

Terms of reference

Queensland's laws relating to civil surveillance and the protection of privacy in the context of current and emerging technologies

Background

With the advent of readily available technologies, including smartphones, drones fitted with cameras, and tracking and data surveillance devices, governments are increasingly expected to protect individuals from unreasonable intrusions on their privacy.

The need to regulate the use of surveillance devices and technologies to protect individuals against interferences with their privacy must be balanced against the legitimate uses of surveillance.

Queensland's *Invasion of Privacy Act 1971* provides a number of offences relating to the use of listening devices to overhear, record, monitor or listen to private conversations. However, the *Invasion of Privacy Act 1971* does not prohibit or regulate optical, tracking or data surveillance devices.

As a result, Queenslanders must rely on general laws where surveillance devices have unreasonably intruded on their privacy. These laws include common law actions such as trespass and nuisance, the *Invasion of Privacy Act 1971* in limited circumstances and section 227A of the *Criminal Code Act 1899* (which prohibits a person observing or visually recording another person in circumstances where a reasonable adult would expect to be afforded privacy without that person's consent).

In most other States and the Northern Territory, surveillance device legislation applies and extends beyond regulating the use of listening devices.

Concerns regarding the adequacy of Queensland's legislation to protect the privacy of individuals with the emergence of new technology are noted in the Queensland Drones Strategy released in June 2018. A key action item in the Queensland Drones Strategy is for the Queensland Government to refer to the Queensland Law Reform Commission (Commission) the question of whether Queensland's legislation adequately protects the privacy of individuals in the context of modern and emerging technologies.

Queensland law already regulates the use of surveillance devices by law enforcement agencies – for example, surveillance conducted pursuant to a warrant or emergency authorisation under the *Police Powers and Responsibilities Act 2000*. The review is not intended to extend to such provisions in existing legislation.

Terms of Reference

I, YVETTE MAREE D'ATH, Attorney-General, Minister for Justice and Leader of the House, refer to the Commission for review and investigation, the issue of modernising Queensland's laws relating to civil surveillance and the protection of privacy in the context of current and emerging technologies pursuant to section 10 of the *Law Reform Commission Act 1968*.

Scope

The Commission is asked to recommend whether Queensland should consider legislation to appropriately protect the privacy of individuals in the context of civil surveillance technologies, including to:

1. regulate the use of surveillance devices (such as listening devices, optical surveillance devices, tracking devices and data surveillance devices) and the use of emerging surveillance device technologies (including remotely piloted aircraft (or 'drones') fitted with surveillance devices) to appropriately protect the privacy of individuals;
2. regulate the communication or publication of information derived from surveillance devices;
3. provide for offences relating to the unlawful use of surveillance devices and the unlawful communication or publication of information derived from a surveillance device;
4. provide appropriate regulatory powers and enforcement mechanisms in relation to the use of surveillance devices;
5. provide appropriate penalties and remedies; and
6. otherwise appropriately protect the privacy of individuals in relation to the use of surveillance devices.

In making its recommendations, the Commission should have regard to the following:

- A. legislative and regulatory arrangements in Queensland, Australian and international jurisdictions, including permissible uses of surveillance devices;
- B. law reform and parliamentary inquiry reports in other Australian jurisdictions;
- C. the views expressed to the Commission following consultation with stakeholders, including with the community, academics and specialists in privacy law;
- D. enforcement issues that are likely to arise from any new provisions, including what, if any, additional regulatory or other powers might be required, how provisions will be enforced, and whether any particular authority is best placed to do so;

- E. Queensland's existing law regulating the use of surveillance devices for state law enforcement purposes is excluded from the review;
- F. the issue of whether there should be a legislative framework to regulate the surveillance of workers by employers using surveillance devices (such as optical surveillance devices, tracking devices, listening devices and data surveillance devices) is excluded from this review; and
- G. any other practical issues likely to arise.

The Queensland Law Reform Commission is asked to prepare draft legislation based on its recommendations.¹

Consultation

The Commission shall consult with any group or individual, in or outside of Queensland, to the extent that it considers necessary.

Timeframe

The Commission is to provide a report on the outcomes of the review to the Attorney-General and Minister for Justice and Leader of the House by ~~1 July 2019~~ 31 October 2019.²

Dated the 24th day of July 2018

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Leader of the House

¹ This amendment to the terms of reference, was made by a letter from the Attorney-General and Minister for Justice, Leader of the House, the Hon Yvette D'Ath MP, to the Chair of the Queensland Law Reform Commission, the Hon Justice David Jackson, dated 7 December 2018.

² Ibid.