

**2017**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2016**

**(No 3)**

**Amendment to be moved by the  
Attorney-General**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

**Presented by  
Gordon Ramsay MLA  
Attorney-General**



# JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2016 (No 3)

## **Introduction**

This explanatory statement relates to an amendment to the Justice and Community Safety Legislation Amendment Bill 2016 (No 3) (the Bill) as presented to the Legislative Assembly.

## **The Bill**

The Bill amends nine Acts in the Justice and Community Safety portfolio. The amendments are intended to improve the operation of each amended law without amounting to a major change in policy.

## **Purpose of the amendment**

Amendment 1.13 of the Bill was intended to amend the *Information Privacy Act 2014* (IP Act) to allow Government contracts to include privacy protections other than, rather than in addition to, the Territory Privacy Principles (TPPs). This reflects recognition that there are a number of equivalent privacy regimes and tying compliance to the Territory's scheme may operate to increase the difficulty for corporations operating in the Territory for no benefit to the Territory or users of Territory services.

In preparing to make an instrument in anticipation of the amendment, it became clear that amendment 1.13 was open to be interpreted to require compliance with both the TPPs and any other privacy protection regime recognised for the purposes of the section (a corresponding privacy law). The amendment addresses this concern by making it clear that compliance with a corresponding privacy law is an alternative to complying with the TPPs.

This introduces flexibility in Government contracting while upholding important mechanisms for protecting personal privacy.

## Outline

### **Background**

The Government amendment replaces amendment 1.13 in the Bill with a new amendment.

New amendment 1.13 clarifies that a Government contract may include other privacy protection measures instead of, rather than in addition to, the TPPs.

### **Human Rights considerations**

The Government amendment engages the right to privacy and reputation (s 12) under the *Human Rights Act 2004* (HRA) by recognising measures in contracts other than the TPPs as suitable for protecting individual privacy.

There is no substantive change to existing rights as the amendments in the IP Act recognise compliance with the Commonwealth Privacy Act. The requirements of the Commonwealth Privacy Act are broadly similar to the requirements of the IP Act. Although the Minister responsible for the IP Act can recognise privacy measures in other jurisdictions by regulation, this requires a separate assessment of risk and compliance with the HRA.

## Clause notes

### **Amendment 1.13 (Section 21 (1) and (2))**

This clause omits amendment 1.13 and substitutes a new amendment 1.13.

This clause inserts a new section 21 (1) and (2) into the IP Act.

Section 21 (1) states that a public sector agency must not enter into a Government contract unless the contract contains measures to ensure that the contract service provider and any subcontractor for the contract complies with the TPPs, a TPP code that binds the agency or a corresponding privacy law.

Section 21 (2) provides that a public sector agency must not enter into a Government contract that authorises the contract service provider or any subcontractor for the contract to breach the TPPs, a TPP code or a corresponding privacy law.