



EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Members present:

Ms KE Richards MP—Chair
Mr JP Lister MP
Mr MA Boothman MP
Mr DJ Brown MP
Mr JA Sullivan MP

Staff present:

Mr R Hansen—Committee Secretary
Ms H Koorockin—Committee Support Officer

PUBLIC BRIEFING—INQUIRY INTO THE INFORMATION PRIVACY AND OTHER LEGISLATION AMENDMENT BILL 2023

TRANSCRIPT OF PROCEEDINGS

Monday, 23 October 2023

Brisbane

MONDAY, 23 OCTOBER 2023

The committee met at 11.15 am.

CHAIR: Good morning. I declare this public briefing open. I am Kim Richards, the member for Redlands and chair of the Education, Employment and Training Committee. I would like to respectfully acknowledge that we meet today on the lands of the Yagara and Turrbal people and pay my respects to elders past, present and emerging. We are very fortunate in this country to have two of the world's oldest continuing living cultures in Aboriginal and Torres Strait Islander people. Welcome everybody and thank you for supporting the committee's work. With me here today are: James Lister, the member for Southern Downs and deputy chair; Mr Mark Boothman, the member for Theodore; I am sure we will be expecting at any moment now Mr Nick Dametto, the member for Hinchinbrook; Mr Jimmy Sullivan, the member for Stafford; and Mr Don Brown, the member for Capalaba. Today's hearings form part of the committee's consideration into the Information Privacy and Other Legislation Amendment Bill 2023. I believe the member for Stafford wanted to briefly mention something.

Mr SULLIVAN: In terms of conflicts of interest, obviously being a DJAG bill I just wanted to flag that obviously I have worked with several of the officers here today in the past, but nothing that would cause any real conflict.

CHAIR: Thank you, member for Stafford. The Hon. Leeanne Enoch MP, Minister for Aboriginal and Torres Strait Islander Partnerships, Minister for Communities and Minister for the Arts, introduced this bill in the Legislative Assembly on 12 October 2023. The bill was then referred to this committee for its consideration. This meeting is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Witnesses are not required to give evidence under oath or affirmation, but I remind you that intentionally misleading the committee is a serious offence.

ALLAN, Ms Kathryn, Principal Legal Officer, Department of Justice and Attorney-General

HAILSTONES, Ms Alexis, Principal Legal Officer, Department of Justice and Attorney-General

ROBERTSON, Mrs Leanne, Assistant Director-General, Department of Justice and Attorney-General

TUBOLEC, Ms Melinda, Acting Director, Department of Justice and Attorney-General

LLOYD-JONES, Mr Rob, Director, Department of the Premier and Cabinet

WELCH, Ms Rachel, Executive Director, Department of the Premier and Cabinet

CHAIR: I now welcome the officers from the Department of Justice and Attorney-General and the Department of the Premier and Cabinet. Before I turn to questions from the committee, who would like to make a brief opening statement?

Mrs Robertson: Thank you, Chair. Thank you for the opportunity to brief the committee regarding the Information Privacy and Other Legislation Amendment Bill 2023. Thank you for the introductions. Obviously I will not repeat them. The bill contains amendments to the Information Privacy Act, the Right to Information Act, the Criminal Code and consequential amendments to other legislation. Primarily, the bill implements or responds to recommendations in a number of reports including: the *Report on the review of the Right to Information 2009 and Information Privacy Act 2009*; two reports of the Crime and Corruption Commission, one titled *Operation Impala—A report on misuse of confidential information in the Queensland public sector* and the other entitled *Culture and corruption risks—Culture and corruption risks: Lessons from an investigation into Ipswich City Council*; and also Professor Coaldrake's 2022 report *Let the sunshine in—Review of culture and accountability in the Queensland public sector*.

The amendments in the bill have been informed by several rounds of consultation, including consultation undertaken in the development of the reports. There are two key categories of reforms: privacy and right to information. Turning briefly to the information privacy reforms: the privacy reforms

modernise and strengthen the collection and management of personal information by the Queensland public sector. Significantly, they introduce a single set of privacy principles broadly consistent with the Australian privacy principles under the Commonwealth's Privacy Act. Secondly, the bill implements a Coaldrake recommendation by establishing a mandatory data breach notification scheme for Queensland agencies consistent with international best practice and approaches in the Commonwealth, New Zealand and New South Wales. The scheme requires agencies to take three key steps for an eligible data breach; that is, to contain, to assess and to notify. Enhanced powers and functions for the Information Commissioner are also provided to support these reforms. The bill also seeks to address a number of the shortcomings identified in the Impala report in section 408E of the Criminal Code which is used to prosecute public sector employees who improperly access or disclose confidential information.

Turning briefly now to the Right to Information Act reforms, the bill makes a number of amendments to Queensland's information privacy and right to information framework to clarify and improve the operation, broadly based on the reports I mentioned earlier. A key reform in this regard is the introduction of a single right of access to information under the Right to Information Act, consolidating the right for an individual to access and amend their personal information into the Right to Information Act. This is intended to reduce complexity for individuals and agencies and also deliver efficiencies. Finally, the bill also makes a number of amendments to support the proposed scheme for the proactive release of cabinet documents which was recommended by the Coaldrake report. Thank you again, Chair, for the opportunity to brief the committee. We are happy to take questions.

CHAIR: Terrific. Thank you, Mrs Robertson.

Mr LISTER: Thank you everyone for being here today. I would like to ask about the public release of cabinet documents. Could you explain the legislative basis for the confidentiality of cabinet documents, submissions and so forth now and how will the amendments proposed here actually function in terms of balancing the executive's wish to maintain secrecy around certain things for perhaps good or not so good reasons and the actual release of the information?

Mr Lloyd-Jones: I am not aware of the legislative basis for confidentiality so I will take that on notice, if that is okay. The amendments here do not actually look to change anything per se; they look to maintain the status quo in the sense that were cabinet to release a document that information is out in the public domain. In the event that some information was withheld for sensitivity reasons, the amendment provides certainty to decision-makers and applicants that that sensitivity or the confidentiality of that material remains.

Mrs Robertson: If I could just elaborate, in relation to cabinet documents of course there are specific provisions in the schedule of the Right to Information Act in relation to the release of those documents and them being exempt information et cetera. We could go into detail on that if you want us to. I will turn to my colleague.

Ms Hailstones: The Right to Information Act provides that cabinet documents are exempt and that is an exemption which is provided in schedule 3 of the Right to Information Act. There is a provision which provides that cabinet documents created before the Right to Information Act came into existence are exempt and there is another exemption which provides for documents which were created since the Right to Information Act commenced are also exempt. Basically, there is an exemption which lasts for 10 years if a document has been brought into existence for consideration of cabinet or its disclosure would reveal any consideration of cabinet or otherwise prejudice the confidentiality of cabinet considerations or operations. If an application were made for cabinet documents at the moment, a decision-maker would consider the application of that exemption to cabinet documents.

Mr BOOTHMAN: I have a question in terms of immunity from civil liabilities for ministers. As proposed in the bill, what is the cost to taxpayers of granting some type of protection to ministers when it comes to immunity from legal liability? Can the department say how much that would cost?

Ms Welch: No, no costing has been done. At the moment under the *Ministerial Handbook* there already is a liability. This is just providing a liability protection similar to the Public Sector Act for ministers. The liability will attach to the state as a state decision to release or not release. The issue came up because ultimately it will be a minister's decision to release the documents. There needs to be liability protection to ensure that ministers feel safe in releasing rather than not releasing. Liability attaches to the state. On the odd chance that there may be liability that arises from the release of the cabinet document, it is the state that will pick that up as it would if it were a public servant who lawfully released information under the right to information for instance.

Mr SULLIVAN: In terms of the national principles trying to be implemented through the IP Act out of the Impala report, have other jurisdictions moved towards a single principle?

Ms Hailstones: The Australian Capital Territory does have territory privacy principles which broadly correspond with the Commonwealth Privacy Act provisions.

Mr SULLIVAN: No others have moved the same way?

Ms Hailstones: Not at this point.

Mr SULLIVAN: I do not want to breach any confidentiality, but has this been on a ministerial council agenda or part of interjurisdictional discussions? I know that they have flipped in the past couple of years post-COVID.

Mrs Robertson: The best I can answer that question is to say that to my knowledge it is not on a formal ministerial council agenda at this point.

Mr SULLIVAN: Thank you. I should say, Mrs Robertson, that I have been dying to ask you a question to test your back pocket briefs, but I am resisting the urge today. In terms of the public authorities that it is extending the scope of the IPE and the RTI acts to, can you talk through who we are talking about there in terms of who is additionally captured?

Ms Hailstones: The new provisions essentially build on existing criteria for prescribing public authorities, but to our knowledge there are no plans for any more public authorities to be prescribed at this point.

Mrs Robertson: Just to clarify, the amendments are purely a facilitative thing to augment the existing regulation-making criteria as such.

Mr SULLIVAN: Should there be MOG changes or different authorities created or coming in and out of the scheme—there is an ability for that to be done by regulation?

Mrs Robertson: Ultimately, the decision about prescribing entities will be a matter for government in that sense.

Ms Hailstones: The bill does not make any changes to who is a public authority under the Information Privacy Act.

Mr SULLIVAN: DPC as the central agency might want to add to this, in terms of the privacy confidentiality changes, are you confident that the habit that can creep into government of agencies using privacy to create silos and not talk to each other in terms of where single families or single individuals may have contact with various agencies and various arms of government will not allow that to be put up as a silo? I know it is difficult when it comes to the Privacy Commissioner and the Information Commissioner—Yin and Yang a little bit. Can you speak to that at all?

Ms Hailstones: Our understanding is that the privacy principles will not actively create new barriers to the sharing of information. They were always intended to provide some flexibility. When there is a public interest in sharing information, without looking at each of the privacy principles and their effect, it is intended generally that government is able to share information where that is required.

Mr LISTER: I have a question regarding the immunity for ministers. I gather there will be liability and so forth in the case of the release of a document and they were to be challenged on that. Who would be defending the minister? Would it be the Solicitor-General, Crown Law or something like that, or is it ordinarily the case this kind of matter would be farmed out to a private firm or practitioner?

Mrs Robertson: It might be best if we take that question on notice.

Mr LISTER: I am not sure if it is still the case that liability, for instance, could potentially constitute a criminal matter? Do we still have criminal libel in Queensland? I ask the lawyers on our committee here. If so, does that have some bearing on how the defence would be made and who would do it?

Mrs Robertson: Subject to the views of my DPC colleagues, I think it is probably best if we take that question on notice.

Ms Welch: I might add that it may be difficult in a hypothetical situation to determine how a case for liability would proceed. It would depend on, as you have pointed out, whether it was criminal or civil. The liability protection that is being included here would place the liability on the state rather than the individual minister, so the state would avail itself of its usual pathways for cases. Yes, we will take that on notice and see if we can get an answer for you.

Mr BOOTHMAN: As an example, would that include past ministers? For instance, if there was a document released and some information was disclosed and it affected a past minister, would that get legal protection?

Ms Welch: The liability protection is protection from liability for releasing the document, not for what is in the document. The sort of premise we have been working on is there might be an inadvertent release of information in a cabinet document that is released that breaches a commercial-in-confidence contract or is seen to defame, libel or slander someone. A civil suit would be brought against the minister for publishing that information rather than it highlighting—we had not contemplated this. This is not liability or protection for highlighting something from the past.

Mr BOOTHMAN: What if they potentially slandered a previous minister?

Ms Welch: The previous minister would be open to civil action. This liability protection is about attaching liability to the state for the publication of it.

CHAIR: To the state, not the individual.

Mr SULLIVAN: Forgive my ignorance, but is the publication the physical publication of the document or is it speaking publicly about the content of the document?

Ms Welch: I believe it is publication. It is the publication of a document in an administrative scheme, so the proactive release of a cabinet document.

Mr BOOTHMAN: I am a little bit confused. If a minister releases that document and then speaks about that document, would that also cover them if they express a point of view about that document? What happens there?

Ms Welch: The publication of the document—and that could be verbal as well as publication—is where the liability protection attaches to the state rather than to the minister. In the case of an individual, whether it be a minister or another person raising their own views, that is not what is covered here. I do not know what the answer is. That is a matter for law, but that is not what the provision is intended to cover.

CHAIR: I just want to clarify for councils whether the bill would result in controlled entities being subject to the Right to Information Act 2009, as recommended in the Windage report or whether it would require a declaration to be made under the proposed new section 16A?

Ms Hailstones: Currently under the bill the ability to prescribe a council controlled entity will be there, but there would need to be a declaration made by regulation for that to happen.

CHAIR: There being no further questions, I note that a couple of things have been taken on notice which will be available in the transcript. Rob, the secretariat will follow up with you. The time for this briefing has now expired.

Mrs Robertson: I note the questions will be in the transcript. If we need any clarification are you comfortable with us reaching out to the secretariat?

CHAIR: Absolutely. Thank you for your time here today. A transcript of these proceedings will be available in due course. The questions taken on notice will be required by close of business on Monday, 6 November 2023. I declare this public briefing closed.

The committee adjourned at 11.36 am.