

**Bills Committee on  
the Personal Data (Privacy) (Amendment) Bill 2021**

**Government's Proposed Committee Stage Amendments**

**Purpose**

\_\_\_\_\_ This paper sets out the Government's proposed Committee Stage Amendments ("CSAs") (a draft of which is at **Annex**) to the Personal Data (Privacy) (Amendment) Bill 2021 ("**the Bill**"), in response to the concern in respect of the scope of a defence relating to a cessation notice raised by a Member in a letter tabled at the Bills Committee meeting on 13 August 2021.

**Defence for contravening a cessation notice**

2. The proposed cessation notice mechanism under the Bill aims at expeditiously removing doxxing messages, so as to reduce or prevent any harm caused to the data subjects and their family members. Under the proposed section 66M of the Bill, if the Privacy Commissioner for Personal Data (Commissioner) has reasonable ground to believe that (i) there is a subject message as defined in the proposed section 66J; and (ii) a Hong Kong person or (for an electronic message) a non-Hong Kong service provider (e.g. an operator of an online service platform) is able to take a cessation action in relation to the message, the Commissioner may serve a cessation notice directing the person or provider to take cessation action.

3. At the meeting of the Bills Committee on 13 August 2021, a Member expressed concern by a letter that one of the defences to the offence for contravening a cessation notice (**proposed section 66O(2)(b)(iv))**<sup>1</sup> was too wide in scope, thus weakening the intended effect of the Bill.

4. A search of Hong Kong legislation suggests that there is no

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<sup>1</sup> The proposed section 66O(2)(b)(iv) provides that it is a defence for a person charged with an offence under the proposed section 66O(1) in respect of a cessation notice to establish that it was not reasonable to expect the person to comply with the cessation notice because there was a risk of incurring a civil liability arising in contract, tort, equity or otherwise.

existing defence similar to the proposed section 66O(2)(b)(iv). Instead, there are immunity clauses for protecting persons who comply with certain requirements imposed on them from potential civil liability owed to third parties. Examples can be found in section 380 of the Securities and Futures Ordinance (Cap. 571) and section 54 of the Financial Reporting Council Ordinance (Cap. 588).

### **Proposed CSA**

5. To address the concern of the Member, we **propose** removing the defence provided under the proposed section 66O(2)(b)(iv) and instead adding an immunity clause (**new proposed section 66OA**) as follows:

*“A person who complies with a cessation notice served on the person does not incur any civil liability, whether arising in contract, tort, equity or otherwise, to another person only because of that compliance”.*

In practice, this would ensure the doxxing message can be removed in an expeditious manner, while protecting the recipient of the cessation notice from potential civil liability arising from compliance with the cessation notice. This approach is preferred to the defence originally provided under the proposed section 66O(2)(b)(iv) of the Bill.

### **Advice Sought**

6. Members’ views are sought on the proposed draft CSAs at **Annex**.

**Constitutional and Mainland Affairs Bureau**  
**August 2021**

## Personal Data (Privacy) (Amendment) Bill 2021

## Committee Stage

Amendments to be moved by the Secretary for Constitutional and Mainland Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
10	In the proposed section 66O(2)(b)(ii), by adding “or” after “person;”.
10	In the proposed section 66O(2)(b)(iii), by deleting “; or” and substituting a full stop.
10	By deleting the proposed section 66O(2)(b)(iv).
10	In the proposed Part 9A, in Division 4, by adding—  <b>“66OA. Immunity from civil liability</b>  A person who complies with a cessation notice served on the person does not incur any civil liability, whether arising in contract, tort, equity or otherwise, to another person only because of that compliance.”.