

Information Privacy and Other Legislation Amendment Bill 2023

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Committee Secretary
Education, Employment and Training Committee
Parliament House
George Street
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By Email: eetc@parliament.qld.gov.au

Dear Committee Secretary

Information Privacy and Other Legislation Amendment Bill 2023

Thank you for the opportunity to make submissions on the Information Privacy and Other Legislation Amendment Bill 2023 (**Bill**).

The Queensland Human Rights Commission (**Commission**) is a statutory body established under the *Anti-Discrimination Act 1991* and deals with complaints made under that Act and the *Human Rights Act 2019 (HR Act)*. The Commission also has functions to promote an understanding and public discussion of human rights in Queensland, and to provide information and education about human rights.

Amendment of definition of ‘public authority’

This submission relates only to the proposal to amend the definition of ‘public authority’, under the *Information Privacy Act 2009 (IP Act)*¹ and the *Right to Information Act 2009 (RTI Act)*², to not include an entity established by letters patent. If passed, entities established by letters patent will not be subject to obligations under Queensland’s information privacy and right to information laws.

According to the Parliamentary Committee Briefing Note and the Bill’s Statement of Compatibility, entities established by letters patent are generally charitable and religious organisations and include Bible Societies, Churches, Church Trusts, Kindergarten Associations, Welfare Associations and Historical Associations. Applying the IP Act and RTI Act to entities established by letters patent is inconsistent with their purpose to ensure *government entities* handle information appropriately and give access to information in the *government’s* possession or control. The clarification by amendment to legislation is necessary as a Queensland Civil and Administrative Tribunal (Appeals) decision has held that an orphanage established by letters

¹ Information Privacy and Other Legislation Amendment Bill 2023 Clause 19.

² Information Privacy and Other Legislation Amendment Bill 2023 Clause 84.

patent in 1929 issued by the Governor was a 'public authority' under the existing definition of the RTI Act.³

The Commission accepts that the proposed amendments are consistent with the purposes of the RTI Act and IP Act, and would alleviate administrative burdens on entities established by letters patent.

However, in the Commission's view, consideration must be given to any impact this amendment might have on the rights and entitlements of First Nations people in respect of their data, and on truth-telling and treaty processes.

Significance of data held by entities established by letters patent

Entities established by letters patent have the potential to hold significant personal and cultural information about First Nations people. For example, missions and dormitories were often established by religious organisations, who may be Queensland entities established by letters patent.

The significance of this information was described in the 2022 Review of the *Public Records Act 2002* as follows:

[The Queensland State Archives] has tens of thousands of records about Aboriginal and Torres Strait Islander peoples. The records were created by government agencies over the past 200 years, many without the knowledge, let alone consent, of those people mentioned in them. The records refer to: cultural knowledge, including traditions, sacred sites and activities; personal information about individuals, groups and relationships; and policies, programs and activities relating to children, marriages, employment and land use. Information in these records is often a source of pain or sadness.

Queensland's public records matter to First Nations peoples. Information about family, childhood, marriages, community, movements, employment and other historical facts is especially important. So too is control over, and timely access to, that information.

Socio-economic and other disadvantages have contributed to Aboriginal and Torres Strait Islander peoples encountering organisations that deal with child safety, justice, health and others when many records were made about them. The state's records attest that surveillance of First Nations persons was common and contributed to considerable intervention into their lives by government.

The Act, however, is silent on First Nations peoples and issues. This omission is consistent with traditional archival practice. However, developing societal expectations, as well as movements such as Path to Treaty, have highlighted this silence, drawing attention to the historical exclusion of First Nations perspectives and interests in the management of the state's records⁴

Pursuant to the review's recommendations, the Public Records Bill 2023 (currently before the Community Support and Services Committee) sets out Public Record Principles that give due recognition to the special interests and needs of First Nations people in public records, and that public records be managed and accessed with care to:

- (i) support Aboriginal peoples and Torres Strait Islander peoples to participate in truth-telling and treaty negotiations; and

³ *Stanway v Information Commissioner & Anor* [2017] QCATA 30.

⁴ *Report of review of the Public Records Act 2002* (31 August 2022) 24.

- (ii) contribute to reframing the State government's relationship with Aboriginal peoples and Torres Strait Islander peoples; and
- (iii) otherwise support revitalisation of culture and reconnecting communities and families.

The amendments proposed by Information Privacy and Other Legislation Amendment Bill have the potential to impact how information relating to Aboriginal people and Torres Strait Islander people is protected, managed and disclosed. It therefore engages rights to freedom of expression (s 21), rights to privacy and reputation (s 25), and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples (s 28) protected by the HR Act. The Statement of Compatibility has not given any consideration to the cultural rights of Aboriginal peoples and Torres Strait Islander peoples in the amendment of the definition of 'public authorities'.

Other rights to protection and access

While the regime for the management of public records established by the *Public Records Act 2002* appears to include records created and received by entities established by letters patent⁵, and requires custody and preservation of certain records, it does not give rights of access to documents unless and until those documents come into the possession of the Queensland State Archives.

The Inquiry body established by the *Path to Treaty Act 2023* only has powers to compel information from government entities and the Queensland Police Service. Other organisations are encouraged to voluntarily participate in truth telling processes. In the inquiry into that bill, the Commission expressed concern that these limited powers of production and compulsion, when there are many other organisations involved with the histories and experiences of Queensland's First Nations people, would risk the effectiveness and cultural safety of the truth telling and healing process. The lack of compulsion powers in relation to dormitories under the control of faith-based organisations was given as a specific example.

Entities established under letters patent have the potential to be functional public entities under s 9(1)(h) of the HR Act, ie, an entity whose functions are, or include, functions of a public nature when it is performing the functions for the State or a public entity (whether under contract or otherwise). A public entity has obligations to act and decide compatibly with human rights, and to give proper consideration to human rights when making decisions.⁶ The HR Act does not apply to acts or decisions of a public entity prior to 1 January 2020, but may apply to decisions and actions regarding data made after that date. However, while there are dispute resolution processes available under the HR Act, there are no enforcement powers.

⁵ Under the *Public Records Act 2002* (PR Act), public records are those created and received by public authorities. The definition of a 'public authority' does not expressly refer to entities established by letters patent, but does include entities 'created by the Governor in Council or a Minister', and entities 'established by the State and a local government': PR Act s 6. Following the reasoning in *Stanway v Information Commissioner & Anor* [2017] QCATA 30, entities established by letters patent could be public authorities under the PR Act.

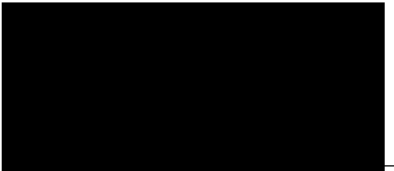
⁶ *Human Rights Act 2019* s 58(1).

Conclusion

While the Commission is not an expert in this area, it is very likely there are documents in existence held by entities established by letters patent in Queensland that relate to First Nations people.

The Commission submits that the issue should be investigated to ensure respect and protection of the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

Yours Sincerely



Scott McDougall
Queensland Human Rights Commissioner