Metro North Hospital & Health Service
Response to the Review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009* Discussion Paper
August 2013

In response to the questions posed in the discussion paper we provide the following:

Part 1 – Objects of the Act – "Push Model' Strategies
Nil comment

Part 2 – Interaction between the RTI and IP Acts
We are supportive of making the Right to Information Act as the single entry point for right of access for both personal and non-personal information. Applicants find the interaction between the acts complex to understand and it is difficult to administer from a decision making aspect.

Part 3 – Applications not limited to personal information
3.1 The processing period should be suspended while the agency is consulting with the applicant about whether the application can be dealt with under the IP Act given that it can be difficult to contact the applicant or their agent to discuss.
3.2 The requirement for the agency to consider whether the application can be retained under the IP Act should be retained (provided that the RTI Act does not become the single entry point for access).
3.3 The timeframe for section 54(5)(b) should be 10 business days instead of calendar days.

Part 4 – Scope of the Acts
4.1 The Act should include am mechanism to refuse access on the basis that a document is not a document of an agency.
4.2 The decision to refuse access on the basis that a document is not a document of an agency should be a reviewable decision.
4.3 The timeframe should be extended for making a decision that a document or entity is outside the scope of the Act to 25 business days.
4.4 No comment.
4.5 No comment.
4.6 We agree that the documents of contracted service providers where they are performing functions on behalf of government should be subject to the RTI Act and Chapter 3 of the IP Act.

Part 5 – Publication schemes
5.1 Agencies should be required to publish publication schemes on their websites.
5.2 Further guidance on publications schemes would be beneficial to aid agencies in deciding the content of their published information. This will also provide for improved consistency between agencies.
5.3 No comment.

Part 6 – Applying for access or amendment under the Acts
6.1 The application form should be retained but does not need to be compulsory. The addition of date of birth to aid in identification should be included. A consumer consultation process should be undertaken to ensure the form is simple to complete. The applicant should not have to specify that their

application is being made under specific legislation as many applicants are unaware of the options available.

6.2 The amendment form should be retained but does not need to be compulsory. The addition of date of birth to aid in identification should be included.

6.3 There is a need to expand the list of qualified witnesses who can certify copies of identity documents to include witnesses such as police officers and medical practitioners.

6.4 Agents should be required to provide evidence of identity.

6.5 There is no need to refund application fees for additional reasons other than for deemed decisions.

6.6 The Acts are not adequate for agencies to deal with children's documents. In processing health records the term 'in the best interest of the child' should be more clearly defined. Parents find this term difficult to understand. Decision makers also find it difficult to determine whether disclosure of the information is in the best interests of the child. The application age should be lowered to 16 or be based on the capacity of the child.

6.7 A further specified period should be added on the end of the processing period.

6.8 The agency should be able to continue to process an application outside the processing period and further specified period until they hear than an application for review has been made.

6.9 A charges estimate notice is beneficial for an applicant however it is often problematic for an agency to determine the CEN without significant input of resources to locate and process documents only to have the application not progress due to the cost. If an agency chooses not to charge then a CEN should not be required.

6.10 Applicants should be limited to two CENs.

6.11 If any aspect of the application is under review then the processing should cease until a decision is made on the review matter including for charging.

6.12 A schedule of documents should be discretionary.

6.13 The threshold for third party consultations should be raised to reflect 'substantial concern'.

6.14 It should be at the discretion of the agency whether the identity of applicants and third parties should be disclosed.

6.15 For documents held by two agencies the Act should provide for the agency whose functions relate more closely to the documents to process the applications.

6.16 Written notices would be easier to read and understood by applicants if the legislation was simplified and preferably only one piece of legislation to be applied to applications. Terminology used within the legislation should be 'consumer focused' rather than 'legalistic'.

6.17 Nil comment

6.18 Applicants should have the option for external review.

Part 7 – Refusing access to documents

7.1 Nil comment

7.2 Exempt categories are satisfactory and appropriate.

7.3 The public interest balancing test works reasonably well however it is open to interpretation by individual decision makers. The factors in Schedule 4 Parts 3 and 4 should be combined into a single list of public interest factors favouring non-disclosure.

7.4 Nil comment

7.5 Nil comment

7.6 Nil comment

7.7 Nil comment
7.8 Nil comment
7.9 Nil comment
7.10 The current provisions are sufficient to deal with access applications for information about successful applicants for public service provisions.

Part 8 – Fees and charges

8.1 Fees and charges should more closely reflect the true cost of processing applications, for example, the processing charges are currently $26 per hour in comparison to the decision maker pay rate which may be in excess of $40 per hour. The fees and charging regime should be as simple as possible to minimise administrative burden of applying the fees and charges as well as to aid applicants.
8.2 Fees and charges should be imposed equally on all applicants. There should be the ability to waive fees and charges, for example, applications from parents for the records of stillborn children.
8.3 The processing period should be suspended awaiting an outcome from the Information Commissioner regarding a financial hardship decision.
8.4 There should be no fee waiver for applicants who apply for information about people treated in multiple HHSs.
8.5 Refer 8.4

Part 9 – Reviews and appeals

9.1 Internal review should remain optional or cease and all reviews become external.
9.2 Mandatory internal review should not be reinstated.
9.3 There should be a right of internal review for 'sufficiency' of search matters.
9.4 There should be some flexibility in the Acts to extend the time in which agencies must make internal review decisions. The processing time should be 25 business days with possibility of extension on agreement of the applicant.
9.5 The RTI Act should specifically authorise the release of documents by an agency as a result of an informal resolution settlement. This would provide for protection of decision makers by the relevant provisions within the Act.
9.6 Applicants should not have a right of appeal directly to QCAT.

Part 10 – Office of the Information Commissioner (OIC)

10.1 Nil comment
10.2 The current provisions are not sufficient for agencies. There should be provision to declare an applicant as 'vexatious' at an earlier stage.
10.3 We don't believe the OIC requires additional powers.
10.4 Nil comment
10.5 Nil comment

Part 11 – Annual Reporting Requirements

11.1 No additional information should need to be provided for inclusion in the Annual Report.

Part 12 – Other Issues?

12.1 Nil further issues.

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Response to the Review of the *Information Privacy Act 2009*:
Privacy Provisions Discussion Paper
August 2013

In response to the questions posed in the discussion paper we provide the following:

1.0 There is an advantage to align the IPPs with the APPs or to adopt the APPs in Queensland to reduce complexity and make it consistent between the state and the Commonwealth.
2.0 Nil comment.
3.0 The definition of personal information in the IP Act should be amended to bring it in line with the definition in the *Commonwealth Privacy Amendment Act 2012*.
4.0 Nil comment
5.0 Section 33 should be revised to ensure it accommodates the online environment. This needs to occur on a regular basis given the changing nature of the technological environment.
6.0 Nil comment
7.0 An 'accountability' approach should be considered in Queensland as a means to provide the 'checks and balances' for any personal information published.
8.0 The IP Act should outline the process for the management of privacy complaints.
9.0 There is a need for more flexibility about the timeframe for complaints to be lodged to the OIC. Applicants should be allowed to apply once they receive a response from the agency.
10.0 Nil comment
11.0 The parent's ability to do things on behalf of a child should not be limited to Chapter 3 provided it is in the child's best interest. In addition, if a child has capacity they should be consulted (i.e. a 14 year old).
12.0 Nil comment
13.0 The reference to 'documents' in the IPPs should be removed. The IPPs should be in alignment with the NPPs.
14.0 IPP4 should be amended to include an element of 'reasonableness' that reflects reasonable steps have been taken by the agency to protect personal information.
15.0 The words 'ask' should be replaced with 'collect' for the purposes of IPPs 2 and 3.