

## Information Privacy and Other Legislation Amendment Bill 2023

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Every Queensland  
community deserves  
to be a liveable one

# Information Privacy and Other Legislation Amendment Bill 2023

Submission to Queensland Parliament Education,  
Employment and Training Committee

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## About the Local Government Association of Queensland (LGAQ)

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association established solely to serve councils and their needs. The LGAQ has been advising, supporting, and representing local councils since 1896, enabling them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and providing them with the means to achieve community, professional and political excellence.

### Partners-in-Government Agreement

The LGAQ on behalf of all 77 Queensland local governments is a signatory to a three-year partners-in-government-agreement with the State of Queensland.

The Agreement details the key principles underlying the relationship between the state and local governments and establishes the foundation for effective negotiation and engagement between both levels of government.

The agreement acknowledges that local government is the closest level of government to the community, affecting the lives of everyday Queenslanders and acknowledging Local Government as a genuine partner in the Australian government system.

The intent of the agreement was to continue the tradition of working in genuine partnership to improve the quality of life for all Queenslanders to enjoy. By identifying the roles and responsibilities of each party, it provides a solid foundation for effective negotiation and engagement between both levels of government.

The LGAQ is committed to working with the Queensland Government and will continue to be a passionate advocate for councils, to serve our joint jurisdiction for the people of Queensland.

### Rural and Remote Councils Compact

The Rural and Remote Councils Compact<sup>1</sup> signed on 25 June 2021, complements the existing Partnership in Partners-in-Government agreement in place between the LGAQ and the Queensland Government to provide a platform to ensure issues of priority for these communities are properly considered by the Government when developing policies, programs, and legislation.

The Rural and Remote Councils Compact, pledges to amplify the voice of and improve outcomes for the state's 45 rural and remote councils and their local communities by enhancing engagement between both levels of government.

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<sup>1</sup> <https://knowledgebaseassets.blob.core.windows.net/images/9c61cdc2-3cfa-eb11-94ef-002248181740/Rural%20and%20Remote%20Councils%20Compact%20-%20signed%20copy.pdf>

# Information Privacy and Other Legislation Amendment Bill 2023

## Executive Summary

The LGAQ welcomes the opportunity to provide feedback to the Queensland Parliament Education, Employment and Training Committee (the Committee) on the Information Privacy and Other Legislation Amendment Bill 2023 (the Bill), introduced by Minister Leeanne Enoch in October 2023.

With local government operations becoming increasingly digital, councils understand the need to safeguard information is a key priority. Councils provide a myriad of services to their communities and as a result, retain a range of community data sets including rate payer information, health related data, payment information, development application and proposal information, and local business data. Councils have been entrusted with this information, so there is an expectation that it will be secure.

Accordingly, local councils are attuned to the growing threat of cyber-attacks, and the need to direct resources toward cyber security and measures that would protect their information infrastructure. However, it is important to understand that local governments face considerable budgetary challenges and their ability to dedicate resources to mitigate and manage cyber risks ultimately comes at the cost of other community services.

While the LGAQ and its members understand the objectives of the Bill, there has been little consideration given to the operating environment of local government and the financial impost this new regulation passes on to councils.

This submission highlights the major challenges this Bill imposes on local government and offers recommendations which may address these issues and present an alternative to a “one size fits all” approach to information protection.

Without the inclusion of specific mechanisms to account for local governments’ unique context the LGAQ cannot support this Bill in its current form as it would be unworkable, unrealistic and would set the sector up to fail.

## Recommendations

The LGAQ has prepared detailed comments in relation to the Bill and has made three recommendations, summarised below:

- **Recommendation 1** – The LGAQ recommends that the State Government develop and adopt industry specific codes and guidelines developed specifically for the local government sector.

- Recommendation 2 – The LGAQ recommends that councils continue to be subject to a voluntary DBN scheme.
- Recommendation 3 – The LGAQ recommends the State Government introduce modifications and exclusions for small business suppliers.

## Introduction

As the peak body representing Queensland's 77 local governments, the LGAQ is well placed to provide feedback on the proposed changes to Queensland's Information Privacy Act 2009 (IP Act) and Right to Information Act 2009 (RTI Act). Of particular concern are the costs to local councils of adopting a single set of privacy principles (QPPs) and a mandatory data breach notification (DBN) scheme as well as the implications of service contractors and subcontractors captured by the new framework.

ICT security is becoming an increasingly complex and costly discipline to manage within local government. Despite best efforts to continue to bolster cyber security posture, councils are challenged when providing the range of ICT security skills, expertise, and resources required to deliver a high level of protection for information systems and assets.

## Submission

### Single set of privacy principles

As stated in the Explanatory Notes, the Bill amends the IP Act and the RTI Act to adopt a single set of privacy principles based on the Australian Privacy Principles (APPs) in the Commonwealth Privacy Act to be referred to as the Queensland Privacy Principles (QPPs), in place of the National Privacy Principles (NPPs) applying to health agencies and the Information Privacy Principles (IPPs) applying to all other agencies.

The LGAQ has no objection to the amalgamation of the APPs and the NPPs currently contained in the IP Act. However, the true implications for the local government sector resulting from this reform, while acknowledged, have not been fully considered, or addressed, prior to the Bill being introduced.

*The Report on the review of the Right to Information Act 2009 and Information Privacy Act 2009<sup>2</sup>* (the Review Report) found that there would likely be administrative and resource implications for organisations and agencies in adopting a new single set of privacy principles. This is certainly the case for local government. The Explanatory Notes of this Bill also acknowledges there will be resource impacts on agencies including local councils but is explicit that these "costs will be absorbed by those agencies".

Queensland councils will have to review and amend policies, procedures, and systems, and provide training to staff to appropriately embed these new principles. This is certainly an observation strongly reflected in the feedback from our member councils who are concerned about the ongoing costs this proposed change would have on their individual budgets.

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<sup>2</sup> <https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2017/5517T2014.pdf>

The LGAQ would contend that the definition as to what constitutes "reasonable steps" to protect personal information looks like in practice should be informed by the real cost of these changes. Indeed, Article 32 of the European Union General Data Protection Regulation<sup>3</sup>, as referred to in Recommendation 16 of *Operation Impala - report on misuse of confidential information in the Queensland public sector* says that the "state of the art" and "the costs of implementation" are to be considered when determining the appropriate level of security mandated.

The LGAQ believes that this can be achieved by utilising provisions in the Bill to allow for the issuing of codes and guidelines allowing the full extent of the impost on councils to directly inform their obligations and to ensure guidance materials reflect their operating environment.

Conversely, without appropriate support, councils, which are already experiencing significant budgetary pressures and continuously increasing compliance requirements, will find implementation challenging.

Without considerable financial support to meet the costs of implementing the new compliance standards there will be a corresponding impost on rate payers.

**Recommendation 1 – The LGAQ recommends that the State Government develop and adopt industry specific codes and guidelines developed specifically for the local government sector.**

*The LGAQ recommends that council specific QPP codes and guidelines be developed under clause 33 (new Chapter 3) of the Bill. This will ensure the requirements on councils with respect to the management of personal information are consistent, fit for purpose and do not place unreasonable costs on already strained council budgets. The process of developing QPP codes, as outlined in the Bill, would allow input from councils and the community through public submissions and would result in a realistic path toward best practice personal information management across Queensland councils.*

### **Mandatory Data Breach Notification (DBN) scheme**

Queensland councils remain dedicated to protecting the privacy of data gathered in the execution of their roles and responsibilities to their local communities. Councils strive to the best of their ability to protect personal information from misuse and loss, as well as to prevent any unauthorised access, modification, or disclosure. They also remain ready and willing to report any serious data breaches, as appropriate.

The LGAQ board is committed to the organisation assisting with minimising cyber security risk where possible for Queensland councils. The LGAQ have conducted free cyber security maturity assessments for 47 Queensland councils. Those councils were provided with free cybersecurity awareness and education through our subsidiary, Peak Services. This work informed the development of a local government sector report on cybersecurity maturity and also ongoing work with several councils through a Digital Leaders Group sharing best practice from them and insights into what they've done with wider councils.

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<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679>

Our member councils are not complacent to the risks of a cyberattack on their systems and the impact such an event can have on councils' ability to operate and the potential reputational risks to their organisation. It can also have an impact on a councils' ability to get insurance coverage. Accordingly, Queensland councils operate under the assumption that it is a matter of when, not if, they will experience a malicious data breach.

At our 2023 annual conference, Isaac Regional Council and Blackall-Tambo Regional Council, presented on their experiences with cyber breaches in recent years. This session focused on how it impacted their councils and their teams, and the ongoing recovery period to get back to 'normal' operations. This was followed by a cyber security panel where the LGAQ Chief Digital Officer and the Queensland Chief Information Security Officer spoke about the low cost and no cost options for councils available through the State's Cyber Security Unit and what councils should be looking out for.

While ultimately successful in responding to these data breaches, it did highlight the deficit councils are working from with regard to knowledge, resources and expertise.

In the case of a data breach notification, Queensland councils are currently subject to a voluntary notification scheme, with data breaches reported to the Office of the Information Commissioner Queensland (OIC). Councils are not required to report privacy breaches under the IP Act and are also not covered by the Commonwealth's mandatory DBN scheme.

The current voluntary scheme is workable for local government in Queensland due to the decentralised nature of the state and the financial and workforce challenges that most of the state's councils face. The reality is that the vast majority of our member councils do not have the budget nor the workforce expertise to implement and then maintain the requirements of a mandatory DBN scheme.

A basic Security Operations Centre and Security Information and Event Management solution in local government costs up to \$300,000 per annum, not including internal organisational resources and training. In addition to the financial commitment, finding cyber security professionals and attracting them to local government is considerably challenging. It is well documented that regional, rural, remote and First Nations councils face workforce challenges. Attracting staff with the necessary skills to comply with a mandatory DBN scheme would be difficult.

Funding new and dedicated positions would also be problematic given the financial position of these councils and the impracticability of training existing staff who are already stretched in the performance of their normal duties. From the informal feedback we have received, it is apparent that a mandatory DBN scheme in local government would likely struggle to be successful if it resulted in undue burdens on the operations of our councils.

While the LGAQ does acknowledge the case for the establishment of a mandatory DBN scheme in Queensland, we would advocate for any such scheme to be carefully considered in the local government context, including the limited resources available to councils, and thus ensure establishment would include facilitation funding for councils.

Alternatively, the LGAQ have advocated for the State and Federal governments to develop and resource an expert Security Operations Centre for local government authorities as a shared services concept to improve cyber security management. This will increase the cyber security



ability through shared resourcing across the local government sector, attract and retain high-performing security personnel to address scarcity of skillset in the market and provide centralised managed policy, design, and monitoring for emergency response preparedness to protect local government infrastructure.

Should the State Government move forward with a mandatory DBN scheme, and require councils to adhere to it, the LGAQ recommends both financial assistance and training support be provided to councils to manage workforce and training issues, and further, that the imposition of such a scheme be phased in with a grace period to allow sufficient time for councils to recruit appropriate staff and/or train existing staff with the state funding that is supplied.

Realistic reporting timeframes should also be set, and a review period be built in to ascertain whether a mandatory DBN scheme is workable within the local government context.

The LGAQ also firmly believes a mandatory DBN scheme would only be effective if coupled with realistic establishment and reporting timeframes as well as the introduction of measures to assist and compensate councils that already devote a substantial part of their annual budgets to complying with State legislation and regulations.

**Recommendation 2 – That LGAQ recommends that councils continue to be subject to a voluntary DBN scheme.**

*The LGAQ recommends Queensland councils continue to be subject to a voluntary notification scheme, as is currently the case, or that local government be given an exemption to any new mandatory DBN scheme. This could be achieved by utilising the proposed new functions of the Information Commissioner to waive or modify the obligations of an agency.*

### **Contracted service providers and subcontractors**

The Bill includes amendments to the IP Act to clarify privacy obligations on service contractors and extends those same obligations to subcontractors. Additionally, the Bill, in a departure from the June 2022 Consultation Paper, goes further to impose obligations for the Mandatory DBN scheme to contracted service providers and their subcontractors.

Extending these obligations to contracted service providers and subcontractors places a further administrative burden on councils who will need to ensure their contractors are compliant with legislation or the contracting agency, in certain situations would be seen to be in breach of their obligations under the IP Act.

Imposing this further burden of compliance will increase administrative costs for councils and contractors and potentially create a disincentive for small local business to contract with councils.

Partnerships between councils and local business are essential to supporting local employment and reducing the cost of goods and services, particularly for regional and remote councils who incur added costs for goods and services sourced outside the local area.

In situations where the cost of compliance is seen to outweigh the benefit of contracting with a Queensland council, small businesses may see no other option than to withdraw services.

In some small, rural and remote communities, the depth of suppliers available within a local or regional community can be quite shallow – something not recognised by the Bill or new framework.

**Recommendation 3 – The LGAQ recommends the State Government introduce modifications and exclusions for small business suppliers.**

*The LGAQ recommends that a process be established to allow council service contractors and their subcontractors to apply for waivers or modifications to their privacy principles requirements and data breach obligations. In theory this could be achieved through bespoke codes and guidelines for councils (as recommended above) or utilising the new functions of the Information Commissioner contained in the Bill.*

## Conclusion

The LGAQ welcomes the opportunity to provide feedback on the Information Privacy and Other Legislation Amendment Bill 2023. As discussed in this submission, the LGAQ has identified significant issues which prevent our full support of this legislation.

Local councils take seriously their responsibility regarding information privacy and protection and are attuned to the risks of cyber-attack. In partnership with the LGAQ, Queensland councils have been proactive in lifting the level of readiness and resources dedicated toward both preventing and responding to a potential data breach.

While the LGAQ understands the reasoning behind many of the reforms contained in this Bill, we believe that it fails to take in to account the unique operating environment of local government and their diverse financial and employment profiles.

In providing this critique we have made several recommendations for the consideration of the committee which, if incorporated into the Bill, provide a more realistic pathway toward improved information protection in Queensland's 77 local councils.

## Contact Details

Please do not hesitate to contact Angus Sutherland, Lead – Intergovernmental Relations via email [REDACTED] or phone [REDACTED] should you wish to discuss any aspect of this submission.