

Small Business Commissioner Bill 2021

Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019*, I, Di Farmer, Minister for Employment and Small Business and Minister for Training and Skills Development make this statement of compatibility with respect to the Small Business Commissioner Bill 2021 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill permanently establishes a Queensland small business commissioner. In doing so, the Bill provides for the operational aspects of the small business commissioner including ministerial expectations, ministerial direction, reporting requirements, and appointment. The Bill also provides a legislative basis for dispute resolution functions in relation to retail tenancy disputes, other small business lease disputes and small business franchise disputes.

The Bill proposes that the main small business commissioner functions are to:

- provide a central point of contact in relation to matters affecting small businesses; and
- provide information and advisory services to the public about matters relevant to small businesses; and
- assist parties in reaching an informal resolution for small business disputes, including by facilitating the exchange of information between the parties; and
- provide alternative dispute resolution services and administer a dispute resolution process for small business disputes; and
- advocate on behalf of small businesses to –
 - the State, the Commonwealth, another State or a local government; or
 - any other entity involved in administering a matter relevant to small businesses; and
- work collaboratively with the equivalent of the commissioner in other States or the Commonwealth to enhance conditions for small businesses; and
- perform functions conferred on the commissioner under another Act; and
- carry out other activities to further the objects of this Act, as directed by the Minister.

The Bill also proposes that the small business commissioner will have all the powers needed to perform the commissioner's functions under the Act.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The proposed legislation engages one human right under the *Human Rights Act 2019*, the right to privacy (section 25(a)).

The clause of the Bill that is relevant to the right to privacy is:

- 37 – power for the small business commissioner to enter into information-sharing arrangements with a relevant agency.

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

Right to privacy

(a) the nature of the right

The right to privacy protects an individual from all interferences and attacks on their privacy, family, home or correspondence (written and verbal). The purpose of this is ‘to protect and enhance the liberty of the person – the existence, autonomy, security and well-being of every individual in their own private sphere’.¹ In the context of the Bill, the right to privacy protects against arbitrary interference with a person’s private and personal information.

Clause 37 provides that the small business commissioner may enter into information-sharing arrangements with a relevant agency for the purpose of assisting the functions of the small business commissioner or the relevant agency. For this purpose, a relevant agency has been defined as the chief executive of a department, a local government, the equivalent to the commissioner of another State or the Commonwealth, or another agency or entity prescribed by regulation.

As the permanent small business commissioner is proposed to act as a single point of information and advice for small business enquiries, it is necessary for the small business commissioner to be able to share information, including the contact details for the small business, when referring applicants to different services. An example of this function is the potential sharing of information relating to a franchise dispute, which can be referred to the small business commissioner by the Australian Small Business and Family Enterprise Ombudsman. Conversely, it may be necessary for the small business commissioner when referring the applicant to other agencies to provide applicant’s details to assist in the referral.

In a human rights context, ‘arbitrary’ means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought. Because questions of proportionality arise when considering justification of limits on human rights under section 13 of the *Human Rights Act 2019*, it is important to consider the questions below (under headings (b) – (e)) before making a determination as to whether any limitation on the right to privacy will be arbitrary.

¹ *Director of Housing v Sudi* (2010) 33 VAR 139

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

The purpose of enabling the small business commissioner to enter into information-sharing arrangements with other relevant agencies is to enable the commissioner to fulfil its purpose of being the central point of contact in relation to matters affecting small businesses. A key part of this function will be in referring small businesses to relevant agencies, which will require the sharing of information between the commissioner and the other agency.

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

Limiting the right to privacy by enabling the small business commissioner to enter into information-sharing arrangements with relevant agencies is directly related to the purpose of enabling the small business commissioner to act a central point of contact for matters affecting small businesses. The limitation on the right to privacy, therefore, directly helps to achieve the purpose.

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

There is no less restrictive way to enable the small business commissioner to share information other than through a legislated ability to enter into information-sharing arrangements. While other mechanisms exist to enable this sharing of information, including memorandums of understanding, these alternatives do not provide a less restrictive way to enable the information-sharing.

In all cases, the power to enter into information-sharing arrangements is not unfettered and the information that is shared must be for the purpose of assisting the small business commissioner or the relevant agency to undertake their functions. The term ‘relevant agency’ is also a defined term and ensures that the information-sharing arrangements can only be entered into with a defined set of entities.

In both cases where the right to privacy is limited by the Bill, information will be managed in line with the *Information Privacy Act 2009*, which will mitigate the limitation on the right to privacy. A further mitigation on the engagement of this right is the offence for disclosing confidential information obtained under or as a result of the operation of the Bill, unless the disclosure is authorised under the Bill. This offence is provided in clause 38 of the Bill.

- (e) the balance between the importance of the purpose of the Bill, 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 limitation on the right to privacy is limited by provisions in the Bill that enable the small business commissioner to enter into information-sharing arrangements with relevant agencies to assist the small business commissioner and the other agency to carry out their functions. Balanced against the limitation is the need for the small business commissioner to have the power to adequately carry out its function as a central point of contact for matters affecting small businesses.

Because the impacts on the right to privacy are not disproportionate, the impacts are therefore not arbitrary. It follows that while these amendments engage the right to privacy, in my opinion they do not limit it. However, even if the right to privacy is limited, the limitations are reasonable and demonstrably justified.

(f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the Bill is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

DI FARMER MP
MINISTER FOR EMPLOYMENT AND SMALL BUSINESS
MINISTER FOR TRAINING AND SKILLS DEVELOPMENT

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