2016 Consultation Paper Feedback – Department of Education and Training

1. Are the objects of the RTI Act being met? Is the push model working? Are there ways in which the objects could be better met?

   The Department is satisfied that the objects of the RTI Act are being met and the push model is working effectively.

2. Is the privacy object of the IP Act being met? Is personal information in the public sector environment dealt with fairly? Are there ways that this object could be better met?

   The Department is satisfied the privacy object of the IP Act is being met and that personal information in the public sector environment is dealt with fairly.

3. Should the way the RTI Act and Chapter 3 of the IP Act applies to GOCs, statutory bodies with commercial interests and similar entities be changed? If so, in what way? Is there justification for treating some GOCs differently to others?

   The Department does not have any GOCs and is therefore not in a position to comment on the Acts operation in terms of GOCs.

4. Should the RTI Act and Chapter 3 of the IP Act apply to the documents of contracted service providers where they are performing functions on behalf of government?

   The Department recognises that there are strong public interests in ensuring transparency and accountability of contracted service providers in their performance of functions on behalf of government, particularly where these functions are funded by the public purse.

   However, extending the reach of the Acts to contracted service providers would present significant practical obstacles including requiring changes to procurement and contracting practices and allocating sufficient resources to ensure that agencies are able to meet the additional workloads.

   As a result the Department does not support the RTI Act and Chapter 3 of the IP Act applying to contracted service providers.

5. Should GOCs in Queensland be subject to the Queensland's IP Act, or should they continue to be bound by the Commonwealth Privacy Act?

   The Department does not have any GOCs and is therefore not in a position to comment on the Acts operation in terms of GOCs.

6. Does the IP Act deal adequately with obligations for contracted service providers? Should privacy obligations in the IP Act be extended to sub-contractors?

   Yes. The privacy obligations should not be extended to sub-contractors.

7. Has anything changed since 2013 to suggest there is no longer support for one single point of access under the RTI Act for both personal and non-personal information?

   The Department strongly agrees with a single point of access. Access to both personal and non-personal information should be under the RTI Act. Applicants are often confused as to which Act they should make their application under, which results in delays and frustration with the application process.

   Having the right to access both personal and non-personal information in a single Act will overcome resulting delays and frustrations with the existing processes.

8. Noting the 2013 response, should the requirement to provide a schedule of documents be maintained?

   A schedule of documents should not be mandatory. The Department should be able to provide a schedule only when considered relevant. The Department agrees that a majority of applications are reduced through direct consultation with applicants rather than by the schedule.

9. Should the threshold for third party consultations be changed so that consultation is required where disclosure of documents would be 'of substantial concern' to a party?

   The Department is in favour of the threshold being amended to 'of substantial concern'. The current lower threshold creates delays and does not lead to better decisions.

10. Although not raised in 2013, is the current right of review for a party who should have been but was not consulted about an application of any value?

    The Department is in favour of maintaining the right of review for a third party that wasn't consulted on the release of documents that relate to them. The review should only be accepted if said documents have not been released at the time the review is sought.

11. Are the exempt information categories satisfactory and appropriate? Are further categories of exemption needed? Should there be fewer exemptions?

The Department is satisfied with the current exemptions within the RTI Act.

The Department proposes that consideration be given to an exemption regarding documents created as part of the relevant Queensland Department's involvement in COAG committees and sub-committees. COAG guidelines require documents prepared to be treated as sensitive and only distributed on a strict need to know basis. In addition the Department regularly produces documents for consideration of members of COAG committees and sub-committees which are confidential. An new exemption based on the principles of the Cabinet exemption would be appropriate.

12. Given the 2013 responses, should the public interest balancing test be simplified; and if so how? Should duplicated factors be removed or is there another way of simplifying the test?

The Department is in favour of simplifying the public interest balancing test by combining the non-disclosure factors from Parts 3 and 4 into a single list removing the duplicated factors. Some non-disclosure factors should still have two part thresholds to them (as set out in part 4 currently) to assist decision makers.

13. Should the public interest factors be reviewed so that (a) the language used in the thresholds is more consistent; (b) the thresholds are not set too high and (c) there are no two part thresholds? If so, please provide details.

If the part 3 and 4 factors are combined then the language and threshold should be reviewed in conjunction with that process so it is more consistent and not set too high. As outlined in the response to Q12. some non-disclosure factors should still have two part thresholds to them (as set out in part 4 currently) to assist decision makers in determining whether information meets a threshold.

14. Are there new public interest factors which should be added to schedule 4? If so, what are they? Are there any factors which are no longer relevant, and which should be removed?

The current list of factors in Schedule 4 are sufficient.

15. Are there benefits in departmental disclosure logs having information about who has applied for information, and whether they have applied on behalf of another entity?

The Department sees no benefit in publishing the names of applicants and whether they are making it on behalf of another entity but it also has no issues with maintaining the current requirements. It is possible that

fewer applications for the same or similar documents are received because a potential applicant can see that an application has already been made by someone in a similar field for example, a media organisation won't apply for documents that have already been sought by another media organisation.

16. Have the 2012 disclosure log changes resulted in departments publishing more useful information?

    Yes.

17. Should the disclosure log requirements that apply to departments and Ministers be extended to agencies such as local councils and universities?

    For consistency purposes the Department agrees that the requirements should be extended but is unable to comment on the affect this would have on those agencies.

18. Is the requirement for information to be published on a disclosure log 'as soon as practicable' after it is accessed a reasonable one?

    Yes

19. Do agency publication schemes still provide useful information? Or are there better ways for agencies to make information available?

    Yes.

20. Should internal review remain optional? Should the OIC be able to require an agency to conduct an internal review after it receives an application for external review?

    The Department strongly agrees with the internal review process remaining optional for applicants. The OIC should not be able to require an agency to conduct an internal review after it receives an application for external review. In some cases it is more appropriate for the OIC to deal with the review rather than an internal review by the agency. Frequently applicants have no interest in an internal review but rather wish to go straight to external review. Requiring the additional step of an internal review first will cause unreasonable delay for these applicants.

    In addition to this the Department is of the view that there should be a provision allowing further time to consider an internal review application, similar to section 35 of the RTI Act and section 55 of the IP Act. Further time to process internal review applications is frequently required for applications where consultation is required with third parties, additional

searches are required or where an applicant raises an exhaustive list of issues requiring consideration. The inability of the Department to seek further time when required results in the decision often being deemed to be affirmed thus causing delays in the outcomes for the applicant as they then usually apply to the Information Commissioner for an external review.

Further, when an applicant applies for internal review on a very specific aspect of the initial decision to be reviewed (ie refusal of a particular document(s) or sufficiency of search), the internal review decision maker should be entitled to only decide upon the applicant's specific concern(s), rather than making a fresh decision as if the reviewable decision had not been made.

21. Should applicants have a right to appeal directly to QCAT? If so, should this be restricted to an appeal on a question of law, or should it extend to a full merits review?

No. This will overburden QCAT with issues that are appropriately dealt with in the first instance by the OIC and agencies will require additional resources and incur further costs to deal with matters brought to QCAT.

22. Should the OIC have additional powers to obtain documents for the purposes of its performance monitoring, auditing and reporting functions?

The OIC should have sufficient powers to perform its functions.

23. Is the information provided in the Right to Information and Privacy Annual Report useful? Should some of the requirements be removed? Should other information be included? What information is it important to have available?

The information is useful and the current requirements are sufficient.

24. What would be the advantages and disadvantages of aligning the IPPs and/or the NPPs with the APPs, or adopting the APPs in Queensland?

Advantages of aligning the IPPs and/or the NPPs with the APPs, or adopting the APPs in Queensland, include:

- ***Uniformity of the privacy principles for entities in Queensland by providing a single set of principles that apply to both agencies and organisations;***
- ***Providing a simpler and more streamlines privacy regime for Queensland.***

A disadvantage would be the cost and operational burden that would be necessary to give effect to the changes (ie through updating existing

privacy notices, policies and guidelines and effecting organisational awareness of those changes.

25. Should the definition of 'personal information' in the IP Act be the same as the definition in the Commonwealth Act?

Yes. To ensure uniformity and clarity in dealings with personal information by agencies, Ministers and GOCs, the definition should be the same as the definition in the Commonwealth Act.

26. Does the IP Act inappropriately restrict the sharing of information? If so, in what ways? Do the exceptions need to be modified? Would adopting a 'use' model within government be beneficial? Are other exceptions required where information is disclosed?

There are a number of information sharing proposals within the education sector at a national level, with increasing pressure for information to be made available across systems and between jurisdictions.

If a 'use' model was adopted, further consideration would need to be given to the application that provides the most utility for the state, and whether this would apply to information-sharing between:

- ***State Government departments only;***
- ***State Government departments and statutory bodies; and***
- ***State and federal government departments.***

While the least risk approach would be application to state government departments only, it is noted that some existing proposals for sharing of education-related information have related to statutory authorities at a state (e.g. Queensland College of Teachers) and federal (e.g. Australian Curriculum and Assessment Authority) level. Limited application of a 'use' model to state departments may be undesirably narrow in some cases. However, if applied more broadly stringent safeguards would need to be in place.

27. Does section 33 create concerns for agencies seeking to transfer personal information, particularly through their use of technology? Are the exceptions in section 33 adequate? Should section 33 refer to the disclosure, rather than the transfer, of information outside Australia?

Yes section 33 creates concerns. Government entities are increasingly utilising technology as a way of conducting their affairs and engaging with the community. It is appropriate that the IP Act reflect these advancements and changes as the restrictions in section 33 are burdensome, particularly where the transfer of information is low risk.

Furthermore, section 33 is of concern in relation to employee personal information that might be transferred overseas in a very routine way in the course of an employee undertaking their duties e.g. ordering an item, completing a work survey. The concept of 'routine personal work information' appears only relevant to a disclosure under IPP 11 but not to considerations when transferring personal information overseas under section 33.

Yes section 33 should refer to the disclosure, rather than the transfer.

28. Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged? How should this be approached?

The Department has no concerns with the 45 day timeframe however there should be an option for the complainant to lodge a complaint with the OIC after a response from the Department has been provided, without having to wait for the 45 day timeframe to expire.

29. Should there be a time limit on when privacy complaints can be referred to QCAT?

Yes there should be a timeframe.

30. Are additional powers necessary for the Information Commissioner to investigate matters potentially subject to a compliance notice under the IP Act?

No. Sufficient powers are provided under the legislative regime.

31. Should the definition of 'generally available publication' be clarified? Is the Commonwealth provision a useful model?

Yes to both questions.

32. Should IPP 4 be amended to provide, in line with other IPPs, that an agency must take reasonable steps to ensure information is protected against loss and misuse?

Yes.

33. Should the words 'ask for' be replaced with 'collect' for the purposes of IPPs 2 and 3?

Yes.

34. Are there other ways in which the RTI Act or the IP Act should be amended?

The Department has no further recommendations.