

# **Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021**

## **Statement of Compatibility**

### **FOR**

## **Amendments to be moved during consideration in detail by the Honourable Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House**

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

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Yvette D'Ath, Minister for Health and Ambulance Services and Leader of the House make this statement of compatibility with respect to amendments to be moved in consideration in detail to the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021.

In my opinion, the amendments to be moved in consideration in detail to the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021 are 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 Amendments**

### *Amendments to Public Health Act 2005 – privacy protections for contact tracing information*

The Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021 Bill (Bill) extends the operation of the existing Public Health Act amendments and other various COVID-19 emergency measures to 30 April 2022, or an earlier date as prescribed by regulation.

During the Economics and Governance Committee's (Committee) consideration of the Bill, submissions were received from the Queensland Council for Civil Liberties, Queensland Human Rights Commission, Australian Lawyers Alliance and individuals that raised concerns about the privacy of data collected through the Check In Queensland App (App) and potential limitation on the right to privacy arising from the release of contact tracing information to agencies such as the Queensland Police Service. Although the Committee

noted stakeholders' concerns about the privacy of data collected through the App, it did not specifically comment on these issues.

The amendments to the Public Health Act will provide privacy protections for the personal information collected in accordance with the Chief Health Officer's (CHO) public health directions to assist with contact tracing for COVID-19. The amendments will apply to information collected through the App and other permitted methods. The amendments will prohibit the use and disclosure of this information, except for limited purposes including contact tracing or purposes related to contact tracing (for example, ensuring the integrity or security of the information), compliance, investigation or prosecution activities under relevant provisions of the Public Health Act related to contact tracing.

*Amendments to the Hospital and Health Boards Act 2011 and Public Health Act 2005 – appointment of more than one Deputy Chief Health Officer*

Section 53AA of the Hospital and Health Board Act enables the appointment of one Deputy Chief Health Officer (DCHO). The amendments to allow for the appointment of more than one DCHO will ensure appropriate support for the CHO in performing their functions.

*Amendments to the Holidays Act 1983 and Industrial Relations Act 2016*

As a result of the cancellation of the Royal Queensland Show in response to a South East Queensland COVID-19 lockdown, the show public holiday for the City of Brisbane and for the Moreton Bay and Scenic Rim local government areas were cancelled. The amendments to the *Holidays Act 1983* will provide for Friday 29 October 2021 as a public holiday in the area of Brisbane under the *City of Brisbane Act 2010* and for the Moreton Bay and Scenic Rim local government areas.

The amendments to the Holidays Act will also provide the Minister with authority to change the 29 October 2021 public holiday to another date, if the Minister considers it is necessary or desirable to do so, by publishing a notice on the Department's website.

The amendments also include a minor consequential amendment to the *Industrial Relations Act 2016* to ensure the proposed public holiday is recognised for industrial relations purposes.

*Repeal of the Personalised Transport Ombudsman Act 2019 and an amendment to the Transport Operations (Passenger Transport) Act 1994*

The *Personalised Transport Ombudsman Act 2019* provides for the establishment of the Personalised Transport Ombudsman to help resolve complaints relating to personalised transport services. The Personalised Transport Ombudsman was expected to be appointed in 2020 but the appointment and commencement of the legislation was deferred due to the impacts of the COVID-19 pandemic on industry.

The Department of Transport and Main Roads has since reviewed the objectives of the *Personalised Transport Ombudsman Act 2019*, focusing on issues raised by the former Transport and Public Works Committee and industry submissions during committee consideration of the Bill for the *Personalised Transport Ombudsman Act 2019* (the Review). The Review noted that industry is recovering from impacts of the pandemic and did not support further regulation at this time. The Review also determined that the cost of establishing the Personalised Transport Ombudsman and administering the *Personalised*

*Transport Ombudsman Act 2019* would outweigh any potential benefits of the Personalised Transport Ombudsman to the personalised transport industry and users of personalised transport services.

The amendments repeal the *Personalised Transport Ombudsman Act 2019* and make a minor consequential amendment to the *Transport Operations (Passenger Transport) Act 1994*. The amendments respond to industry views and results in cost savings for government. The Department of Transport and Main Roads will establish channels for mediation of personalised transport matters and enhance existing complaints frameworks to ensure systemic issues which may arise are monitored on an ongoing basis.

## Human Rights Issues

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

#### Amendments to *Public Health Act 2005* – privacy protections for contact tracing information

##### *Privacy and reputation*

Section 25 of the Human Rights Act provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary', including interferences that are unreasonable, unnecessary, or disproportionate.

The collection of personal information for contact tracing has been a crucial part of the overall strategy for the management of COVID-19. The purpose of contact tracing is to assess the movements of a person with COVID-19 while they are infectious and determine who in the community is considered a 'close contact' or 'causal contact'. Information collected through the App is critical in assisting contact tracers to identify contacts at exposure sites. This enables the containment and appropriate response to prevent the spread of COVID-19 in the community.

Personal information collected under public health directions made by the CHO and held by public sector entities is subject to the privacy principles in the *Information Privacy Act 2009*. The Information Privacy Act provides that information should not be disclosed unless an exception applies. Exceptions include express or implied consent, if there is a threat to life or safety, and if disclosure is authorised or required by law. Another exception permits disclosure if an agency is satisfied on reasonable grounds that disclosure of the information is necessary for the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of laws imposing penalties or sanctions. The exceptions for disclosure authorised or required by law, and the law enforcement exception currently permit disclosure of personal information obtained by the App pursuant to a valid warrant.

A number of stakeholders, including the Queensland Human Rights Commission, have expressed concerns about the adequacy of the existing privacy protections applying to the personal information collected through the App and the potential for this information to be accessed and used for purposes unrelated to contact tracing under one of the exceptions in the Information Privacy Act (for example, for law enforcement).

Under the *Restrictions on Businesses, Activities and Undertakings Direction (No. 26)* (as at 24 August 2021) (*Restrictions on Businesses Direction*) made by the CHO, in limited circumstances, check-in information can be collected through alternative means other than the App. For example, the *Restrictions on Businesses Direction* allows a paper-based collection of information to be used if there is a temporary failure of an internet service, a safety issue such as risk of overcrowding or a remote location that does not have internet access. To the greatest extent possible, the amendments ensure equivalent privacy protections apply regardless of how the information is collected, whether through the App or a paper-based system.

The amendments will prohibit the use and disclosure of personal information collected through the App or an alternative method, except for limited purposes including:

- contact tracing or purposes related to contact tracing (for example, ensuring the integrity or security of the information);
- investigating or prosecuting an offence under ‘relevant provisions’ of the Public Health Act;
- ensuring compliance with ‘relevant provisions’ of the Public Health Act;
- deriving statistical or summary information; or
- another purpose prescribed for a COVID-19 application if the application is prescribed as one to which the privacy protections will apply under section 362MAC.

The amendments include a new offence of using or disclosing contact tracing information other than in accordance with the new provisions. The new offence carries a maximum penalty of 100 penalty units.

The amendments also provide that personal information collected through the App or an alternative method cannot be:

- accessed under any judicial or administrative order, including a decision on an application under an Act for access to information or a document such as an application under the *Information Privacy Act 2009* or the *Right to Information Act 2009*, except for an order under a ‘relevant provision’ of the Public Health Act;
- compelled to be produced by a person or given in evidence by a person in any criminal or civil proceeding or in compliance with a requirement under an Act or legal process, except for under a proceeding relating to a ‘relevant provision’ of the Public Health Act.

These amendments engage the right to privacy and reputation in the Human Rights Act.

#### Amendments to the *Hospital and Health Boards Act 2011* and *Public Health Act 2005* – appointment of more than one Deputy Chief Health Officer

The amendments will:

- amend the *Hospital and Health Boards Act* to allow the appointment of more than one DCHO position and the *Public Health Act* to allow the CHO to delegate their public health powers (except the power to issue a public health direction) to any person appointed as a DCHO; and

- clarify that protection from civil liability under the Public Service Act will extend any person appointed as a DCHO.

These amendments do not engage or limit human rights under the Human Rights Act.

Amendment to the *Holidays Act 1983* and *Industrial Relations Act 2016*

The amendments do not engage or limit human rights under the Human Rights Act.

Repeal of the *Personalised Transport Ombudsman Act 2019* and an amendment to the *Transport Operations (Passenger Transport) Act 1994*

The amendments do not engage or limit human rights under the Human Rights Act because they repeal provisions that have not commenced. The repeal does not affect a person's ability to make complaints or resolve issues through existing mechanisms or State and Commonwealth regulatory oversight bodies.

**Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the Human Rights Act)**

Right to privacy and freedom of expression

The limit on the right to privacy is reasonable and demonstrably justified for the following reasons.

(a) the nature of the right

The right to privacy is 'the right of the individual to determine for himself [or herself] when, how, and to what extent he [or she] will release personal information about himself [or herself]'.<sup>1</sup> That control over one's personal information is important for autonomy.

(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 introduction of privacy protections and safeguards for personal information collected for contact tracing purposes, promotes the right to privacy in the Human Rights Act. The amendments do not impose any additional requirements for the collection of personal information other than information already mandated to be collected under public health directions issued by the CHO under the Public Health Act.

The privacy protections that are introduced by the amendments reduce the extent to which the right to privacy is impacted by public health directions mandating the collection of personal information through the App (or other methods) to assist with contact tracing. The amendments displace several uses and disclosures of personal information that would ordinarily be permitted under the Information Privacy Act, Right to Information Act and prevent the use of the information in legal proceedings, including civil and criminal proceedings.

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<sup>1</sup> *R v Duarte* [1990] 1 SCR 30, 46.

The amendments provide very limited circumstances in which personal information collected through the App or other methods can be used for purposes other than contact tracing. Under new section 362MAG, the information may be used for limited purposes closely related to contact tracing and the management of the COVID-19 pandemic, including ensuring compliance with ‘relevant provisions’ of the Public Health Act and investigating or prosecuting an offence under ‘relevant provisions’ of the Public Health Act.

‘Relevant provision’ is defined to include chapter 3, part 3 of the Public Health Act that relates to contact tracing, and other provisions of the Public Health Act that are closely related to contact tracing or matters directly related to the COVID-19 emergency, such as failing to comply with a requirement of an emergency officer (section 346), giving false or misleading statements or documents (sections 363 and 364), and the provisions of chapter 8, part 7A about the COVID-19 emergency, including failing to comply with a public health direction (section 362D) and failing to comply with a written direction of an emergency officer (section 362J).

The purpose of ensuring personal information can be used for these purposes is to provide appropriate management of the COVID-19 pandemic and to protect human life which is consistent with the values of our society.

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

The use of personal information for limited purposes under the amendments provides strong privacy protections but also ensures the information can be used for matters related to compliance and enforcement activities related to contact tracing and the COVID-19 pandemic. If the information was not made available for these purposes, compliance with public health directions and requirements of emergency officers, which help to keep the public safe, may be less likely to occur.

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

The only alternative which would impose a lesser restriction on privacy, would be to provide a narrower set of provisions for which personal information could be used. However, the provisions which are defined as ‘relevant provisions’ have been restricted to only those provisions where there is a strong connection with the potential use of check-in information. Accordingly, there are not considered to be any other ways of achieving the purpose which would impose a lesser burden on the right to privacy.

The amendments also contain significant safeguards to protect privacy and will restrict the personal information being used for law enforcement or civil and criminal proceedings.

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

The limits on the right to privacy under the amendments are minor. The importance of ensuring check-in information is available for use for contact tracing and associated purposes, including compliance and enforcement activities, ensures an effective response to the COVID-19 pandemic, which protects human life and risk of disease. The importance of protecting human life outweighs the minor impacts on privacy.

## Conclusion

In my opinion, the amendments to be moved during consideration in detail of the Bill are compatible with human rights under the *Human Rights Act 2019* 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.

**Hon YVETTE D'ATH**  
MINISTER FOR HEALTH AND AMBULANCE SERVICES  
and LEADER OF THE HOUSE

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