



A joint submission:

Proposed reforms to Queensland's information privacy and right to information legislation

The APF and CLA are pleased to note that the Queensland Attorney-General and Minister for Justice, the Honourable Shannon Fentiman, has opened a consultation of community views about reviewing that State's Information Privacy Act.¹⁻² Specific recommendations for review include whether:

- the Information Commissioner should have enhanced powers to investigate privacy breaches;
- Queensland should have a mandatory data breach notification scheme; and
- Queensland should adopt a single set of privacy principles that are more aligned with those in the Commonwealth Privacy Act.

Key consultation aims are commendable and include modernising, streamlining and improving the efficiency of privacy regulation by devising a robust single method to ensure people's transparent right of access to information.

APF and CLA hope to support the Queensland Government's response to community submissions about this important issue by outlining a workable and privacy enhancing philosophical approach:

1. **We need a statutory tort for breach of privacy**, as recommended by five Australian Law Reform reviews over three decades. Queenslanders must no longer live in a country where, unlike as in equivalent countries, citizens have no means to take legal action to protect their personal dignity. The tort blueprint has been discussed and consulted on for years and can include law like that of current defamation, but also a simpler, easier, quicker way for people to seek relief (and compensation, if needed) from unreasonable and unjustified intrusion.
2. **The introduction of a new statutory scheme for civil surveillance is urgent.** This would ensure the security of Australians and their freedoms. The scheme would restrain the private sector and police/government agencies from abiding by enacted laws and regulations or seeking approval in advance for new, unnecessarily privacy invasive technology.³
3. **Replace the currently valueless Australian notion of data breach notification by imposing actual security obligations**, supported by regimes of fines for organisations that, after a reasonable period of notice, fail to comply with those obligations. Organisational data breaches are a regular and pervasive Australian experience, presenting a significant trade barrier and reducing community trust in digital initiatives, and our current data breach notification system hasn't change organisational behaviour over time. We urge Queensland to urgently adopt a General Data Protection Regulation approach to information breach.⁴
4. **Any proposed Freedom of Information – Right to Information (FOI-RTI) scheme should err on the side of openness** and be monitored/supervised by an appeal mechanism which includes representatives of independent bodies like the Queensland Council for Civil Liberties (QCCL)⁵ and/or CLA, and the APF and/or Transparency International⁶, under a tribunal-like appeal mechanism where civil society is paid the professional rate for its daily work and deep expertise.

APF and CLA look forward to analysing draft proposals to refresh the State's Information Privacy Act in detail once a considered consultation paper stating the Queensland Government's starting position is available. We hope to help develop further responses to support this opportunity to achieve a modern, privacy-enhancing statutory scheme for civil surveillance change.

Yours truly,

(signed)

Dr Juanita Fernando
Deputy Chair
Australian Privacy Foundation

(signed)

Dr Kristine Klugman OAM
President
Civil Liberties Australia

References

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3. Queensland Council for Civil Liberties, Liberty Victoria and the Australian Privacy Foundation. Submission to Australia's Electronic Surveillance Framework Discussion Paper, 8 February 2022. https://privacy.org.au/wp-content/uploads/2022/02/080222_QCCL-APF-LIBERTY-VIC-Submission-to-Home-Affairs-Reform-of-Electronic-Surveillance-Framework.pdf
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5. Queensland Council for Civil Liberties. Splash page on the Internet. <https://www.qccl.org.au/>
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