

Information Privacy and Other Legislation Amendment Bill 2023

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3 November 2023

Committee Secretary
Education, Employment and Training Committee
Parliament House
George Street
Brisbane QLD 4000
by email: eetc@parliament.qld.gov.au

Dear Committee Secretary

Submission to inquiry into the Information Privacy and Other Legislation Amendment Bill 2023

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

IIS Partners (IIS) is consultancy that provides expert advice to entities on meeting their privacy and data security obligations, managing privacy and security risk, and implementing a privacy by design (PbD) approach to product and service development. We have worked extensively with public and private sector clients across Australia, including Queensland, and bring a practical perspective to law reform - particularly how privacy law is implemented 'on the ground' and the challenges entities tend to encounter.

Our comments, whether in support or opposition, and associated **recommendations** and **suggestions**, primarily relate to the privacy aspects of the Bill. Overall, we would like to congratulate the Queensland Government on moving ahead with this much needed reform and seeking to align its privacy frameworks with those of the Commonwealth. In our view, this will simplify privacy compliance for entities operating in Queensland and strengthen privacy protections for individuals.

We recommend that this submission be made publicly available without redactions, and fully support publishing submissions to promote transparency and trust.

Ensuring ongoing uniformity with Commonwealth privacy arrangements

You will be aware that a reform process is currently ongoing at the Commonwealth level. That process has involved a [Review of the Privacy Act 1988 \(Cth\)](#) to address emerging challenges and threats arising from the digital age and changing data handling practices. The review and associated stakeholder consultations resulted in over 100 proposals for reform – proposals [to which the Government recently responded](#).

In our view, it is critical that Queensland’s privacy arrangements continue to align with the Commonwealth arrangements, in order to facilitate national consistency and reduce regulatory complexity. Certainly, this appears to be the Government’s intention, with the Minister stating that the new Queensland Privacy Principles (QPPs) would ‘improve consistency with the Commonwealth privacy framework’ and ‘reduce red tape for businesses that may be subject to multiple sets of privacy principles such as larger businesses that contract with the Queensland government.’¹

Notwithstanding those intentions, there is a risk that changes at the Commonwealth level result in another long period of regulatory inconsistency in Queensland. This will be felt hardest in sectors in which public and private entities work closely together, such as public-private partnerships in the health sector.

We **suggest** that the Committee recommend immediate future review and update of the Queensland Information Privacy Act in the event of changes to the Commonwealth Privacy Act with the aim of ensuring ongoing legislative uniformity.

Also, as a backstop, we **suggest** the Committee recommend a review of the operation of the Information Privacy Act to occur no later than three years from the commencement of the Bill.

We also **suggest** that the Attorney-General publicly commit to ongoing uniformity of Queensland privacy law with Commonwealth privacy law, to the extent possible.

Queensland Privacy Principles

We **support** the introduction of a single set of privacy principles in Queensland that align with the APPs operating at the Commonwealth level. The QPPs contained in the Bill get the balance right between uniformity with the APPs and

¹ Leeanne Enoch MP, Information Privacy and Other Legislation Amendment Bill 2023, [Explanatory Speech](#) 12 October 2023.

necessary adaptations to make them appropriate for Queensland's legislative environment. We agree with the Australian Law Reform Commission's seminal review of privacy in 2008 which found that the benefits of national consistency of privacy regulation will only be achieved with legislative uniformity. Slight differences in approach can undermine this goal and result in considerable regulatory complexity.

For these reasons, we **support** a goal of uniformity with the APPs to the extent possible.

We would **not support** any additional amendments to the QPPs which undermine uniformity and introduce inconsistency or needless complexity.

Definition of personal information

The Bill updates the definition of personal information to align with the definition contained in the Commonwealth Privacy Act. This is an important and necessary reform which IIS **supports**.

Notably, the recent review of the Privacy Act proposed some changes to the definition of personal information - proposals to which the Australian Government 'agreed in principle.' This indicates that the definition of personal information in the Commonwealth Privacy Act is likely to change.

As with our feedback above, we recommend ongoing uniformity with Commonwealth privacy arrangements. Differences in the definition of personal information risk creating significant regulatory complexity. Moreover, the definition of personal information is foundational to the scope and reach of the Information Privacy Act and privacy laws generally. It determines what information is regulated by the proposed QPPs and what is not.

In line with our suggestion above, we **recommend** the Queensland Government immediately update the definition of personal information if the Privacy Act definition is updated. Furthermore, such a significant change - relating as it does to the foundational scope of the Information Privacy Act - must be prioritised ahead of other more complex updates.

Mandatory data breach notification

We **support** the new obligations that would require agencies to report eligible data breaches (cl 47).

Agencies will need assistance in implementing new breach notification arrangements. Indeed, there are many areas where agencies may need particular or targeted assistance – for example, understanding which breaches are ‘eligible’, the meaning of ‘serious harm’ and the difference between an ‘eligible data breach’ versus any other failure to comply with the privacy principles.

Agencies will therefore heavily rely on advice and guidance from the Office of the Information Commissioner (OIC) which will require adequate resourcing (see below). Additionally, to achieve effective implementation of new breach notification obligations, agencies will benefit from – indeed, require – dedicated funding (see below).

Ensuring adequate resourcing for the OIC

We are reassured to see that the Explanatory Statement accompanying the Bill recognises that the reforms will impact on the OIC due to its statutory responsibility to provide education, training and guidance and its new regulatory and statutory functions including the oversight of the data breach notification scheme.² According to the Explanatory Statement, the OIC has been allocated \$11.465 million over four years, and \$2.563 million ongoing, through the State Budget 2023-24 for operational implementation, development of an ICT solution and training and awareness activities.³

We **strongly support** supplementary funding for the OIC and would like to emphasise the importance of a sufficiently resourced regulator to the overall success of the reform program.

Ensuring adequate resourcing of agencies meeting new privacy requirements

The Explanatory Statement to the Bill accepts that there will be resourcing impacts for agencies implementing the reforms – costs that will be absorbed by the agencies.⁴ This is unacceptable and undermines the efficacy of privacy reforms and corresponding improvements to privacy protection. Agencies most affected will be smaller entities with low privacy maturity, such as local councils.

² See Information Privacy and Other Legislation Amendment Bill – [Explanatory Statement](#) p 6.

³ See Information Privacy and Other Legislation Amendment Bill – [Explanatory Statement](#) p 6.

⁴ See Information Privacy and Other Legislation Amendment Bill – [Explanatory Statement](#) p 6.

According to the Explanatory Statement, such agencies will be supported by the OIC and the funding it will be receiving to undertake education and training. The Statement also says that local councils will receive an extra 12-months before the data breach notification scheme takes effect to allow time to transition to the scheme.⁵ While such arrangements are helpful, they are inadequate.

We **recommend** the Queensland Government directly fund reform implementation by allocating funding equivalent to one FTE staff member for 12-months to oversee transition and uplift of each agency's privacy arrangements.

If that is not possible, commit such funding to all local councils, which are most likely to struggle to meet baseline requirements.

Ensuring adequate support to contractors that are small businesses

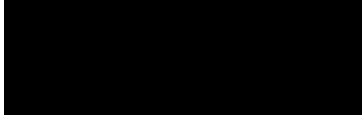
The impacts of reforms are also likely to be felt by Queensland small businesses. While small businesses are not directly regulated by the Information Privacy Act (with many, if not a majority, also not (yet) directly regulated by the Commonwealth Privacy Act), they may nevertheless be affected as contractors bound to comply with the QPPs - e.g., where they collect and/ or manage personal information on behalf of Queensland Government agencies. This may be particularly so given the Queensland Government's [approach to government procurement](#), which has a strong focus on engaging local small businesses.

We **suggest** that the OIC work with the Queensland Small Business Commissioner to ensure that small businesses are supported in updating their privacy arrangements in-line with requirements associated with government contracted service providers.

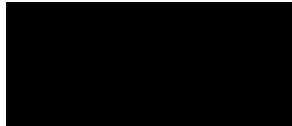
⁵ See Information Privacy and Other Legislation Amendment Bill - [Explanatory Statement](#) p 6.

Thank you for considering our comments. Questions in relation to any aspect of this submission may be directed to Partner and Privacy Services Lead, Nicole Stephensen, via email to [REDACTED]

Yours sincerely



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