# Review of the *Right to Information Act 2009* and *Information Privacy Act 2009* - Response to Consultation paper

## 1.0 Introduction

The Department welcomes the opportunity to provide a response to the consultation paper regarding the statutory review of the *Right to Information Act 2009* (RTI Act) and *Information Privacy Act 2009* (IP Act). The Department of Health (the Department) is committed to the Queensland Government's position in ensuring that right to information and privacy laws remain appropriate and achieve their objectives, and to uphold accountability, honesty and transparency.

## 2.0 Health Portfolio overview

The Health Portfolio consists of the Office of the Minister for Health and Minister for Ambulance Services, the Department, and a number of statutory agencies including the 16 Hospital and Health Services (HHSs), the Office of the Health Ombudsman, the Queensland Mental Health Commission, the QIMR Berghofer Medical Research Institute Council, hospital foundations and ministerial advisory councils (such as the Radiation Advisory Council).

The portfolio receives over 50% of the overall access and amendment applications lodged across Government.[1]. Of the 5015 applications processed across the portfolio in 2015-16, 94% of information was disclosed in full, demonstrating our commitment to the push philosophy and intent of the legislation for pro-disclosure of Government information.

Please note that feedback was sought from HHSs in preparing this submission, but it is made on behalf of the Department only. The HHSs, as independent statutory authorities, may lodge their own submissions separately, as may the other Health Portfolio agencies.

It should be noted, where "Queensland Health (QH)" is mentioned in this document, it encompasses the Department and the 16 HHSs, and where "the Department" is used, this refers to the Department only.

## 3.0 Consultation paper responses

| 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? |
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The Department has made a concerted effort to push as much information into the public domain as possible. Whilst not always published under the 'RTI' banner, the philosophy of the push model is reflected in many public release strategies on our internet site. There are vast repositories of information already available to the public. The Department continues to monitor and update data in line with the push model philosophy. On that basis, the Department considers that the objects of the RTI Act are being met and the push model is working.

A broad outline of the types of information available on the QH website is as follows:

- "Our Performance" pages (which contain current information on the activity and performance of QH's reporting hospitals)

[1] Right to Information and Information Privacy Annual Report 2014-15 published by the Department of Justice and Attorney-General

- QH Policy site (which contains all mandatory policies and associated implementation standards, protocols, procedures and guidelines for the department)
- Patient Safety and Quality Improvement Service site (which contains programs and services offered, survey and audit results and details regarding committees
- Statistical Services Branch site (which contains data collections, reports, data quality statements and resources to assist with the requesting of information outside of the RTI process)
- Openness and transparency site (which contains information regarding the open data strategy, customer complaint information and clinical, hospital and patient data and statistics
- Public health and wellbeing initiatives (which include cancer screening information, health topics, disaster management, poison management)
- Workforce information
- Links to HHS internet sites
- Governance (including strategic plans, financial data/information, organisational structure, health reform etc)
- Open data portal currently containing 151 health specific data sets and 480 resources (including raw data on commonly requested data such as public dental waiting lists, emergency department wait times/categories, and Retrieval Services Queensland activity)
- Gifts and benefits register
- Right to Information Disclosure Log
- Information Asset Register, outlining the systems and types of information we collect.

Across QH, various administrative access schemes exist, some chargeable, such as the Queensland Ambulance Service (QAS) scheme (access to an individual's own health information as held by QAS), and others free, such as access to health records (as held by the HHSs).

Across Government there are varied policies and methods for administrative release. The Department would like to see set protocols for all Government administrative schemes so that they appropriately align with the intent of the IP Act and provide a consistent way of dealing with documents outside of legislative and court-ordered access mechanisms.

| 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? |
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The Department and the 16 HHSs, as 'health agencies' are subject to the National Privacy Principles (NPPs) outlined in the IP Act. All other Government agencies are required to comply with the Information Privacy Principles (IPPs). The Office of the Minister for Health and Minister for Ambulance Services is also subject to the IPPs. While Question 24 explores alignment of the NPPs and IPPs, it is valid to address the issue of fairness under Question 2 .

Having two distinct sets of privacy principles leads to inconsistency and unfairness across the public sector. People have a right to know that their information is treated the same across all agencies.

Health agencies have additional compliance requirements to meet compared to non-health agencies when dealing with information privacy, as follows:

- The IPPs refer to *documents* containing *personal information*. This means the IPPs do not apply to verbal information that is never recorded in a document. However, the NPPs apply to **all** personal information regardless of whether or not it is contained in a document (for example, verbal information).

- Health agencies have added responsibilities regarding collection of personal information, and have a requirement to take reasonable steps to inform a person when their personal information has been provided by another person. Non-health agencies do not have this obligation.

- Sensitive information is addressed in the NPPs but not the IPPs, even though non-health agencies also deal with sensitive information.

- The NPPs allow for anonymity. There is no equivalent privacy principle in the IPPs.

It is acknowledged that health agencies, by their nature, will often hold information that the community would consider particularly sensitive and confidential. However, the same could be said about many agencies holding highly sensitive personal information regarding their clients and consumers. On that basis, it is suggested that all agencies should be held to a consistent framework, which is to a similar standard currently in place for health agencies.

The above could be achieved through consolidation of the current framework into a single set of privacy principles for Queensland Government agencies. As outlined above, this will be discussed further in Question 24.

| 3. Should the way the RTI Act and Chapter 3 of the IP Act apply 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? |
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The Department has no comments regarding this question.

| 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? |
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The Department does not support the legislation extending to Contracted Service Providers (CSP). The Department considers that current legislative measures sufficiently address the need for accountability and transparency.

If such a process were managed by the agency, or even reviewed by the agency as a concerned third party, there would be impacts on current agency resources given this would most likely be a significantly large and additional body of work.

If managed by the CSP, wherein RTI/IP processing is not a regular/familiar function, there would be at least an initial deficit of the skills and knowledge required to administer what is complex legislation. This may in turn cause deficiencies in the CSP's ability to appropriately process applications and/or impact on their core business (through diversion of resources to the RTI/IP function)? Smaller CSP's may additionally be less inclined to contract with government and ultimately, contract prices will be increased to cover these additional costs.

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?

As Government Owned Corporations (GOCs) operate in a commercial environment and are subject to the provisions of the Commonwealth Privacy Act, the needs of the community in a privacy context are likely met. However, as it would be easier for the general public to deal with one privacy regime for Government, the Department would be supportive of GOCs being subject to the Queensland IP Act, if determined that it would be of benefit to the community.

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?

The IP Act adequately deals with obligations for CSP, with the onus currently on the contracting agency to take all reasonable steps to ensure CSPs are required to comply with the privacy principles, as if they were the contracting agency. It is therefore necessary for contracts entered into with the CSP to explicitly state that the CSP will comply with the privacy principles in the IP Act. It can become confusing when dealing with two sets of privacy principles, namely the IPPs and the NPPs, in that whole of Government contracts generally bind the CSP to the non-health agency IPPs. This creates issues for health agencies who may need to enter into separate arrangements to bind the CSP to the NPPs. Again, this is explored further in the response to Question 24.

With the increase in technology, and in particular cloud computing, the services of sub-contractors are used more frequently. The Department believes that the provisions in the IP Act should be extended to include sub-contractors.

It is worth noting that some CSPs are reluctant to agree to be bound by the privacy principles in the IP Act on the basis that they are already compliant with the Commonwealth Australian Privacy Principles (APPs). It is suggested that consideration should be given to the Act acknowledging that compliance with the APPs is sufficient to comply with the NPPs, or alternatively, arranging for the Office of the Information Commissioner (OIC) to produce guidance on the differences between the two so that both health agencies and CSPs can understand the gaps and amend their contracts accordingly.

Where it is appropriate to achieve value for money and economies of scale (as per the Queensland Government Procurement Policy), the Department may enter into a contract with a supplier for goods or services to be provided for the benefit of one or more of the Department and the 16 HHSs. In those circumstances, the Department is the contracting party and will ensure that contractual provisions are included to require compliance with the NPPs by the supplier. While the HHSs can take the benefit of goods or services supplied, they do not have a contractual right to enforce privacy provisions against the supplier in the event of a breach (due to privacy of contract principles). In a complex organizational and legal basis such as that in place for QH, it would be useful for the Act to recognise that a contractual arrangement utilised by the HHSs to procure goods and services is sufficient for the HHSs to have taken all reasonable steps to require the CSP to comply with the NPPs.

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 still strongly supports the RTI Act as a single entry point, for the following reasons:

- The separation between the RTI and IP Acts remains confusing for applicants and is difficult to administer from an agency perspective.

- Applicants and decision-makers are required to cross-reference between the Acts in order to work through the process for access/amendment applications for personal information.
- Decision letters for access/amendment applications issued under the IP Act are unnecessarily complicated and lengthy due to the requirement to refer to RTI provisions.
- There is significant duplication between the Acts and it would be far simpler to limit the amendment/access provisions to a single Act, irrespective of the nature of the application (ie personal or non-personal).
- The emphasis of the IP Act should be on the privacy obligations of Government and the rules regarding appropriate and lawful handling of personal information. These obligations are often overshadowed by the access/amendment provisions. The privacy principles are currently situated at the end of the legislation rather than being the primary focus.

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

The Department continues to support the removal of the mandatory requirement to provide applicants with a schedule of documents. The time taken to prepare the schedule of documents, on some occasions, takes longer than the time required to make the decision for the application.

- There is potential for exempt information to be inadvertently disclosed within the schedule of documents (this is a particular risk when it comes to legal professional privilege and personal information).
- Preparation of a schedule of documents can be a time-intensive exercise which may take a great proportion of the timeframe allowed to process the application, leaving little time to produce a properly considered and adequately researched decision.
- A schedule of documents requiring a significant amount of time to complete could trigger the 'unreasonable diversion of resources' mechanism contained in the RTI Act.
- There is likely to be a cost implication for the applicant (that is, if processing charges are applicable, then they will need to pay for the time taken to prepare a schedule which ultimately, may not be of value to the process).

The Department has found it is more beneficial (for both the applicant and the Department) for an applicant to be contacted as early as possible in the process to discuss the categories, types and potential numbers of documents relevant to the application. This method of communication with the applicant is more workable and user-friendly than the requirement to produce a schedule of documents.

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 legislation currently outlines the requirement to consult with third parties when it would be of *reasonable* concern. Often in the health context, such as when dealing with family members of patients, third parties may be considered to have reasonable concern, and third party consultation is therefore undertaken. Sometimes health records do not provide a complete picture as to the level of concern a family member may have about collateral information they provide, therefore on the face of

it the concern may not be considered 'substantial'. It is often only through consultation that a decision-maker recognises the extent of the concern.

Health agencies rely on members of the public providing collateral information about others, so that the best treatment can be provided to our patients. There is a concern that if the consultation threshold is raised, at least to the degree of 'significant concern', there may be a risk that collateral information is disclosed without due regard to its potential consequences. In particular, a reluctance or mistrust from members of the community in providing information to Queensland Health.

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 review rights for parties who have not been consulted are considered to be of little value. This view is taken because generally the documents have already been released by the time the third party becomes aware. We believe, however, that there should be an avenue for aggrieved persons to lodge a complaint, or ask for feedback, so that the agency can review its documents and processes to ensure third parties receive adequate contact. It is important that agencies become aware of any such issues to provide opportunity for process improvement or other remedial action. The Department would be interested in exploring options for this issue further.

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

The exemption categories contained in the RTI Act are considered to be sufficient.

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 supports the proposal to simplify the public interest balancing test provisions, particularly in relation to schedule 4, part 4. The reasons for the separation of the public interest factors in schedule 4, part 4 remain unclear and can be difficult to both apply and explain to an applicant. There is a view that the factors in part 4 have 'greater weight' than the factors in part 3, but there is also quite a bit of duplication between the two sections, which can be confusing for all involved (applicants, practitioners and third parties).

There is still some propensity to treat the schedule 4 factors as a checklist or numbers game – that is, if an applicant/third party can 'tick off' more factors in support of their argument for or against disclosure, then they consider that this is the determining factor in deciding release or otherwise. It would be helpful if the Act could provide more clarity regarding how the public interest balancing test/determination works, particularly for members of the public.

As a whole, the public interest balancing test works effectively for practitioners, and other than removing duplication and combining factors in parts 3 and 4 into one set of factors, the Department supports the current process.

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.

It is agreed that the factors be reviewed to ensure greater consistency and coherency. By changing wording such as 'ensure' to 'provide' or 'contribute to', the threshold will be lowered and allow

agencies to better apply factors relevant to the documents. Two part factors should be altered, so as not to require the meeting of both parts of the factors, such as the example provided in the consultation paper (page 20): *positive* and *informed* debate.

| 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? |
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As outlined above in Question 12, it would be useful if duplication was removed from part 3 and 4 and that the factors be combined into a single part. The Department has not identified a public interest factor that is frequently in use and not currently reflected in the current legislation. Further, as the Act allows for factors to be considered in addition to those outlined in the legislation, there is no need for extra or supplementary factors to be added to the existing list of factors.

| 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? |
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From a practitioner perspective, there is little benefit for a disclosure log to provide details of the applicant such as name and entity they represent.

The Department has no further comments regarding this question.

| 16. Have the 2012 disclosure log changes resulted in departments publishing more useful information? |
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As outlined in Question 1, QH actively pushes information into the public arena through avenues such as the publication scheme and open data initiative. The 2012 changes have not resulted in more useful information being published but have ensured information regarding RTI applications is made more readily available to the community. Whilst there is little administrative impost on publishing this information within the Department, we are aware that many agencies are required to remove information from documents prior to publishing and this has created a significant burden on their resources.

The Department welcomes the opportunity for further exploration of the need to balance the requirement of placing this information in the public domain with a more flexible approach that may exclude classes or categories of documents being published where it is considered to be burdensome on the agency, or of little public value.

| 17. Should the disclosure log requirements that apply to departments and Ministers be extended to agencies such as local councils and universities? |
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The Department supports having the same requirements apply to all agencies, as this aligns with the government objectives regarding transparency and accountability.

As statutory agencies, the 16 HHSs are not required to comply to the same extent as the Department and Office of the Minister for Health and Ambulance Services in relation to disclosure log requirements. Despite this, compliance audits of HHSs conducted by the Office of the Information Commissioner have recommended that information be made available on agency disclosure logs as per the requirement currently existing for departments.

It is confusing for members of the public to understand that requirements differ between departments and agencies, particularly for QH. These differences are often perceived to be inconsistent or non-

compliant application of the current legislation, rather than the proper administration of the current requirements of the RTI Act (which creates the discrepancy).

| 18. Is the requirement for information to be published on a disclosure log 'as soon as practicable' after it is accessed a reasonable one? |
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While the Department has key performance indicators relating to the publishing of information, publishing times can often vary. It is assumed that other agencies face similar challenges regarding publishing, including:

- documents may need to be 're-processed' so that information is removed in accordance with section 78B of the RTI Act

- document files may require 'splitting' into a number of parts so that they meet the publishing size restrictions

However, the current requirement is considered to be reasonable.

| 19. Do agency publication schemes still provide useful information? Or are there better ways for agencies to make information available? |
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As outlined in Question 1, QH uses a variety of methods to push information into the public domain.

Our publication scheme includes useful information such as:

- **About us** – Annual reports, health legislation, Hospital and Health Boards, HHS profiles, organisational structure
- **Our services** – HHS Service Agreements, hospital services, media releases, health & wellbeing, health conditions directory, research and reports
- **Our finances** – Annual reports, budget, procurement and logistics
- **Our priorities** – Health service planning, performance reports, strategic direction
- **Our decisions** – Policy proposals, decisions, decision making processes, internal criteria and procedures, consultations
- **Our policies** –policies, health service directives
- **Our lists** – Statistical Services Branch, register of approved auditor, gifts and benefits register.

QH strives to make it easy for the public to locate information and believe the publication scheme is an excellent tool for this.

The open data strategy outlines our priority in ensuring QH information is made publicly available, in line with the following policy principles:

- Government data will be available for open use
- Government data will be available free of charge
- Government data will be in accessible formats and easy to find

- Government data will be released within set standards and accountabilities

On the Queensland Government open data portal, the most frequently searched term is 'health'. Accordingly, QH is working towards steadily increasing the current 151 data sets and 480 resources specifically relating to the word 'health'.

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 supports the existing process for optional internal review. Current statistics across the Health Portfolio for the 2015-16 year indicate that 91 matters went to external review, seven of which had a proceeding internal review.

Under the previous FOI regime, when internal review was mandatory, some applicants expressed a view that a more senior officer of the same agency was unlikely to make a decision independent (or that differed) from the initial decision. Some applicants viewed the internal review stage as additional and unnecessary bureaucracy.

If it is determined that the OIC have the ability to require an agency to conduct an internal review after an external review is received, the Department is of the view that detailed consideration of the parameters of such an arrangement would need careful consideration. As an example, if information not provided to the agency at the original application stage which may drastically alter the access decision was then revealed at external review, there may be value in an internal review decision being made.

However, it is noted that the OIC has a high rate of informally resolved decisions[2] (88%), and this would appear to be a more satisfactory avenue for applicants (rather than an OIC mandated internal review process).

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?

The current process of external review appears to meet both the needs of the agency and the applicant, in that there is appropriate resolution at no cost to either party. Often negotiation occurs with both parties and a mutual agreement is reached. The small number of matters which proceed to QCAT are an indication that the current process works well.

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

While the Department is happy to explore this further, there does not appear to be a reason that necessitates the provision of documents to the OIC for performance monitoring, auditing and reporting. The general powers outlined in section 125 of the RTI Act allow the Information Commissioner to *'do all things that are necessary or convenient to be done for or in connection with the performance of the commissioner's functions under an Act.'*

[2] Office of the Information Commissioner Queensland Annual Report 2015-16

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?

Work previously undertaken by the Department of Justice and the Attorney-General leading up to the 2012-13 reporting period has greatly reduced the reporting burden on agencies. While the reporting requirements can be onerous, the information collated is seen to be useful for a variety of reasons and, apart from some provisions where there is rarely (or never) anything to report, it is not clear which requirements could be removed such that the usefulness of the data is not compromised.

The exception to this position is the requirement to report the number of pages published to disclosure logs. The benefit in reporting this information is not evident, particularly given the amendments to the RTI Act late in 2012 which require departments to publish the actual documents to the disclosure log.

Given the push for agencies to implement administrative access schemes as an alternative to applicants lodging RTI/IP access applications, basic reporting regarding the operation of such schemes in agencies is suggested. An outline of the categories of documents covered by the administrative access scheme, as well as basic data (such as number of applications and possibly, number of pages disclosed) would better illustrate agencies' efforts to release information through less formal, faster methods of disclosure.

Also, it is suggested that purported applications be reported, to clearly outline the work involved in making those applications compliant. Purported applications require agencies to contact the applicant to issue a notice of non-compliance, and then make a formal decision if the applicant does not establish compliancy. The applicant is extended both internal and external appeal rights, despite their application never being recognised as valid, nor ever reported by the agency. These statistics are kept internally, and during the 2015-16 year, over 500 applications across the Health Portfolio fell into this category. Placing this figure in the annual report would allow agencies to accurately reflect the number of applications received and give an indication of the resources required to properly administer the legislation.

It is also noted that if the proposal to have RTI as a single entry point for access/amendment applications is implemented, this would assist greatly in reducing the complexity of annual reporting.

Although the title of the report is *Right to Information and Privacy Annual Report,* there are no reporting aspects relating to information privacy aspects outside of those contained in chapter 3 relating to access and amendment. We would welcome further discussion around this, such as adding privacy complaints, privacy breaches and compliance with the privacy principles.

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?

As outlined in Question 3, the Department and the 16 HHHSs, as 'health agencies' are subject to the NPPs, while all other Government agencies are required to comply with the IPPs. The Office of the Minister for Health and Minister for Ambulance Services is also subject to the IPPs.

The Department sees a definite advantage in aligning the IPPs and NPPs to form one set of privacy principles for Queensland – e.g. the Queensland Privacy Principles (QPPs). The current regime is confusing for members of the public, administrators of the legislation and other staff, members of the public. The current framework implies inconsistency and possibly inequity in how personal information is handled across all State Government agencies.

The NPPs currently have additional requirements to those in the IPPs. Therefore, it would be important to consider the impact on non-health agencies in complying with these requirements, such as the QPPs:

- extending to all personal information regardless of whether or not it is contained in a document
- requiring agencies to take reasonable steps to provide an individual with a collection notice where personal information about that individual has been collected from someone else
- having a privacy principle relating to sensitive information
- having a privacy principle relating to anonymity.

While the Department does not support a complete adoption of the APPs, it would welcome an opportunity to be involved in reviewing those privacy principles currently in the APPs, with an aim to creating one set of privacy principles specific to Queensland.

| 25. Should the definition of 'personal information' in the IP Act be the same as the definition in the Commonwealth Act? |
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The Department would support using the same definition as the Commonwealth Act. It would not alter the way it currently deals with personal information, but would provide consistency to the general public.

| 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? |
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A 'use' model within government would be considered very beneficial, particularly when dealing with statewide systems. Of particular relevance to QH is that the Department and 16 HHSs often use the same systems, particularly when dealing with patient information. Although the Department is often the administrator of these systems, sharing of personal and sensitive information between the Department and 16 HHSs is currently considered to be "disclosure" and it can be difficult to administer and ensure compliance with the legislation across QH.

It would be of benefit to the Health Portfolio if the IP Act recognised the Department and the 16 HHSs as one entity for the purposes of the Act. This amendment could reference the establishment of the Hospital and Health Services by the *Hospital and Health Boards Act 2011* (Qld).

| 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 that the transfer, of information outside Australia? |
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Section 33 needs updating in line with advances in technology. The Department would welcome the opportunity to be involved in further discussions regarding this, in achieving:

- clearer definitions of *transit* versus *transfer* of personal information so it is clear when information is being transferred and caught by section 33 and when it is merely in transit
- strict and defined exceptions to require security measures for the transfer/disclosure/storage of information. While the NPPs require compliance in respect of data security, it would be

useful to have greater clarity on what is required to be compliant when transferring information overseas.

The Department acknowledges the use of servers which may be located overseas and can trigger section 33 of the IP Act. In some cases, large servers are unlikely to agree to amendments to their service terms to include provisions dealing with privacy. In those circumstances, the Department may elect to adopt the risk of the provider's non-compliance or alternatively, look to another provider. To mitigate risk, the Department (and other agencies) may choose providers who are not as competitive on price or service quality.

| 28. Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged? How should this be approached? |
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Part 2 of the Act, **Dealing with privacy complaints** needs greater clarity. As an example, unlike the access and amendment sections, the IP Act does not specify that evidence of identity should be provided prior to a privacy complaint being accepted by an agency.

Currently, if the complainant is not satisfied with the agency response, or has not received a response, it is necessary for them to wait until 45 business days have passed since lodgment of the complaint before proceeding to the OIC. This can be distressing for a complainant and difficult for the agency to review a complaint after a lengthy period of time has elapsed. It is suggested, as with access and amendment provisions, that the complainant may seek immediate review, but do so within a 20 business day timeframe.

The Department would welcome the opportunity to be involved in further discussions regarding this aspect of the IP Act.

| 29. Should there be a time limit on when privacy complaints are referred to QCAT? |
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Yes, there should be a time limit placed on this process, and it is suggested that a 60 day timeframe be applied, from the date the OIC process is finalised.

| 30. Are additional powers necessary for the Information Commissioner to investigate matters potentially subject to a compliance notice under the IP Act? |
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The current provisions in the IP Act regarding investigation of matters potentially subject to a compliance notice would appear to be sufficient. The Department is not aware of a situation which would require the Information Commissioner having greater powers to sufficiently investigate.

| 31. Should the definition of 'generally available publication' be clarified? Is the Commonwealth provision a useful model? |
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The Commonwealth provision expands to such items as 'magazine, book, article, newspaper or other publication' and is considered to be a clearer definition. The Department supports a move to this definition.

| 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? |
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As health agencies are not subject to the IPPs, the Department has no comment regarding this question. However, as previously indicated, the Department supports the alignment of the IPPs and NPPs to form one set of privacy principles for Queensland.

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

As health agencies are not subject to the IPPs, the Department has no comment regarding this question. However, as previously indicated, the Department supports the alignment of the IPPs and NPPs to form one set of privacy principles for Queensland.

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

The Department submits additional feedback for consideration, as follows:

Application forms

The Department does not support the prescribed application form as being the only avenue for applying for access/amendment. Requiring applicants to complete a form before an application is considered compliant is unnecessarily bureaucratic and inflexible. Further, the prescribed forms do not allow for the needs of individual agencies to be met. For example, when seeking access to health information, it is often useful and sometimes necessary to have the date of birth of the applicant.

If agencies were able to accept written applications in other forms, such as emails and letters, as long as the other requirements were met, applicants would have greater access to information and processing timeframes would be reduced.

Qualified witnesses/evidence of identity for agents

The list of qualified witnesses has been sufficient for applicants to the Department. However, there are some difficulties experienced by people in rural or remote communities. As such, the Department is open to further discussion on additional witness categories being added to the list. It is important that government is seen to be as helpful as possible to applicants, and the current list is not sufficient to achieve this aim.

In terms of evidence of identity, consideration should be given to allowing flexibility of agent identification when that person acts in a legal capacity for the person. It is inconvenient for these agents to continually provide their identification when acting for multiple clients and requesting information from the same agency. Another method may be to receive the identification on one occasion and apply that to all subsequent applications lodged by the applicant, by keeping a register within the agency.

Charges Estimate Notices (CENs)

The Department finds the CEN process works reasonably well, however would ask that consideration be given to the reintroduction of a requirement to pay a deposit at the time a CEN is agreed to by an applicant. One of the primary reasons for the CEN process was to ensure that an applicant provides some commitment to paying processing/access charges for an application, and this commitment is sometimes not met, despite the work taking place within the agency. A small deposit (25% of the total estimated charge) would satisfy the agency that the applicant is committed to pay the total charge.

As an alternative, consideration could be given to refusing to process any subsequent applications from the applicant (and organisation they may represent) until outstanding charges have been settled.

Transfer of purported applications

The Department receives a significant number of IP applications via the online application form. A requirement of the form is to select the agency in which the documents may be held, and this list is limited to Departments. This limitation means that any applications for HHS records are received first by the Department, and when made compliant, transferred to the appropriate health agency.

As there is a requirement under the IP Act for evidence of identity (at a minimum) to be supplied at the time of lodgement, each IP application received is immediately invalid. In the 2014-15 and 2015-16 periods, 165 and 157 IP applications respectively were received and transferred by the Department. This process creates a burden on the Department in dealing with an application for records we do not hold, and delays the process in transferring the application to the correct agency when made compliant. Importantly, the applicant is disadvantaged, in that they are unable to have timely discussions with the agency on other access mechanisms such as administrative release.

The Department strongly advocates for a change in the legislation to allow for agencies to transfer purported applications to the correct agency, without having to first meet the application requirements set out in section 24 of the RTI Act and section 43 of the IP Act.

Processing period

Currently, the legislative processing period is 25 business days, or 35 business days where third party consultation is required. The Acts currently specify that a number of things must happen within the processing period, including:

- providing a schedule of documents to the applicant; and
- issuing a charges estimate notice (CEN).

Sometimes due to the complexity and number of documents sought by applicants, a further extension of time is required. This is considered to be an extension *beyond* the processing period, and therefore those items mentioned above cannot be dealt with outside of the original processing period. This creates difficulty for agencies, particularly when document searches may still be underway.

It is suggested that the term 'processing period' be extended to include any other timeframe agreed to by the applicant.

Internal Review timeframe

The current timeframe for internal review is 20 business days with no extension of time permitted. Sometimes a significant review of documents is required to be undertaken by the internal review officer, and it is impossible for a thorough review to be undertaken within the legislative timeframe. Therefore, it is suggested extensions of time be available at internal review, if deemed necessary.

As internal reviews are undertaken on the premise that the decision is remade (that is, the application is effectively "reprocessed"), that the internal review timeframe be extended from 20 business days to 25 business days, and allow for an additional 10 days for third party consultation as required.

Vexatious applicants

Currently, the OIC threshold for vexatious applicants is considered to be very high. The legislation is silent in terms of when an applicant can be considered vexatious, and it is suggested that this be explored further within the legislation. HHSs have experienced upward of 30 amendment

applications or over 20 access applications from a single individual, and these applications have not met the threshold for vexatious, despite heavily impacting on the resources of the agency.

Law enforcement inclusion in the NPPs

While the Department advocates for a new combined and aligned set of privacy principles for Queensland (QPPs), if this does not occur, we would ask that an addition be made to Part 2 of the IP Act – Compliance with NPPs.

The IP Act currently provides, in section 29, for special provisions for law enforcement agencies and non-compliance with the IPPs. However, there is no equivalent provision for health agencies in the NPPs. QH has law enforcement/regulatory functions and it would therefore be appropriate that this provision be extended to health agencies.

Re-identification of personal information

The Commonwealth Privacy Commissioner recently advocated for penalties to be payable for any parties who knowingly and deliberately re-identify previously de-identified data. We would strongly support a penalty based approach in the Queensland legislation.