information* as information obtained by the relevant agency in the performance of its functions and which is relevant to a purpose for which information can be shared under clause 5. Without limiting the term, subsection (2) lists three types of justice information.

Clause 5 defines the term *justice purpose*. Under clause 6, justice information about a person in the criminal justice system, is made available between agencies for a justice purpose if it is made available for the purposes listed in subparagraphs (a) to (m) of clause 5. These purposes for which information may be shared include a purpose prescribed by regulation (subparagraph (m)). In accordance with clause 17, a regulation made under the provision will expire one year after its commencement. Clause 5(m) expires two years after the commencement of clause 17.

Clause 6 is a provision to enable *justice information* about a *person in the criminal justice system* to be made available to the chief executive of a criminal justice agency for the *justice purposes* listed in clause 5. The clause enables information to be provided under an arrangement made between the relevant criminal justice agency chief executive and another criminal justice agency chief executive. Criminal justice agency is defined in the schedule in relation to the administration of certain Acts and accordingly covers the Department of Justice and Attorney-General, the Queensland Police Service, Queensland Corrective Services and the Department of Communities.

The term *justice information* is defined in clause 4. The term *person in the criminal justice system* is defined in the schedule to be a person listed in subparagraphs (a) to (j) of that definition, for example, a person who has been charged with an offence (subparagraph (c)).

Part 3 Disclosure of child protection information between child protection agencies

Clause 7 defines the term *child protection information* as information obtained by the relevant agency (the Department of Child Safety, the Department of Justice and Attorney-General or the Queensland Police Service) in the performance of its functions and which is relevant to a purpose for which information can be shared under clause 8. Without limiting the term, subsection (2) lists two types of child protection information.

Clause 8 defines the term *child protection purpose*. Under clause 9, child protection information about a person in the child protection system or a person in the criminal justice system, is made available between agencies for a child protection purpose if it is made available for the purposes listed in subparagraphs (a) to (j) of clause 8. These purposes for which information may be shared include a purpose prescribed by regulation (subparagraph (j)). In accordance with clause 17, a regulation made under the provision will expire one year after its commencement. Clause 8(j) expires two years after the commencement of clause 17.

Clause 9 is a provision to enable *child protection information* about a *person in the child protection system* or a *person in the criminal justice system* to be made available to the chief executive of a child protection agency, for the *child protection purposes* listed in clause 8. The clause enables information to be provided under an arrangement made between the chief executive of the Department of Justice and Attorney-General and the chief executive of the Department of Child Safety for the purposes listed in clause 8. An arrangement may also be made between the Department of Child Safety and the Queensland Police Service for the purposes of clause 8(e) (information linking) (defined in the schedule) or 8(i) (technical system testing).

The term *child protection information* is defined in clause 7.

The term *person in the criminal justice system* is defined in the schedule to be a person listed in subparagraphs (a) to (j) of that definition, for example, a person who has been charged with an offence (subparagraph (c)).

The term *person in the child protection system* is defined in the schedule as:

- a child in relation to whom an application has been made for an order under the *Child Protection Act 1999*;
- a child in relation to whom the chief executive has decided to take action under the *Child Protection Act 1999*, chapter 2, part 3B (intervention with parents' agreement);
- a parent of a child mentioned above; or
- an adult against into whom an allegation of harm or risk of harm to a child has been made.

Part 4 Disclosure of information to information technology service provider

Clause 10 makes provision for the role of any information technology service provider which may transmit information shared between agencies or assist an agency in carrying out a justice purpose or a child protection purpose. The chief executive of a criminal justice agency or a child protection agency may arrange with the chief executive of an information

technology service provider to make information available to the information technology service provider in order that the provider:

- can transmit the information to the receiving agency; or
- enable or assist the receiving agency to carry out a purpose for which the information was sent.

The term *information technology service provider* is defined in the dictionary.

Part 5 Relationship with other Acts

Clause 11 provides that the use of information as provided under the arrangements mentioned in clause 13 is permitted despite any other Act prohibiting the use of the information. This clause relates to information made available between the criminal justice agencies or between the child protection agencies pursuant to the authorisations in clauses 6, 9 and 10. Subsequent use of information received under the arrangements mentioned in clause 13 and authorised by clauses 6, 9 or 10 is governed by clause 15 and by the terms of the arrangements themselves.

Clause 12 excludes from the operation of the Bill information provided in certain applications made under the *Police Powers and Responsibilities Act 2000*. Also excluded is information that may lead to the identification of an informant and information mentioned in section 803(2) of the *Police Powers and Responsibilities Act 2000* which is a variety of information not required to be disclosed in court proceedings unless considered necessary by the court.

Also excluded from the operation of the Bill is information that may lead to the identification of a person who has notified under the *Child Protection Act 1999* about harm or a risk of harm of a child or unborn child and information that may lead to the identification of a detention centre employee who has reported under the *Juvenile Justice Act 1992* harm or suspected harm to a child.

Part 6 Miscellaneous

Clause 13 provides for the form of arrangements between the chief executives for the sharing of information under the Bill. The arrangements may be written and may include the electronic transfer of information. This provision contemplates the bulk disclosure of information. The arrangement must state all limitations on the purposes for which information may be used.

Clause 14 provides for the discarding of certain information provided to an agency under the Bill. The reason for this is that although IJIS strives to provide the most logical, cost effective and privacy compliant models of information sharing, information sharing under IJIS will necessarily involve instances in which information superfluous to an agency's needs, will be sent to it.

The first instance of this is to enable person of interest matching by the receiving agency where it is only interested in a select category of persons. The matching is performed by the receiving agency as it holds and controls the list of persons of interest. Although the majority of the matching is done automatically by the computer system, some must be done manually by officers.

Person of interest matching must take place at some point. For example, the Department of Justice and Attorney-General will hold a list of court results for one particular day. The Department of Child Safety will be interested in the court outcomes for those persons on that list who are children in the child safety system or who are associated with such children (e.g. a parent). The alternative to the Department of Justice and Attorney-General sending that list to the Department of Child Safety for Child Safety to perform the matching, is that the Department of Child Safety would provide its database of children and associated people to the Department of Justice and Attorney-General so that the Department of Justice and Attorney-General can identify if there is a person of interest before sending the information out. This is a costly approach that would duplicate agency held data into other agency systems and involves a far greater breach of privacy in that all of the Department of Child Safety's confidential data would reside in the Department of Justice and Attorney-General.

The second instance is where information is sent about a person who *is* of interest to a receiving agency, but aspects of the information sent are not

required by the agency. The majority of information will be automatically and instantly deleted by the receiving agency's computer system. No person in the receiving agency views the information prior to its deletion. In limited circumstances the information will not be able to be extracted and discarded. It will be maintained by the agency in accordance with legislative and privacy obligations.

The obligation in clause 14 to discard information not required where practicable means receiving agencies are only keeping – and officers are only accessing – that personal information which is required by them to perform their roles. This obligation provides compliance with the *Public Records Act 2002* which only permits disposal of public records where there is authority given by the archivist or other legal authority, justification or excuse. It is noted that whilst clause 14 obliges receiving agencies to discard “extra” information, the information will still be held in the sending agency's records.

Clause 15 provides that information provided under the Bill may only be used for the purpose or purposes for which it was made available or for a purpose permitted or authorised by an Act. Information provided in pursuance of another Act is subject to any restriction on the information in the hands of the sending agency. This restriction does not apply if the receiving entity could have obtained the information under any Act or law in the performance of its functions without restriction. Breach of this provision carries a maximum penalty of 100 penalty units (\$7,500).

Clause 16 applies if a person, acting honestly, gives information under the Bill. Subsections (2) and (3) provide that a person who gives information is not liable civilly, criminally, or under an administrative process, and cannot be held to have breached any code of professional ethics, or departed from accepted standards of professional conduct. Without limiting subsections (2) and (3), subsection (4) confers protection in relation to civil proceedings and contraventions of any Act, oath, rule of law or practice.

Clause 17 expires the regulation making powers in clauses 5(m) and 8(j) two years after clause 17 commences. Any regulations made under those clauses expire one year after they commence. A regulation can only be made within one year of the commencement of clause 17.

Part 7 Amendment of other Acts

Division 1 Amendment of Child Protection Act 1999

Clause 18 states that this division amends the *Child Protection Act 1999*.

Clause 19 amends section 7 to expand the functions of the chief executive (child safety) to permit that department's participation in the collection and publication of information and statistics about, and the promotion and conduct of research into, harm to children; the life outcomes of children in care; and the relationship between the criminal justice system and the child protection system. These are key IJIS initiatives and relate to the purposes for which information are shared between the Department of Child Safety, the Department of Justice and Attorney-General and the Queensland Police Service under clause 9.

Division 2 Amendment of Constitution of Queensland 2001

Clause 20 states that this division amends the *Constitution of Queensland 2001*.

Clause 21 amends section 56 of the *Constitution of Queensland 2001* to recognise the office of District Court Judge Administrator.

Division 3 Amendment of District Court of Queensland Act 1967

Clause 22 states that this Division amends the *District Court of Queensland Act 1967*.

Clause 23 amends section 10A of the *District Court of Queensland Act 1967* to recognise that the Judge Administrator is senior to all other judges of the court apart from the Chief Judge.

Clause 24 inserts new part 2 division 2AA into the *District Court of Queensland Act 1967* to provide for the appointment, powers and responsibilities of the Judge Administrator.

Under proposed new section 28B a judge is to be appointed Judge Administrator for a term of not less than 5 years. The appointment can occur at the time of the person's appointment as a judge or at any time afterwards. The Judge Administrator may be reappointed.

Proposed new section 28C provides for the appointment of an acting Judge Administrator by the Governor in Council.

Proposed new section 28D provides that the Judge Administrator continues to be a judge and may sit and exercise any of the powers of a judge.

Proposed section 28E provides that the Judge Administrator holds office as Judge Administrator while the person holds office as a judge and also provides the circumstances which the person who is Judge Administrator vacates the office of Judge Administrator. These circumstances are the person's appointment as Chief Magistrate, Chief Judge or a judge of the Supreme Court; or the end of the term of appointment as Judge Administrator. The Judge Administrator may resign office as Judge Administrator without resigning office as a judge.

Proposed new section 28F provides that subject to section 28A, the Judge Administrator is responsible for the administration of the District Court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the District Court. The Judge Administrator must consult with the Chief Judge in carrying out the Judge Administrator's functions. The Judge Administrator has power to do all things necessary or convenient to carry out the Judge Administrator's functions, including, for example, listing matters for hearing.