



Speech By
Hon. Yvette D'Ath


MEMBER FOR REDCLIFFE

Record of Proceedings, 28 November 2023

**INFORMATION PRIVACY AND OTHER LEGISLATION AMENDMENT BILL;
PUBLIC RECORDS BILL**

Information Privacy and Other Legislation Amendment Bill resumed from 12 October (see p. 3058) and Public Records Bill resumed from 12 October (see p. 3055).

Second Reading (Cognate Debate)

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (12.31 pm): I move—

That the Information Privacy and Other Legislation Amendment Bill be now read a second time.

On 12 November 2023, the Information Privacy and Other Legislation Amendment Bill 2023 was introduced into parliament and referred to the Education, Employment and Training Committee. The committee tabled its report on 24 November 2023, making three recommendations. This bill contains a wide range of reforms, and I thank the committee members for their thorough consideration of the bill. I would also like to thank those stakeholders who made submissions to the committee and participated in the public hearing. This bill also represents the significant feedback provided by stakeholders following a public consultation process, and I would like to also thank the many submitters to that process.

I would like to acknowledge the assistance provided by the Office of the Information Commissioner during the development of these reforms, and I particularly thank Ms Rachael Rangihaeata, former information commissioner, for her dedication and commitment in making an important contribution to these reforms over the past 10 years. Ms Rangihaeata's term of office ended on 19 September 2023 and processes are currently underway to find her replacement, who will lead the implementation of these reforms.

The first recommendation of the committee's report was that the bill be passed. I thank the committee for its support for the bill. I would like to table the government response to the Education, Employment and Training Committee's report.

Tabled paper: Education, Employment and Training Committee: Report No. 40, 57th Parliament—Information Privacy and Other Legislation Amendment Bill 2023, government response [2004](#).

I will later address the other recommendations in the committee's report and foreshadow that I will be proposing amendments to the bill during consideration in detail in relation to those recommendations and to address other issues raised by stakeholders during the committee's inquiry into the bill, primarily by the then information commissioner.

The bill demonstrates this government's commitment to accountability and transparency by clarifying, strengthening and updating the Right to Information Act 2009, the Information Privacy Act 2009, the Criminal Code and other legislation. This is the third bill to implement integrity reforms from

Professor Coaldrake's 2022 report *Let the sunshine in: review of culture and accountability in the Queensland public sector*. The Right to Information Act forms a critical part of Queensland's integrity framework, and the reforms in the bill will improve the operation of that act and its efficacy for Queenslanders.

The bill responds to not only the Coaldrake report but also reports such as the 2017 *Report on the review of the Right to Information Act 2009 and Information Privacy Act 2009*; the Crime and Corruption Commission's report *Operation Impala: report on misuse of confidential information in the Queensland public sector*; and the CCC's Windage report titled *Culture and corruption risks in local government: lessons from an investigation into Ipswich City Council*. The bill also amends the Right to Information Act and Information Privacy Act in response to developments in case law.

One of the key reforms in the bill is the introduction of a mandatory data breach notification scheme, consistent with Professor Coaldrake's recommendation. This will make Queensland only the second Australian state or territory, after New South Wales, to have such a scheme. The bill requires agencies to contain, assess and notify the Information Commissioner and individuals about a data breach in certain circumstances. The bill also gives the Information Commissioner enhanced powers and functions to support these reforms. Mandatory notification of data breaches builds public confidence and trust in government's handling of personal information and empowers individuals to take action to manage risks and mitigate harm from a data breach.

The bill will also introduce a single set of privacy principles—the Queensland Privacy Principles—which are broadly aligned with the Australian Privacy Principles in the Commonwealth Privacy Act 1988. This is consistent with the Australian Law Reform Commission's 2008 report *For your information: Australian privacy law and practice*, which recommended a scheme for states and territories to enact legislation applying privacy principles in the Privacy Act. To date, only the Australian Capital Territory has principles aligned with the Australian Privacy Principles. The bill will make Queensland the second state or territory to take this step.

Another key reform in the bill is the amendment to the Right to Information Act to provide a single right of access to information, including personal information. This will reduce complexity for agencies and individuals and create a more efficient process for the handling of access and amendment applications. The bill also makes other changes to improve the processing of applications including to modify internal and external review processes.

The bill also amends the RTI Act to support the operation of the administrative scheme which will provide for the proactive release of cabinet information. Recommendation 2 made by Professor Coaldrake in his report was for the Department of the Premier and Cabinet to publish cabinet documents within 30 business days of cabinet making a final decision, subject to a number of reasonable exceptions. The Palaszczuk government has accepted this recommendation and the scheme is expected to commence in the first quarter of 2024.

Professor Coaldrake indicated that a proactive release scheme sets a signal from the top that it is fundamentally about building trust in government through increasing transparency of decision-making. The amendments in this bill are to support implementation of proactive release. Specifically, the proposed amendments: provide clarity for applicants and decision-makers under the RTI Act concerning the exempt status of information in cabinet submissions and cabinet decisions, and other cabinet related documents, in view of the official publishing of information by decisions of cabinet under the proactive release scheme; provide protection from civil liability for ministers disclosing information under a publication scheme or other administrative scheme in good faith; and ensure that the public interest immunity in proceedings and processes is not altered by the publication of information by cabinet or decisions by cabinet to officially publish cabinet information. These are minor amendments that are prudent to ensure the effective implementation of proactive release and to ensure that the intent of the Coaldrake recommendation to make cabinet decision-making more transparent can be met.

The Crime and Corruption Commission's Windage report recommended that council controlled entities should be units of public administration under the Crime and Corruption Act 2001 and also subject to the Right to Information Act. The bill responds to this recommendation but does not implement it exactly as the CCC recommended. This is because council controlled entities and state controlled entities range from small trusts to large corporations and vary substantially in their functions and activities and the extent to which they carry out functions for or on behalf of a local government or state government agency. They are also subject to various existing reporting and oversight mechanisms, including the Corporations Act 2001. As such, it is not appropriate for all of these entities to be required to comply with Right to Information Act obligations.

The bill therefore provides criteria to be considered in deciding whether to prescribe entities as public authorities under the Right to Information Act, including state and council controlled entities. The approach in the bill recognises the broad range of entities controlled by councils and the state and provides a mechanism by which entities can be subject to additional transparency and oversight on a case-by-case basis without instituting a blanket and inflexible approach. I note that the approach in the bill is consistent with the approach in the Public Records Bill, which does not expressly capture council controlled entities in the definition of public authorities and instead allows them to be included by regulation on a case-by-case basis.

The bill also amends the Criminal Code in response to the Impala report. Similarly, following consultation the government has decided not to strictly implement the CCC's recommendation in this report for a new offence. The Impala report noted that the offence in section 408E of the Criminal Code is most often used to deal with public sector employees who improperly access or disclose confidential information but identified a number of challenges and difficulties with the current operation of the offence. The amendments in the bill therefore seek to improve the operation of this offence having regard to those issues raised in the Impala report, including by increasing the maximum penalty.

I would now like to address a number of issues raised during the committee's inquiry into the bill, some of which are also the subject of recommendations in the committee's report. Recommendation 2 of the committee's report is that new section 49 of the Information Privacy Act, inserted by clause 33 of the bill, be amended to require that any extension of time must be only for an amount of time reasonably required for the assessment to be conducted. Currently, clause 33 of the bill permits an agency to extend the period of assessment of a suspected eligible data breach under new section 48 where satisfied that the assessment cannot be completed within a 30-day period. As stated in the government response I tabled earlier, the government accepts this recommendation, and I propose to move an amendment during consideration in detail to incorporate a limitation that any extension only be for a period of time reasonably required for the assessment to be conducted.

Recommendation 3 of the committee's report is that the Attorney-General clarify whether the proposed amendment to the definitions in the Information Privacy Act and Right to Information Act would impact on the rights and entitlements of First Nations people and other Queenslanders in respect of their ability to access personal and family data that may be held by institutions owned by Queensland entities established by letters patent and on truth-telling and treaty processes. The recommendation also asks that I clarify whether there are alternative, less restrictive and reasonably available ways to achieve the same purpose as the proposed amendments at clauses 19 and 84.

The amendments in clauses 19 and 84 of the bill are intended to exclude entities established by letters patent, including such entities established under the now repealed Religious, Educational and Charitable Institutions Act 1861, which I will call the RECI Act. The RECI Act was passed by parliament in 1861 to facilitate the incorporation of religious, educational and charitable institutions. When originally enacted, it allowed letters patent to be issued by the Governor for institutions with religious or secular functions and also institutions for annual or periodical agricultural, horticultural, pastoral or industrial shows. I understand that there were a great many, possibly up to 800, religious entities established under that act by letters patent, including the various dioceses of the Roman Catholic Church, the Presbyterian Church and the Uniting Church. Over time, the use of the RECI Act grew and other types of societies and associations became established under that act by letters patent.

Letters patent entities conduct a wide variety of activities. The characteristic of being established by letters patent under the RECI Act does not, of itself, show any connection to a function of government. It is simply an older way of creating a body corporate. If those entities were established in modern times, they would more likely be established as an incorporated association under the Associations Incorporation Act 1981 or a company limited by guarantee under the Commonwealth Corporations Act 2001. In fact, I understand that many of the entities have changed their structure and currently operate under those acts and some have had their letters patent cancelled.

The primary object of the Right to Information Act is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access. However, a judicial decision has deemed that letters patent entities under the RECI Act meet the criteria for public authorities under the RTI Act and, hence, the Information Privacy Act because they are either established by the Governor or established under the act for a public purpose.

The definitions of public authority were not made with letters patent in mind, and I am sure it was not parliament's intention to capture such entities within the integrity framework that applies to government merely because they were established by those mechanisms. That is why the bill seeks to

carve out letters patent entities from the Right to Information Act and Information Privacy Act and to alleviate the burden on these entities from having to comply with these complex frameworks that apply to government agencies.

While government still considers that the majority of letters patent entities established under the RECI Act should be excluded from the Right to Information Act and Information Privacy Act frameworks, government acknowledges that the scale and scope of entities established by letters patent is uncertain and that there may be a small subset of such entities that may have a closer connection to government and may therefore be appropriate for inclusion within those frameworks. For this reason, and in recognition of the committee's concerns, I foreshadow that I will move an amendment during consideration in detail to remove the letters patent exclusion in amendments in clauses 19 and 84 of the bill. This will allow further consideration to be given to the issues raised and ensure there are no unintended consequences as a result of any exclusion of letters patent entities to ensure that we get this right.

I will now turn to other matters raised during the committee process. Some of the submitters to the committee's inquiry raised concerns about proceeding with information privacy reforms now, ahead of the completion of the Commonwealth government's review of the Commonwealth Privacy Act. I understand the Commonwealth government has been working on the review of the Commonwealth Privacy Act for several years now and released its response to the *Privacy Act Review report* in October 2023. I understand that the next stage of work for the Privacy Act Review will involve the development of legislative amendments informed by a detailed impact analysis and targeted consultation with stakeholders, with the Commonwealth intending to introduce legislation in 2024.

The government acknowledges the importance and benefits of aligning with the Commonwealth framework. However, given they are still some time away, it is important that Queensland's laws remain contemporary and fit for purpose in the meantime. The bill provides an increase in privacy protections for Queenslanders, moving towards the Commonwealth privacy framework as currently legislated. Further changes can be considered once the Commonwealth government's response to the *Privacy Act Review report* is legislated. However, I would like to point out that not all reforms to the Commonwealth Privacy Act will be appropriate for Queensland, given that the Commonwealth Privacy Act applies to organisations under that act which include private businesses with an annual turnover of more than \$3 million.

Another issue raised by a number of submitters during the committee process was a concern about the administrative and resource burden on the Information Commissioner and agencies in relation to the information privacy reforms in the bill. The government recognises that these are significant reforms and has allocated the Office of the Information Commissioner \$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. This funding will support the Office of the Information Commissioner in its statutory responsibilities to provide education, training and guidance in relation to the Right to Information Act and the Information Privacy Act and its new regulatory and statutory functions, including the oversight of the mandatory data breach notification scheme. Resourcing the Office of the Information Commissioner to undertake education and training will assist agencies and entities to implement the reforms.

I note that the Local Government Association of Queensland has expressed concerns about the impact of the reforms on local governments, particularly smaller councils and regional and remote communities. Subject to passage, it is currently intended to commence the information privacy reforms by proclamation on 1 July 2025, but local governments will not be required to comply with mandatory data breach notification requirements until 12 months after that date. This is intended to reduce the compliance burden on local governments, giving them a longer period to transition to the new mandatory data breach notification scheme. It will mitigate the impact of implementing the mandatory data breach notification scheme at the same time as other reforms.

There are a number of minor and technical amendments that I propose to move during consideration in detail. An amendment will be moved to provide a clearer and simpler way than is already provided in the bill of removing the overlap of the Commonwealth and state privacy regimes for rare instances where entities fall under both frameworks, such as the Queensland Law Society.

Another amendment I propose to move during consideration in detail will alleviate the burden on the Information Commissioner of having to travel throughout the state to receive a demonstration of an agency's data-handling systems and practices by allowing the Information Commissioner to observe a demonstration of an agency's data-handling systems and practices by audiovisual link—where this is possible—without relying on entry powers. This could only occur with consent, noting there may be practical limitations for some agencies in enabling remote access.

I also propose to move amendments to clarify that consent must be requested before an authorised officer of the Information Commissioner can enter any place occupied by an agency, and that entry without consent is limited to circumstances where consent has been sought from an agency but it has not been provided within a stated period. In that case, the authorised officer may enter on a reasonable date at a stated reasonable time.

I also propose to move an amendment to clarify that the functions of the Information Commissioner under section 135 of the Information Privacy Act include promoting understanding of and compliance with the mandatory data breach notification scheme, as suggested by the Information Commissioner.

I also foreshadow that I will be moving a number of technical amendments during consideration in detail to better align the bill's treatment of access and amendment processes under the Right to Information Act to implement recommendations made by the Information Commissioner in their submission on the bill. The Department of Justice and Attorney-General indicated that it would give further consideration to some of these issues in its response to the written submissions to the Education, Employment and Training Committee on its inquiry into the bill.

For example, one of the amendments I propose to move will give the Information Commissioner power to direct agencies and ministers to decide whether documents should be amended following an amendment application and an Information Commissioner decision, in certain circumstances. The bill already includes a similar power in relation to access decisions. Related amendments will provide an objective test for the Information Commissioner to apply when giving directions to an agency or minister to make a decision on an access application after remitting the application back to the agency or minister. Amendments will also provide that the same objective test will apply in relation to the Information Commissioner's powers to refer documents discovered during the course of an external review back to agencies and ministers for decision.

The amendments also include minor, clarifying amendments to the Coal Mining Safety and Health Act 1999 to update the definition of 'union' due to the withdrawal of the Mining and Energy Union from the Construction, Forestry, Maritime, Mining and Energy Union on 1 December 2023. The definition of 'union' is relevant to the appointment by the union of industry safety and health representatives and procedural matters related to ISHRs. ISHRs have important coalmining safety and health functions under the Coal Mining Safety and Health Act 1999, and timely amendments to reflect the union name change will ensure that the appointment of ISHRs and their important functions can continue.

The bill responds to a wide range of recommendations in a number of reports. In doing so, it implements critical reforms which go to the heart of Queensland's integrity framework. I commend the bill to the House.