

# Information Privacy and Other Legislation Amendment Regulation 2024

## Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice, Minister for the Prevention of Domestic and Family Violence provide this human rights certificate with respect to the *Information Privacy and Other Legislation Amendment Regulation 2024* (Amendment Regulation) made under the *Information Privacy Act 2009* (IP Act) and *Right to Information Act 2009* (RTI Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

The IP Act (section 194) and RTI Act (section 185) require the responsible Minister to prepare an annual report after the end of each financial year on matters prescribed under the *Information Privacy Regulation 2009* (IP Regulation) and the *Right to Information Regulation 2009* (RTI Regulation).

Section 6 of the IP Regulation and section 8 of the RTI Regulation outline the matters to be included in the annual report, including the number of access applications and amendment applications received by each agency or Minister under the IP Act (section 6(a), IP Regulation) and the number of access applications received by each agency or Minister under the RTI Act (section 8(a), RTI Regulation).

Section 43 of the IP Act and section 24 of the RTI Act provide the requirements for making access applications in a compliant form. The requirements include matters such as being in the approved form, providing sufficient information about the document being sought to enable it to be identified, providing evidence of identity (if the application is for access to a document containing the applicant's personal information), and, for RTI Act access applications, being accompanied by the application fee. Section 44 of the IP Act provides the requirements for an amendment application. Applications which do not comply with the requirements are referred to as being 'non-compliant' or 'not valid'.

The RTI Act and IP Act outline the processes for where there is noncompliance with access application requirements. For example, they provide the applicant an opportunity to make their access application compliant and enable review rights for decisions that applications are not compliant (section 53, IP Act and section 33, RTI Act).

Each annual report on the operation of the RTI Act and IP Act includes, for each agency and Minister, the total number of valid (compliant) applications received. Reporting on valid

(compliant) applications is consistent with established practice and the *Reporting guidelines: Right to Information and Information Privacy* which are issued by the Department of Justice and Attorney-General (DJAG) to agencies each financial year for the purpose of preparing the annual report. Requiring only valid (compliant) applications to be counted avoids the risk of double counting (i.e. counting a non-valid application, then counting the application again when a valid application is submitted). Counting total applications (i.e. valid and invalid applications) may also distort annual reporting overall given that only valid (compliant) applications result in an agency decision (e.g. about release or refusal to release documents).

In *Poyton and Department of Education*[2023] QICmr 13 (Poyton) the Right to Information Commissioner applied *Powell & Anor v Queensland University of Technology & Anor* [2017] QCA 200 (Powell) and concluded the processing period for an access application commences when the application is received and not when the application is received in a compliant form.

Neither the Powell nor the Poyton decision considered annual reporting, as they were confined to the context of calculating timeframes and processing applications. However, to avoid legal uncertainty about the inadvertent impact these decisions may have on annual reporting requirements and practice, the Amendment Regulation provides that agencies and Ministers are only required to report on valid applications.

## Human Rights Issues

### Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 HR Act)

The Amendment Regulation clarifies annual reporting requirements under the IP Regulation and the RTI Regulation.

The Amendment Regulation engages the human right to freedom of expression under section 21 of the HR Act which protects the right to seek, receive and impart information and ideas of all kinds.

As the Amendment Regulation does not limit, in practice, the information that is included in annual reports under the RTI Act or IP Act, it does not limit the right to freedom of expression. The Amendment Regulation does not limit other human rights protected by the HR Act.

## Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it does not raise a human rights issue.

**YVETTE D'ATH MP**  
Attorney-General and Minister for Justice  
Minister for the Prevention of Domestic and Family Violence