



Queensland

Surveillance Devices Youth Act 2023

Youth Act No. 6 of 2023

A Youth Act to regulate private and government use of surveillance devices, establish a Surveillance Devices Commission and Commissioner, and to amend the Invasion of Privacy Act 1971 for related purposes.

[Assented to 20 November 2023]



Queensland

Surveillance Devices Youth Act 2023

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The Youth Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Youth Act may be cited as the *Surveillance Devices Youth Act 2023*.

2 Commencement

This Youth Act commences on a day to be fixed by proclamation.

3 Main purpose of Youth Act

The main purposes of this Youth Act are to—

- (a) regulate the use of surveillance devices and the use of emerging surveillance device technologies to appropriately protect the privacy of individuals; and
- (b) regulate the communication or publication of information derived from surveillance devices; and
- (c) provide for offences relating to the unlawful use of surveillance devices and the unlawful communication or publication of information derived from a surveillance device; and
- (d) provide appropriate regulatory powers and enforcement mechanisms in relation to the use of surveillance devices; and
- (e) provide appropriate penalties and remedies; and
- (f) appropriately protect the privacy of individuals in relation to the use of surveillance devices; and
- (g) regulate private use of surveillance.

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4 Act binds all persons

This Act binds all persons, including the State.

5 Act prevails

To the extent of an inconsistency of a provision of this Act with another Act, this Act prevails.

6 Definitions

In this Youth Act—

body-worn camera see section 609A of the *Police Powers and Responsibilities Act 2000*.

consent see section 348 of the Criminal Code.

data surveillance device means any application or gadget that can be used to record or monitor information entering a computer or coming out of one.

listening device means a device that is capable of recording, monitoring or listening to words spoken by a person, unless that device is used to assist a person with a hearing impairment.

optical surveillance device means a device that has the ability to be used to observe or record visually a person, place or activity.

private activity means an action conducted in conditions that could be interpreted as indicating the participants want to see it exclusively by themselves.

private conversation means a conversation in which at least one of the parties would not reasonably expect or want to be heard by anyone other than the people present.

surveillance device means a listening device, an optical surveillance, a tracking device or a data surveillance device, or a combination of any of those devices.

surveillance information means the collection, collation and analysis of data obtained from surveillance devices gathered through lawful or unlawful surveillance methods.

the advisory bodies means the mediatory body and the RM body.

the Commissioner means the Surveillance Devices Commissioner.

the Commission means the Surveillance Devices Commission.

the mandate means the functional mandate of the Commission set out in section 20A.

the mediatory body means the mediatory advisory body.

the Minister means the Attorney-General.

the RM body means the research and monitoring advisory body.

tracking device means an electronic device that allows a person to monitor the location of another person or object.

Part 2 Private Surveillance

Division 1 Preliminary

7 Meaning of *public interest*

- (1) In this Part, information that is in the *public interest* means that information has some potential relevance, importance, or interest to the public at large.
- (2) In determining whether a publication was made in the public interest, the Court may give weight to the following factors—
 - (a) the nature of the subject of the obtained surveillance;
 - (b) the context of the obtained surveillance;

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- (c) the nature of the information obtained from the obtained surveillance;
- (d) whether written or verbal consent was provided when recording that communication;
- (e) the purpose of the obtained surveillance;
- (f) the nature of the alleged public interest.

Division 2 Offences relating to surveillance

8 Optical Surveillance Devices

- (1) A person must not intentionally install, utilise, or maintain an optical surveillance device on or within a property, a vehicle, or any other object with the purpose of visually recording or observing a private activity without the explicit or implicit consent of all parties involved in the activity.

Maximum penalty—

- (a) for a body corporate—250 penalty units.
 - (b) for an individual—75 penalty units or 3 years imprisonment.
- (2) For subsection (1), it is immaterial whether the person has any legal possession or control over the property, vehicle, or object.
 - (3) Subsection (1) does not apply to the installation, use or maintenance of an optical surveillance device if—
 - (a) the device is authorised to be used under this Act or any other Act; or
 - (b) the device is authorised under a law of the Commonwealth; or
 - (c) the device is installed, used or maintained for the purposes of an approved undercover operation, or on behalf of, a person who is an authorised participant in the approved undercover operation; or

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- (d) the device is installed, used or maintained by a person who holds an investigation agent's licence—
 - (i) that authorises the holder of the licence to perform the functions of inquiry work; and
 - (ii) it is within the scope of their duties as an investigative agent and the use is reasonably necessary for the protection of the lawful interests of a person; or
 - (e) the device is used to record any activity in connection with the execution a warrant or other authority under any other Act or law; or
 - (f) the device is used by a police officer to record any activity carried out in a public place in the course of the officer's duties and the device used is a body-worn camera.

9 Tracking devices

- (1) Subject to this section, a person must not knowingly install, use or maintain a tracking device to determine the geographical location of—
 - (a) a person without the express or implied consent of that person; or
 - (b) a vehicle or thing without the express or implied consent of the owner, or a person in lawful possession or lawful control, of that vehicle or thing.

Maximum penalty—

 - (a) for a body corporate—250 penalty units.
 - (b) for an individual—75 penalty units or 3 years imprisonment.
- (2) Subsection (1) does not apply—
 - (a) to the installation, use or maintenance of a tracking device if—

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- (i) the installation, use or maintenance of the device is authorised under this Act or any other Act or a corresponding law; or
- (ii) the installation, use or maintenance of the device is authorised under a law of the Commonwealth; or
- (b) to the use of a tracking device solely for the protection of the lawful interests of a person; or
- (c) the device is used to record any activity in connection with the execution of a warrant or other authority under any other Act or law.

10 Listening devices

- (1) Subject to this section, a person must not knowingly install, use or cause to be used, or maintain, a listening device—
 - (a) to overhear, record, monitor or listen to a private conversation to which the person is not a party; or
 - (b) to record a private conversation to which the person is a party.

Maximum penalty—

- (a) for a body corporate—250 penalty units.
 - (b) for an individual—75 penalty units or 3 years imprisonment.
- (2) Subsection (1) does not apply—
 - (a) to the use of a listening device by a party to a private conversation to record the conversation if—
 - (i) all principal parties to the conversation expressly or impliedly consent to the device being so used; or
 - (ii) the use of the device is reasonably necessary for the protection of the lawful interests of that person; or
 - (b) to the installation, use or maintenance of a listening device if—

- (i) the installation, use or maintenance is authorised under any Act or corresponding law; or
 - (ii) the device is installed, used, or maintained for the purposes of an approved undercover operation and the device is utilised by the licensee in the course of their functions as an investigative agent; or
 - (iii) the use is reasonably necessary for the protection of the lawful interests of a person and that use is free from discrimination; or
- (c) to the installation, use or maintenance of a listening device on or within premises of a vehicle if—
- (i) an owner or occupier of the premises or vehicle agrees to the installation, use or maintenance of the device and is reasonably necessary for the protection of the lawful interests of the owner or occupier of the premises of the vehicle; or
 - (ii) the use of a listening device was by an officer for the purpose of recording any words spoken by or to, or within the hearing of, the officer during activities carried out in the course of the officer's duties and the device used is a body-worn camera; or
 - (iii) the hearing of a private conversation by means of a listening device was unintentional, and the use of the listening device was immediately discontinued upon realisation of the unintentional act.

11 Data surveillance devices

- (1) A person must not knowingly install, use or maintain a data surveillance device to access, track, monitor or record the input of information into, the output of information from, or information stored in, a computer without the express or implied consent of the owner, or a person with lawful control or management, of the computer.

Maximum penalty—

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- (a) for a body corporate—250 penalty units
 - (b) for an individual—75 penalty units or 3 years imprisonment
- (2) Subsection (1) does not apply to the installation, use or maintenance of a data surveillance device if the installation, use or maintenance of the device is authorised—
- (a) under this Act or any other Act or a corresponding law; or
 - (b) under a law of the Commonwealth.

12 Public interest defence

It is a defence for a person charged with an offence against section 5 or section 7 to prove that—

- (a) the use of an optical surveillance device to record visually or observe the carrying on of a private activity was in the device is in the public interest; or
- (b) the installation, use or maintenance of the device was in the public interest.

Division 3 Possession of surveillance information

13 Unlawful possession of surveillance information

- (1) A person must not knowingly possess surveillance information with the knowledge it has been obtained directly or indirectly, by the use of a surveillance device, and is the result of the unintentional recording of a private conversation or activity.

Maximum penalty—30 penalty units or 4 months imprisonment.

- (2) Subsection (1) does not apply where the material or information in possession is—

- (a) possessed in connection with proceedings for an offence against this Act; or
- (b) possessed with the consent of each principal party to the conversation or activity; or
- (c) possessed by a law enforcement officer and the information is possessed for the benefit of the public; or
- (d) in possession of a person assisting a law enforcement officer in the exercise of the officer's duty.

14 Unlawful publication of surveillance information

- (1) A person must not knowingly publish material or information derived from the lawful or unlawful use of a surveillance device.

Maximum penalty—55 penalty units or 6 months imprisonment.

- (2) Subsection (1) does not apply where the material or information is published—
- (a) by a person who was a party to the conversation or activity to which the material or information relates; or
 - (b) with the consent of each party to the conversation or activity to which the information or material relates; or
 - (c) by an officer of an investigating agency for the purposes of a relevant investigation or relevant action or proceeding; or
 - (d) in the course, or for the purposes, of a relevant action or proceedings; or
 - (e) in relation to a situation where—
 - (i) a person is being subjected to violence; or
 - (ii) there is an imminent threat of violence to a person; or
 - (iii) there has been substantial damage to property; or

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- (iv) the information or material is published by a media organisation, in the public interest; or
- (v) as part of an ongoing investigation by a law enforcement agency; or
- (f) in any other way that is required or authorised by this Act or another Act.

15 Public interest defence

It is a defence for a person charged with an offence against section 13 or section 14 to prove that—

- (a) for section 13—the possession of surveillance information obtained through the use of a surveillance device was in the public interest; or
- (b) for section 14—the publishing of material or information derived from the use of a surveillance device was in the public interest.

Part 3 State surveillance

16 Mitigation of discriminatory bias in government use of surveillance devices

- (1) Subject to this section, the State must take all reasonable steps to prevent the use surveillance technologies in such a way that may—
 - (a) perpetrate technology-facilitated discrimination online and offline; or
 - (b) perpetrate harmful or discriminatory norms and stereotypes; or
 - (c) limit bodily autonomy through any means, including the unlawful collection or misuse of personal health data; or
 - (d) discriminate against individuals on the basis of any of the attributes listed in section 7 of the *Anti-Discrimination Act 1991*.

- (2) In this section, *personal health data* includes reproductive data, sexual data, data connected to any aspect of an individual's mental and physical health, or intimate images.

17 Government to review surveillance systems

- (1) The State must, every 5 years, perform an evaluation of any surveillance device employed by them for potential discriminatory effects, identifying any relevant potential discrimination.
- (2) Where potential discrimination is identified, the State must take all reasonable steps to eliminate it.
- (3) For the avoidance of doubt, this section extends to any facilities owned and operated by the State.

18 Transparency in government use of surveillance devices

- (1) The State must take all reasonable steps to make public the nature and use of surveillance devices by it.
- (2) Each year, the Minister must table a report in the Legislative Assembly, outlining—
- (a) the prevalence of the use of surveillance devices by the State; and
 - (b) the nature of the use of surveillance devices by the State; and
 - (c) any identified issues stemming from the use of surveillance devices by the State; and
 - (d) the reason for the continuous use of surveillance devices by the State.
- (3) The Minister must table the report by no later than June 30 each year.

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19 Limitations on data scope and collections

- (1) The quantity and nature of data collected through surveillance technologies by the State must be limited to what is necessary and appropriate in achieving specified and legitimate objectives of public interest or safety.
- (2) Biometric data collection tools must—
 - (a) only be used in lawful and appropriate circumstances that balance interests at stake; and
 - (b) be acquired after consent, or collection awareness, from the individual in question unless the Commissioner determines that collection is required in the interests of public safety; and
 - (c) be consistent with safeguarding and confidentiality laws.
- (3) In this section, a *biometric data collection tool* includes fingerprint scanners, DNA analytics, facial recognition, speech recognition, and iris scans.

20 Safeguards in place to protect data

- (1) Data collected through surveillance devices by the State must be kept in accordance with the *Information Privacy Act 2009*.
- (2) The State must disclose a data breach to the Commissioner in writing within 30 days of a breach occurring.
- (3) Any data collected by a government agency must be either destroyed, or all information be de-identified, immediately once it is no longer needed for the purpose that it was collected for.

Part 4 Surveillance Commission

Division 1 Preliminary

21 Establishment of the Commission

- (1) The Surveillance Devices Commission is established, which—
 - (a) is a statutory body for the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*; and
 - (b) consists of—
 - (i) the office of the Commissioner;
 - (ii) the RM body; and
 - (iii) the mediatory body; and
- (2) The Commission operates in line with a functional mandate (*the mandate*) set out in this Act.

22 Mandate of the commission

- (1) This section outlines the functional mandate which the Commission must pursue as its main objective.
- (2) In the exercising of its functions, the Commission must operate under the mandate by—
 - (a) identifying potential risks and impacts related to surveillance through—
 - (i) monitoring technological advancements and their potential impact on surveillance practices; and
 - (ii) identifying and analysing the potential risks associated with the use of surveillance devices; and
 - (iii) assessing the implications of surveillance technologies for privacy, civil liberties, human

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- rights, social cohesion, and democratic principles;
and
- (b) reviewing surveillance device policies and legislation, including—
 - (i) the evaluation of the effectiveness of existing legal and ethical frameworks in regulating the States use of surveillance devices; and
 - (ii) the evaluation of the effectiveness, implementation and operation of this Act; and
 - (iii) the positioning of recommendations to improve the effectiveness of this Act based on the findings of the Commission and advisory bodies; and
 - (c) reviewing surveillance devices usage, including—
 - (i) the mediation of complaints, feedback directed to the commission regarding the misuse of surveillance devices, or the violation of Queensland surveillance legislation; and
 - (ii) the investigation of government agencies who have been accused of surveillance device misuse on more than 2 occasions within 6 months; and
 - (iii) the recommendation of measures to increase the transparency of the government surveillance practices.

23 Surveillance Devices Commissioner

- (1) There is to be a Surveillance Devices Commissioner.
- (2) The Surveillance Devices Commissioner—
 - (a) is appointed by, and holds office on the terms and conditions decided by the Governor in Council; and
 - (b) holds office for a term of not more than two years, stated in the instrument of appointment, and may hold office for not more than 8 years continuously; and

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- (c) controls all aspects of the Surveillance Devices Commission.

24 Deputy Surveillance Devices Commissioner

- (1) There is to be a Deputy Surveillance Devices Commissioner.
- (2) The Deputy Surveillance Devices Commissioner—
 - (a) is appointed by, and holds office on the terms and conditions decided by the Governor in Council, on the advice of the Commissioner; and
 - (b) holds office for a term of not more than two years, stated in the instrument of appointment, and may hold office for not more than 8 years continuously; and
 - (c) is responsible for assisting the Commissioner in the execution of their functions and powers, and exercising those powers in the Commissioners absence.

25 Independence of Commission

- (1) The Commissioner must ensure the independence of the Commission by—
 - (a) ensuring they conduct themselves impartially, and in the public interest; and
 - (b) ensuring the Commission is not subject to direction from any person about how they conduct their activities.
- (2) Without limiting subsection (1)(b), the Commission may be directed to develop a report or give advice to the Minister under this Act.
- (3) The Commissioner may be removed from office by the Minister if the standards outlined in subsection 1 are not met.

26 Vacancy of Commissioner

- (1) Vacancies in the office of Commissioner must be dealt with as soon as practicable by the Minister.

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- (2) Where the Commissioner is on leave, the Deputy Commissioner may act in the Commissioner's place and exercise all the functions and powers of the Commissioner.

27 Staff of the Commission

- (1) Staff of the Commission are—
 - (a) employed under this Act, not the *Public Service Act 2008*; and
 - (b) not subject to direction, other than from the Commissioner, members of the advisory bodies, or a person authorised by the Commissioner, about how the Commissioner's functions are to be performed.
- (2) The Commissioner has the power to—
 - (a) hire and terminate staff; and
 - (b) adjust or decide upon the remuneration of staff; and
 - (c) exercise any other function which is necessary to ensure the staffing of the commission.

28 Powers and functions of the Commissioner

- (1) The Commissioner has the power to do all things that are necessary or convenient to be done to perform the Commissioner's functions under this legislation.
- (2) Without limiting subsection (1), the Commissioner may—
 - (a) publish internal reports and documentation in the interest of ensuring the transparency of the Commission; and
 - (b) request the Minister table reports produced by the Commission.
- (3) Where the Deputy Commissioner exercises a function of the Commissioner in the Commissioner's absence, the decision has the same effect as if the Commissioner themselves had made it.

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- (4) The Commissioner may, at any time, delegate a power to—
- (a) the Deputy Commissioner; or
 - (b) the RM body; or
 - (c) the mediatory body.

Division 2 Composition and staffing of the Commission

29 Preliminary

This division outlines the composition, operational functions operational and staffing of the Commission.

30 Composition of Commission

The Commission is comprised of 3 main bodies, which are the—

- (a) office of the Commissioner, with the function of overseeing and managing the work and structure of the Commission to best fulfil the mandate; and
- (b) mediatory advisory body, with the function of resolving all complaints and managing all feedback directed and received by the Commission; and
- (c) research and monitoring advisory body, which functions as the monitoring and investigative body of the Commission.

31 Office of the Commissioner

- (1) The Office of the Commissioner (*the office*) is established.
- (2) The office is responsible for—
 - (a) exercising high level management of the Commission, including exercising staffing and finance functions; and

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- (b) supporting the Commissioner and the Deputy Commissioner to deliver upon the mandate.

32 Mediatory advisory body

- (1) The mediatory advisory body (*the mediatory body*) is established.
- (2) The mediatory advisory body is responsible for—
 - (a) the handling and resolution of all complaints received by the Commissioner; and
 - (b) investigating each complaint, while aiming to find fair and equitable resolutions in accordance with the Commission’s policies and practices; and
 - (c) managing and recording all types of feedback, including suggestions and comments received by the Commission and Commissioner; and
 - (d) ensuring that all feedback is appropriately acknowledged, categorised, and brought to the attention of the Commission; and
 - (e) upholding principles of neutrality and impartiality in dealing with complaints and feedback.
- (3) The mediatory body must maintain comprehensive records of all complaints, feedback, and their respective resolutions to facilitate transparency and the management of recurring issues.
- (4) In exercising its function under subsection (2), the mediatory body must collect and store—
 - (a) the time and date when a complaint or feedback was received by the commission; and
 - (b) the name, contact details, and any relevant identifiers of—
 - (i) individuals or entities submitting a complaint or feedback; and

- (ii) individuals or entities involved or mentioned in the complaint or feedback; and
 - (iii) individuals or entities involved in the mediation of the complaint or feedback.
- (c) all supporting documents, evidence, or additional information provided by the complainant or feedback provider to substantiate their claim or suggestion; and
 - (d) any supporting documents, evidence, or additional information collected by the mediatory body during the mediation of the complaint or feedback; and
 - (e) a chronological record of the actions taken by the mediatory advisory body in response to the complaint and or feedback; and
 - (f) the current status and progress of the complaint or feedback resolution process along with a description of the final resolution or outcome of the complaint and or feedback.

33 Members of the mediatory advisory body

- (1) The mediatory body has a membership of 5 people (each a *member*), comprised of—
 - (a) the chairperson; and
 - (b) the deputy chairperson; and
 - (c) the principal liaison; and
 - (d) 2 general members.
- (2) The responsibilities of the members are as follows—
 - (a) the chairperson is responsible for—
 - (i) presiding over all meetings and proceedings of the mediatory body; and
 - (ii) exercising decisive authority in mediating complex or high-profile disputes, ensuring impartiality and adherence to established mediation principles; and

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- (iii) representing the mediatory body in its interactions with the commission, stakeholders, and the public; and
 - (iv) overseeing the handling and resolution of all complaints received by the commission through the mediatory process as per Division 3 (The Complaint Process); and
- (b) the deputy chairperson is responsible for—
 - (i) assisting the chairperson in fulfilling their duties and responsibilities; and
 - (ii) in the absence of the chairperson, acting as the interim presiding officer during meetings and proceedings; and
 - (iii) supporting the chairperson in maintaining the effective functioning of the mediatory body; and
 - (iv) actively contribute to the investigation and resolution of complaints received by the commission through the mediatory process; and
- (c) the principal liaison is responsible for—
 - (i) engaging and communicating with entities beyond the commission, including government bodies, private organizations, and international counterparts; and
 - (ii) facilitating communication and cooperation between the mediatory body and relevant external parties in resolving disputes and managing feedback; and
 - (iii) ensuring that relevant feedback and concerns raised by external entities are brought to the attention of the commission and appropriate sub-bodies; and
- (d) the general members are responsible for—

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- (i) actively participating in the mediation process, providing insights and expertise to ensure fair and equitable resolutions of complaints; and
 - (ii) contributing to the management of feedback received by the commission, ensuring that all feedback is appropriately acknowledged, categorized, and considered during decision-making processes, and
 - (iii) actively participating in the production of comprehensive reports with recommendations for improving processes or policies related to this Act.
 - (3) The chairperson is appointed by the Commissioner, considering candidates with exceptional leadership skills, expertise in dispute resolution, and a deep understanding of privacy law, human rights, and surveillance-related issues.
 - (4) The deputy chairperson is appointed by the Commissioner in consultation with the chairperson, considering candidates with exceptional leadership skills, expertise in dispute resolution, and a deep understanding of privacy law, human rights, and surveillance-related issues.
 - (5) The principal liaison is appointed by the Commissioner in consultation with the chairperson, and must possess a thorough understanding of government processes, relevant laws, and surveillance-related policies to effectively engage with government bodies and other entities.
 - (6) The 2 general members are appointed by the Commissioner in consultation with the chairperson, considering individuals with expertise in areas such as data protection, technology, human rights, privacy advocacy, or related fields.
 - (7) The appointment of a person to a position outlined in subsections (3)-(7) must not consider any of the following factors—
 - (a) race;
 - (b) sexuality;
 - (c) gender;

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- (d) religion.
- (8) A person appointed under this section may be appointed for a term not exceeding 2 years, and may be reappointed to additional terms thereafter.

34 Functions of the Research and Monitoring Advisory Body

- (1) The research and monitoring advisory body (*the RM advisory body*) is established.
- (2) The RM advisory body is the monitoring and investigative arm of the commission responsible for conducting research, analysing data, and providing evidence-based insights.
- (3) The RM advisory body shall be responsible for the extensive research and investigation of the following aspects of surveillance technologies, including—
 - (a) the forms of surveillance technologies used by government and private entities, such as CCTV cameras, body-worn cameras, audio recording devices, GPS trackers, drones, and facial recognition systems; and
 - (b) the capabilities of surveillance devices, such as their range, resolution, data storage capacity, and real-time monitoring capabilities.
 - (c) the usage and deployment of surveillance devices within spaces such as public spaces, private properties, government buildings, transportation hubs, and other locations.
 - (d) the collection of data from surveillance devices through the evaluation of government and other entities policies regarding—
 - (i) data collection, such as the types of data that can be collected; and
 - (ii) data storage and retention, such as how long the data can be stored and its storage condition; and
 - (iii) data access and usage, such as who can access the stored data and the conditions of its use; and

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- (iv) data protection, such as the protection protocols used to protect the data and prevent breaches and unauthorised access; and
 - (e) the usage and sharing of surveillance devices data through the evaluation of government and other entities policies regarding—
 - (i) the sharing of surveillance data between different entities, such as law enforcement agencies, government departments, private organizations, and international partners; and
 - (ii) the usage of surveillance data within and between entities, such as criminal investigations, public safety initiatives, traffic management, and disaster response; and
 - (iii) the anonymising or de-identifying of surveillance data to protect the privacy of individuals.
 - (4) The RM body may make recommendations for improvements regarding—
 - (a) the usage and sharing of surveillance data by government entities, ensuring they align with relevant laws, regulations, and ethical standards; and
 - (b) the evaluation of the level of transparency and accountability demonstrated by government entities in their data usage and sharing practices.
 - (5) The RM body may engage in consultations with external experts, stakeholders, academic researchers and the public if deemed relevant to an investigation or monitoring effort.

35 Members of the Research and monitoring advisory body

- (1) The RM body has a membership of 5 people (each a *member*), comprised of—
 - (a) the chairperson;
 - (b) the deputy chairperson;

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- (c) the data and technologies analyst;
 - (d) the legal and policy advisor;
 - (e) the engagement officer.
- (2) The duties and powers of the research and monitoring advisory body are as follows—
- (a) the chairperson is responsible for
 - (i) presiding over all meetings and proceedings of the research and monitoring advisory body; and
 - (ii) overseeing the research and monitoring functions of the RM body; and
 - (iii) coordinating the activities of the other members and ensuring effective communication and collaboration within the RM body; and
 - (iv) have the authority to engage in consultations with external experts, stakeholders, academic researchers, and the public if deemed relevant to an investigation or monitoring effort.
 - (b) the deputy chairperson is responsible for—
 - (i) assisting the chairperson in fulfilling their duties and responsibilities; and
 - (ii) acting as the interim presiding officer during meetings and proceedings in the absence of the chairperson; and
 - (iii) actively contributing to the research and monitoring efforts of the advisory body and support the chairperson in maintaining the effective functioning of the body.
 - (c) the data and technologies analyst is responsible for—
 - (i) conducting in-depth research and analysis of surveillance technologies and their usage within Queensland; and
 - (ii) investigating the forms and capabilities of surveillance devices, data collection and retention

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- policies of government and other entities, and the usage and sharing of surveillance data; and
- (iii) analysing data related to surveillance practices, technological trends, and the impact of surveillance devices on privacy and civil liberties; and
- (d) the legal and policy advisor is responsible for—
- (i) providing expert guidance on relevant laws, regulations, and ethical standards pertaining to surveillance practices, data protection, and privacy rights; and
 - (ii) assisting in identifying potential instances of non-compliance and make recommendations for improvements, ensuring that data usage and sharing by government entities align with legal and ethical frameworks; and
 - (iii) contributing to the production of comprehensive reports with recommendations for improving processes or policies related to this Act.
- (e) the engagement officer is responsible for—
- (i) facilitating communication and collaboration with external stakeholders, including experts, researchers, academic institutions, and the public; and
 - (ii) engaging in consultations and seeking input from relevant parties to gather diverse perspectives and insights for research and monitoring efforts; and
 - (iii) ensuring the transparency and inclusivity of the advisory body's activities.
- (3) The appointment of a person to a position outlined in subsections (3)-(7) must not consider any of the following factors—
- (a) race;
 - (b) sexuality;

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- (c) gender;
 - (d) religion.
- (4) A person appointed under this section may be appointed for a term not exceeding 2 years, and be reappointed to additional terms thereafter.

36 Additional reporting provisions

- (1) The Commissioner may, at any time, prepare a report about a matter of the performance of the Commissioner's functions under the legislation and provide the report to the Minister.
- (2) The Minister may, at any time, request a report on an issue or topic of concern.
- (3) If the Minister requests a report, the Commissioner must prepare and give the report to the Minister as soon as practicable.
- (4) The Minister must table a copy of a report given to them under subsection (3) in the Legislative Assembly within 14 days of receiving the report.
- (5) A report prepared by the Commissioner under this section or another section must not—
 - (a) include personal information about an individual unless the individual has previously published the information, or given the information for the purpose of publication; or
 - (b) make an adverse comment about a person unless the Commissioner has given the person an opportunity to respond, in writing, to the proposed comment and any response from the person is fairly stated in the report.

37 5 Year Report

- (1) The Minister, with the assistance of the Commission, must complete a review of the effectiveness of this Act 5 years after commencement, and every 5 years thereafter.

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- (2) The report must outline—
 - (a) whether the legislation is achieving its purpose; and
 - (b) how surveillance devices and surveillance device technologies are used in civil society at the present time; and
 - (c) developments in surveillance device technology; and
 - (d) whether the legislation should be amended to improve its effectiveness; and
 - (e) new types of surveillance devices; and
 - (f) new uses of surveillance devices and surveillance device technology.
 - (3) The Minister must table in the Legislative Assembly a report on the outcome of the review within 1 month of the completion of the review.

Division 3 Complaints process

38 Purpose of division

This division outlines the complaint function of the Commission and Commissioner.

39 Mediatory advisory body

- (1) For the purposes of this division, the mediatory advisory body may exercise any of the functions and powers exercisable by the Commissioner on the Commissioners behalf.
- (2) However, the mediatory advisory body may not exercise the following powers of the Commissioner—
 - (a) the power to direct persons;
 - (b) the power to refuse a complaint;
 - (c) the power to refer complaints to QCAT.

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- (3) The Commissioner may, by instrument in writing, remove the mediatory advisory bodies ability to perform a function on their behalf.

40 Complaints Process

- (1) Complaints may be made to the Commissioner.
- (2) A complaint may be made or referred to the Commissioner—
 - (a) by—
 - (i) an individual who is the subject of the alleged contravention; or
 - (ii) an agent of the individual; or
 - (iii) a person authorised by the Commissioner in writing to make the complaint for the individual; or
 - (iv) two or more joint individuals; and
 - (b) must be in writing, state the complainant’s name and contact details (postal or email address), state the respondent’s name, address or other contact details if known, and include enough information to identify the alleged contravention to which the complainant relates; and
 - (c) must be made or referred within six months after the alleged contravention that is subject of the complaint came to the complainant’s knowledge, or within a further period that the Commissioner considers reasonable in all circumstances; and
 - (d) as soon as practicable after receiving a complaint made or referred to the Commissioner, the Commissioner must give a notice to the complainant and respondent stating—
 - (i) the substance of the complaint; and
 - (ii) the role of the Commissioner in dealing with the complaint; and

- (iii) whether the Commissioner will seek information or documents from the complainant or respondent in relation to the complaint.

41 Commissioner can make inquiries

Where a complaint is made or referred to the Commissioner, they may make preliminary inquiries about the complaint to decide how to deal with the complaint and, if the complaint does not include enough information to do so, identify the respondent to the complaint.

42 Commissioner can direct persons

- (1) In dealing with a complaint, the Commissioner may direct a person not to communicate or publish information that identifies or is likely to identify, the complainant or respondent to a complaint if the Commissioner is satisfied on reasonable grounds that it is necessary to protect the privacy of the complainant or respondent.
- (2) Subject to this section, failure to comply with a directive from the Commissioner without reasonable excuse is an offence.

Maximum penalty—10 penalty units.

43 Refusal of complaint

- (1) The Commissioner may refuse to deal with a complaint, or part of a complaint, if—
 - (a) the Commissioner considers—
 - (i) the complaint does not comply with the previously stated requirements, regarding the matters that must be stated in the complaint; or
 - (ii) there is a more appropriate course of action available under another law of the State or the Commonwealth to deal with the subject of the complaint; or

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- (iii) the subject of the complaint has been appropriately dealt with by another entity; or
 - (b) the complaint was not made or referred to the commissioner within the time period stated previously; or
 - (c) the complaint is frivolous, trivial, vexatious, misconceived or lacking in substance; or
 - (d) the complainant does not comply with a reasonable request made by the Commissioner in dealing with the complaint or part; or
 - (e) the Commissioner is satisfied on reasonable grounds that the complainant, without a reasonable excuse, has not co-operated in the Commissioner's dealing with the complaint or part; or
 - (f) the Commissioner is unable to make contact with the complainant.
- (2) If the Commissioner refuses to deal with a complaint or refuses to continue dealing with a complaint—
- (a) the Commissioner must give notice of the refusal, with reasons, to the complainant and to the respondent; and
 - (b) the complaint lapses, and the complainant cannot make a further complaint under this Act for the same alleged contravention.
- (3) At the discretion of the Commissioner, refused complaints may be redirected to—
- (a) the Information Commissioner, in relation to a complaint received under the *Information Privacy Act 2009*; or
 - (b) the Human Rights Commissioner, in relation to a complaint received under the *Human Rights Act 2019*; or
 - (c) the Ombudsman, in relation to a complaint received under the *Ombudsman Act 2001*; or

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- (d) the Health Ombudsman, in relation to a complaint received under the *Ombudsman Act 2001*; or
 - (e) any other entity that can receive the complaint in performing its functions under a law (including the law of another State or the Commonwealth).
- (4) If the Commissioner refers a complainant under the above section to another entity, the Commissioner—
- (a) may, with the complainant’s consent, give the entity information about the complaint obtained by the Commissioner; and
 - (b) must give notice of the referral, with reasons, to the complainant and to the respondent.
- (5) The Commissioner may enter into an arrangement with the Information Commissioner, the Human Rights Commissioner, the Ombudsman, or the Health Ombudsman (a *referral entity*), and others, to provide for—
- (a) the types of complaints under the legislation that the Commissioner should refer to the referral entity, and how the referral is made; or
 - (b) the types of complaints made under a referral Act that the referral entity should refer to the Commissioner, and how the referral is made; or
 - (c) dealing with a complaint or other matter under a referral act that could also form the basis of a complaint under the legislation; or
 - (d) co-operating in the performance by the Commissioner and the referral entity in their respective functions to ensure the effective operation of the legislation and the referral entity’s legislation.

44 Complaint mediation process

- (1) Mediation of a complaint by the Commissioner is purposed with identifying and clarifying the issues in the complaint and

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promoting the resolution of the complaint in a way that is informal, quick, and efficient.

- (2) The Commissioner must try to mediate the complaint if—
 - (a) in the Commissioner’s opinion, it is reasonably likely the complaint could be resolved by mediation; and
 - (b) the Commissioner does not—
 - (i) refuse to deal with, or continue to deal with the complaint; or
 - (ii) refer the complainant to another entity.
- (3) The Commissioner must give notice of the mediation to the complainant and respondent, stating—
 - (a) the substance of the complaint; and
 - (b) the powers the Commissioner may exercise in trying to resolve the complaint by mediation; and
 - (c) that the Commissioner may seek information or documents from the complainant or respondent in relation to the complaint.
- (4) The Commissioner must also issue a notice to the respondent that they will have an opportunity to respond to the complaint in writing.
- (5) The Commissioner may take actions they consider reasonable and appropriate to try to resolve the complaint by mediation, including by—
 - (a) asking the respondent to respond in writing to the complaint; or
 - (b) giving the complainant a copy of the respondent’s written response; or
 - (c) asking or directing the complainant or respondent to give the Commissioner information relevant to the complaint; or
 - (d) making enquiries of, and discussing the complaint with, the complainant and respondent; or

- (e) providing information to the complainant and respondent about how the legislation applies to the complaint; or
- (f) facilitating a meeting between the complainant and respondent.

45 Disclosure of information

- (1) It is an offence for a person who is or has been the Commissioner or a staff member of the Commission to disclose information that comes to their knowledge during a mediation.

Maximum penalty—10 penalty units

- (2) However, it is a defence to subsection (1) for a person to prove that the information was disclosed—
- (a) with the consent of the complainant and respondent to the complainant; or
 - (b) for the purpose of giving effect to the Commissioner’s complaints handling or reporting functions under the legislation; or
 - (c) for statistical purposes without identifying a person to whom the information relates; or
 - (d) for an inquiry or proceeding about an offence happening during the mediation; or
 - (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during the mediation; or
 - (f) under a requirement imposed by this Act.

46 Admissibility of evidence

Evidence of anything said or done, or an admission made, in the course of the mediation of a complaint is admissible in a civil proceeding only if the complainant and respondent agree—

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- (a) that this provision should not apply to a mediated agreement filed with QCAT; or
- (b) a civil proceeding for this provision does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during the mediation.

47 Resolution of complaint after mediation

- (1) If, after the mediation, the complainant and respondent agree to resolve the complaint—
 - (a) the agreement is not binding, as a mediated agreement, until it is written down, signed by the complainant and respondent, and certified by the Commissioner; and
 - (b) the Commissioner must keep a copy of the mediated agreement.
- (2) The complainant or respondent may file a copy of the mediated agreement prepared with QCAT.
- (3) If a mediated agreement is filed with QCAT, the tribunal may make orders necessary to give effect to the agreement if the tribunal is satisfied that—
 - (a) the order is consistent with an order the tribunal may make under the QCAT Act; and
 - (b) it is practicable to implement the order.

48 Order enforced under QCAT Act

An order made by the tribunal under section 42 is, and may be enforced as, an order of the tribunal under the QCAT Act.

49 Referral of unresolved complaints to QCAT

- (1) The Commissioner may, if asked to do so by the complainant, refer a complaint to QCAT to decide in circumstances where—

- (a) the Commissioner does not—
 - (i) refuse to deal with, or continue to deal with, the complaint; or
 - (ii) refer the complaint to another entity; and
- (b) in the Commissioner’s opinion, the complaint is unlikely to be resolved—
 - (i) by mediation of the complaint; or
 - (ii) despite attempts made to mediate the complaint.
- (2) The complainant may, in writing to the Commissioner, ask for the referral of the complaint to QCAT within 20 business days after receiving notice under the above clause.
- (3) The commissioner must refer the complaint to QCAT within 20 business days after receiving a request made under subsection (2).
- (4) Where a complaint is referred to QCAT in this section—
 - (a) the tribunal must exercise its original jurisdiction under the QCAT Act to hear and decide the complaint; and
 - (b) the complainant and respondent to the complaint are both parties to the proceeding; and
 - (c) the complainant is taken to be the applicant for the proceeding; and
 - (d) the respondent is taken to be the respondent for the proceeding; and
 - (e) subject to paragraph (f), the rules and procedures applying to QCAT under the QCAT Act apply to the proceeding; and
 - (f) for a hearing conducted by the tribunal in relation to the complaint, the tribunal is to be constituted by at least one legally qualified member.
- (5) After the hearing of a complaint referred to QCAT under the clause above, the tribunal may make one or more of the following decisions to decide the complaint, including—

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- (a) an order that declares the respondent's use, communication or publication contravened a general obligation in the above recommendations in relation to the complainant, and, if QCAT considers appropriate, including—
 - (i) an order that the respondent must not repeat or continue the stated act or practice; or
 - (ii) an order that the respondent must compensate the complainant for the loss or damage (including for injury to the complainant's feelings or humiliation) suffered because of the respondent's act or practice by engaging in a stated act or practice or paying the complainant, a stated amount of not more than \$100,000; or
 - (iii) an order dismissing the complaint, or part of the complaint; or
 - (iv) an order that the complainant be reimbursed for expenses reasonably incurred in connection with making the complaint.
- (6) An order made by the tribunal under the above section must state the reasonable time within which the relevant action must be taken.
- (7) QCAT should be provided with any additional resources necessary to ensure the effective operation of the new jurisdiction conferred on the tribunal by this legislation.

Division 4 Miscellaneous

50 Persons to not give false information to Commissioner

It is an offence under this section for a person, in the administration of the legislation, to give information to the Commissioner or a staff member of the Commission that the person knows is false or misleading.

Maximum penalty—20 penalty units.

