

EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Report No. 40, 57th Parliament, November 2023

Information Privacy and Other Legislation Amendment Bill 2023

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 12 October 2023, the Information Privacy and Other Legislation Amendment Bill 2023 (Bill) was introduced into the Legislative Assembly.

The objectives of the Bill are to:

- make key changes to Queensland's information privacy framework, under the *Information Privacy Act 2009* (IP Act) to better protect personal information and provide appropriate responses and remedies for data breaches and misuse of personal information by agencies;
- make changes to Queensland's information privacy and right to information frameworks, under the IP Act and *Right to Information Act 2009* (RTI Act) to clarify and improve their operation, and
- make legislative amendments to support the operation of the administrative scheme which will provide for the proactive release of Cabinet documents (the proactive release scheme).

After introduction, the Bill was referred to the Education, Employment and Training Committee (Committee) for consideration. On 24 November 2023, the Committee tabled its report (No. 40, 57th Parliament) on the Bill.

The Queensland Government response to the recommendations made by the Committee is provided below.

RESPONSE TO RECOMMENDATIONS:

Recommendation 1 -

The Committee recommends the Information Privacy and Other Legislation Amendment Bill 2023 be passed.

Queensland Government response:

The Government thanks the Committee for its consideration of the Bill and notes the Committee's recommendation that the Bill be passed.

Recommendation 2 -

The Committee unanimously recommends that the proposed new section 49 in clause 33 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.

Queensland Government response:

The Government supports this recommendation.

To address the Committee's recommendation, the Government will move amendments during consideration in detail to proposed new section 49 in clause 33 to require that any extension of time must be only for an amount of time reasonably required for the assessment to be conducted.

Recommendation 3 –

That the Attorney-General clarify whether:

- the proposed amendment to the definitions in the IP Act and RTI 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; and
- there are alternative, less restrictive and reasonably available ways to achieve the same purpose as the proposed amendments at clauses 19 and 84.

Queensland Government response:

The purpose of the *Right to Information Act 2009* (RTI Act) is to provide a right of access to information in the government's possession or the government's control.

While letters patent organisations are established by the Governor in Council, those entities were not originally intended to be captured by the right to information (RTI) framework.

Entities established by letters patent are generally charitable and religious organisations such as Bible Societies, Churches, Church Trusts, Kindergarten Associations, Welfare Associations and Historical Associations established under the *Religious, Educational and Charitable Institutions Act 1861* (repealed) (RECI Act).

The Bill excludes letters patent organisations as public authorities under the RTI Act and *Information Privacy Act 2009*, in response to matters raised in the matter of *Stanway v Information Commissioner & Anor* [2017] QCATA 30.

The Queensland Government acknowledges that the proposed amendment to the definitions of 'agency' in the *Right to Information Act 2009* (RTI Act) and *Information Privacy Act 2009* (IP Act) will 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 Queensland entities established by letters patent.

This impact on Queenslanders was acknowledged in the Statement of Compatibility accompanying the Bill, which notes that the amendments will preclude access and amendment applications under the RTI Act being made to entities established by letters patent, and that the privacy protections under the IP Act will not apply to personal information held by such entities.

The Statement of Compatibility accordingly acknowledged the limitations on the right to freedom of expression under section 21 of the *Human Rights Act 2019* (the Human Rights Act), which includes the freedom to seek, receive and impart information and ideas. As noted in *XYZ v Victoria Police (General) [2010] VCAT 255*, the right to freedom of expression incorporates a positive right to obtain access to government held documents.

The Statement of Compatibility also acknowledged the limitation made by the amendments on the right to privacy and reputation in section 25 of the Human Rights Act. This right is limited because privacy protections under the IP Act will not apply to personal information held by letters patent entities.

In its submission to the Committee, the Queensland Human Rights Commission accepted 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, it stated that in addition to the right to freedom of expression (section 21) and the right to privacy and reputation (section 25), the Bill engaged cultural rights of Aboriginal and Torres Strait Islander peoples (section 28).

To the extent documents held by entities established by letters patent contain information relating to kinship and traditional knowledge of Aboriginal and Torres Strait Islander peoples, the Bill also limits cultural rights of Aboriginal and Torres Strait Islander peoples in section 28 of the Human Rights Act.

The Bill would not preclude access being provided to the documents in ways other than under the RTI Act, including voluntarily or as a result of legal processes such as notices to produce. Rather, the Bill removes a legislative requirement for entities established by letters patent to consider documents in accordance with the provisions of the RTI Act to the extent an application is made under that Act.

The purpose of the limitation on human rights is to provide consistency with the objects of the RTI Act and the IP Act, and alleviates the administrative burden on entities established by letters patent in complying with the RTI Act. The primary object of the RTI Act includes 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. The primary object of the IP Act is to provide for the fair collection and handling in the public sector environment of personal information. This limitation would ensure that entities established by letters patent, which are generally religious or charitable organisations, are not subject to obligations which more properly apply to government.

The Statement of Compatibility also notes that there are no less restrictive reasonably available ways to achieve the purpose of the amendments. Options such as providing that entities established by letters patent are subject to the RTI Act in relation to specified functions only, would not achieve the purpose of the limitation as they would still subject religious and charitable organisation to additional burdens which are not appropriate for those entities.

However, 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 the RTI Act and IP Act frameworks.

On that basis, the Government proposes to move an amendment during consideration in detail of the Bill 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 that there are no unintended consequences as a result of any exclusion of letters patent entities. It will also remove any limitation on human rights as a result of the exclusion.