2016 Consultation on the Review of the *Right to Information Act 2009* and *Information Privacy Act 2009*

Department of Housing and Public Works

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 objects of the *Right to Information Act 2009* (RTI Act) are being met by this agency. Data is regularly published to the publication scheme on the department's website.

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 objects of the *Information Privacy Act 2009* (IP Act) are being met by this agency.

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?

No comment.

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 Discussion Paper proposes that if an application is made to an agency and documents are held by a contracted service provider, the service provider is required to provide the documents to the relevant government agency which is responsible for processing the application. This would align with section 6C of the Commonwealth *Freedom of Information Act 1982* which provides:

6C Requirement for Commonwealth contracts

(1) This section applies to an agency if a service is, or is to be, provided under a Commonwealth contract in connection with the performance of the functions or the exercise of the powers of the agency.

(2) The agency must take contractual measures to ensure that the agency receives a document if:

- *(a) the document is created by, or is in the possession of:*
  - *(i) a contracted service provider for the Commonwealth contract; or*
  - *(ii) a subcontractor for the Commonwealth contract; and*
- *(b) the document relates to the performance of the Commonwealth contract (and not to the entry into that contract); and*
- *(c) the agency receives a request for access to the document.*

The most important part is section 6C(2)(c) which appears to give the agency the right of access to documents that have not already been provided by the contracted service provider. By placing this requirement in a contract with the service provider an agency would be able to formally request documents that it currently has no access to. This agency has processed a number of applications over the years where this requirement would have been beneficial to the applicant by providing them with documents that reveal the reason for a government decision and any background or contextual information that informed that decision.

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?

This agency agrees with the responses to the 2013 Consultation Paper and we have no further comment.

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 deals adequately with this matter.

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?

This agency supports the proposal to provide a single point of access to documents of an agency rather than having two points of access (ie the RTI Act and IP Act).

As indicated in the Consultation Paper, the RTI Act and IP Act each set out the same grounds for refusing access, the same processes for dealing with an application and matters such as the powers of the information commissioner at external review.

This can be confusing as a decision letter commences with referring to the IP Act and then sets out the reasons for refusing access by referring to the RTI Act. When providing a prescribed written notice to an applicant under the IP Act an agency is required to set out the reasons for their decision to refuse access to certain information contained in the documents.

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

This agency supports the proposal of changes to the RTI Act which will end an agency's obligation to provide a written schedule of documents to an applicant.

A schedule of documents is provided to an applicant as part of the charges estimate notice issued under section 36 of the RTI Act. In the majority of cases, the applicant negotiates a revised scope to our charges estimate notice as a result of speaking to us about how they might consider reducing the cost of relevant charges.

Including a schedule of documents in the charges estimate notice is time consuming and, we believe, does not provide any meaningful information that would assist an applicant in revising the scope of their application.

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?

This agency agrees with the responses to the 2013 Consultation Paper and we have no further comment.

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 current right of review for a party who should have been consulted by an RTI decision maker, but was not, is considered to be impractical. The right of review has the effect of

triggering third party consultation by decision makers so as to avoid review rights. This in effect places agencies in time consuming situations and in the potential position of consulting with each and every third party referred to in a document or author of a document. This creates undue and additional work for RTI decision makers. The right of review is considered to be onerous on RTI decision makers.

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

The exemption provisions contained in the RTI Act are satisfactory for the requirements of this agency and we do not believe any expansion to the provisions would be beneficial.

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 public interest balancing test (section 49 of the RTI Act) consists of the following steps –

(a) identify any factor that is irrelevant to deciding whether, on balance, disclosure of the information would be contrary to the public interest, including any factor mentioned in schedule 4, part 1 that applies in relation to the information;
(b) identify any factor favouring disclosure that applies in relation to the information, including any factor mentioned in schedule 4, part 2;
(c) identify any factor favouring nondisclosure that applies in relation to the information, including any factor mentioned in schedule 4, part 3 or 4.

The RTI Act then provides that the decision maker must –

(d) disregard any irrelevant factor;
(e) balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure;
(f) decide whether, on balance, disclosure of the information would be contrary to the public interest;
(g) unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information subject to the RTI Act.

In response to the first part of this question this agency would not support the change to the public interest balancing test. It is important for an applicant and the agency to know the considerations that influenced the decision maker when making their decision.

In response to the second part of this question, this agency contends that the duplicated factors should be removed. We provide the following examples where duplicated factors are evident.

Schedule 4, part 3	**Schedule 4, part 4**
Disclosure of information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities.	Disclosure of the information could reasonably be expected to cause a public interest harm because – (a) disclosure of the information – (i) would disclose information concerning the business, professional, commercial or financial affairs of an agency or another person; and (ii) could reasonably be expected to have an adverse effect on those affairs or to

	prejudice the future supply of information of this type to government.
Disclosure of the information could reasonably be expected to prejudice the conduct of investigations, audits or reviews by the ombudsman or auditor-general.	Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could prejudice the conduct of – (a) an investigation by the ombudsman; or (b) an audit by the auditor-general.
Disclosure of the information could reasonably be expected to prejudice the deliberative process of government.	Disclosure of the information could reasonably be expected to cause a public interest harm through disclosure of- (a) an opinion, advice or recommendation that has been obtained, prepared or recorded; or (b) a consultation or deliberation that has taken place; in the course of, or for, the deliberative processes involved in the functions of government.
Disclosure of the information could reasonably be expected to prejudice the effectiveness of testing or auditing procedures.	Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could – (a) prejudice the effectiveness of a method or procedure for the conduct of tests, examinations or audits by an agency; or (b) prejudice achieving the objects of a test, examination or audit conducted by an agency; […]
Disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information.	Disclosure of the information could reasonably be expected to cause a public interest harm if- (a) information consists of information of a confidential nature that was communicated in confidence; and (b) disclosure of the information could reasonably be expected to prejudice the future supply of information of this type…

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.

This agency agrees with the responses to the 2013 Consultation Paper and we have no further comment.

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?

Please refer to our comments in Q12.

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?

This agency does not see any benefit in disclosure logs publishing details about who has lodged an application for access to information in the government's possession or under the government's control. Likewise we do not see any benefit in disclosure logs publishing details about whether an applicant has applied for information on behalf of another entity.

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

Background

In November 2012 the *Right to Information and Integrity (Openness and Transparency) Amendment Bill 2012* was introduced. The objectives of the Bill were to:

(i) amend the *Right to Information Act 2009* to provide new disclosure log requirements in respect of right to information applications made to departments and Minister's; and
(ii) amend the *Integrity Act 2009.*

The amendments to disclosure log requirements under the RTI Act commenced on 22 February 2013. Key changes to the disclosure log obligations included:

- publication to a disclosure log is no longer discretionary;
- there will be a requirement to publish the date and details of applications as soon as the valid application is received;
- there will no longer be the option of only publishing details of the application with a note about how to obtain a copy of the documents; from commencement of the new provisions, all relevant documents must be published in the disclosure log;
- all documents released under RTI that do not contain the applicant's personal information must be published in full once the documents have been accessed; and
- there is no longer a prescribed period for publishing in the disclosure log and publication must be made as soon as practicable.

Additionally information must be deleted from a document published on the disclosure log if:

a. it may be defamatory;
b. its publication is prevented by law;
c. it is of a confidential nature communicated in confidence or protected from disclosure under a contract; or
d. it would, if included in a disclosure log, unreasonably invade an individual's privacy or cause substantial harm to an entity.

Response

The amendments to the RTI Act in 2013 have resulted in the department publishing more information to the disclosure log which may be useful to persons other than the applicant. An example of this is where an applicant requested access to documents relating to the removal of materials containing asbestos particles from a particular Government owned building. There is a strong public interest in having this type of information available to any individual who may have concerns about residing or working in or around these premises.

The amendments have also resulted in the publication of information that would not normally have been included in a disclosure log as it may not hold any interest to an individual other than the applicant.

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

No comment.

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

Prior to the amendments to the disclosure log in 2013, the RTI Act provided that information was to be published to a disclosure log no longer than five business days after being released to the applicant. The RTI Act now states that information is to be published as soon as practicable. This agency supports maintaining the requirement as currently contained in the RTI Act.

However, should a further amendment to the RTI Act be considered, then we would be in full support of amending the section relating to disclosure logs so that the RTI Act is in line with section 26 of the New South Wales' *Government Information (Public Access) Act 2009* as provided on page 21 of the Consultation Paper.

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

This agency believes publication schemes provide useful information via the agency's website.

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?

This agency supports the current section of the RTI Act whereby an internal review of a decision is optional.

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?

This agency agrees with the responses to the 2013 Consultation Paper and we have no further comment.

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

This agency believes the OIC's existing powers are adequate.

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?

This agency supports the view expressed in the 2013 consultation paper that completing the annual report is very resource-intensive. The RTI and IP Annual Report currently provides details relating to –

- the number of compliant access applications received by each agency or Minister;
- the number of pages considered by each agency or Minister and the provisions of the RTI Act and IP Act which were utilised;
- the number of applications where access to government held information has been refused;

- the number of internal and/or external review applications received by each agency or Minister;
- the amount of fees and charges received under the RTI Act and IP Act;
- the number of instances disciplinary action has been taken against an officer of the agency or Minister;
- the number of instances where proceedings have been brought for an offence against an officer of the agency or Minister; and
- what an agency does to further the objects of the RTI and IP Acts.

A review of the annual reports under the Victorian *Freedom of Information Act 1992* and the New South Wales *Government Information (Public Access) Act 2009* shows that similar information to the RTI Act and IP Act is published. However, Queensland Government agencies publish information relating to how they further the objects of the Acts which, in our view, is superfluous and should be removed from the annual reporting requirements.

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?

With the increase of information flow between Commonwealth, State and Territory agencies, aligning IPPs with the APPs should be considered as the uniform application of the IPPs/APPs would ensure consistent application of privacy principles. Aligning the IPPs with the APPs would, to some extent, simplify privacy principles e.g. combining the 'use' and 'disclosure' of information privacy principles and avoid duplication.

This agency cannot identify any disadvantages in aligning the IPPs with the APPs.

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

This agency supports the proposal in the Consultation Paper to align the definition of 'personal information' in the IP Act with the definition in the Commonwealth's *Privacy Act 1988* (Privacy Act).

Whilst both definitions are similar, the definition in the Privacy Act appears to be much more succinct than the definition provided in section 12 of the IP 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?

This agency considers that the IP Act does not restrict the sharing of information between government agencies. We process requests for information received from State or Commonwealth agencies in accordance with Information Privacy Principle 11 of the IP Act which provides adequate safeguards.

However, it is our view that the current IPP 10 and IPP 11 exceptions be reviewed and aligned with APP 6 (including section 16A 'permitted general situation' which stipulates when an APP entity can disclose personal information).

It is noted that the definitions of 'use' and 'disclosure' do not appear in the Privacy Act. The definition of 'use' and 'disclosure' as defined in section 23 of the IP Act, whilst helpful, should be omitted or combined so that agencies are not limited on what actions may be a 'use' or

'disclosure' of the information particularly in times of innovation and technological change and how agencies are operating.

It should also be made clear that personal information may be used or disclosed for any court or tribunal proceedings which the agency is a party to. At the moment this can only be done by 'law enforcement agencies'.

The use and disclosure of personal information is jointly referred to in APP 6. This avoids duplication as seen in IPP 10 exceptions and IPP 11 exceptions in the IP Act.

Furthermore, it may be prudent to extend information sharing to private sector organisations which provide services to government agencies and that provision for this be made in the IP Act i.e. to allow agencies to share information with specified private sector organisations such as mental health agencies.

It is considered that specific guidelines be developed to ensure that agencies understand the responsibilities and procedures when information sharing and that the guidelines provide sufficient detail so as to prevent inappropriate sharing of information and consistency in approach.

In our view adopting a 'use' model within government may be beneficial for government agencies that provide services to the same client. Reference is made to the 2016 Consultation Paper at page 29:

> "*Although members of the public expect the Government to respect their personal information, there are times when they also expect, or prefer, that their information is shared between agencies rather than have to repeat the information to a number of agencies*".

It is considered that if an agency wishes to share information with another agency that written consent be obtained from the individual. Where seeking consent is not practicable, legislative provisions should be introduced in the IP Act to indicate which agencies can share information and circumstances in which it can be shared.

Alternatively, information sharing could be achieved by developing a database to allow the sharing of information between certain agencies. It is considered that a shared database may assist some services to work together as a team and deliver joint services promptly and without duplication.

Nevertheless, we are of the view that shared information databases should be approached with caution. It should be noted that in the United Kingdom there was an online directory which contained information on all children in England and allowed authorised officers in different services such as health, welfare, police and education, to access the information. The online database was regulated under the *Children Act 2004 Information Database (England) Regulations 2007* (UK).

This online directory was closed in 2010 as the system was affected by delays, technical problems and fears over security.

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?

It is the view of this agency that section 33 provides adequate exceptions for transferring personal information outside Australia. Under section 33 an agency may transfer an individual's personal information to an entity outside Australia only if an exceptions (a) – (d) apply.

Section 33(d)(iii) provides that transfer outside Australia is permitted if the 'transfer is for the benefit of the individual but it is not practicable to seek the agreement of the individual, and if it were practicable to seek the agreement of the individual, the individual would be likely to give the agreement.' This provision is verbose and confusing.

Applying this part of the exception would be difficult and could be subject to challenge by an individual who could argue that consent would not have been likely by them and so forth. It is our view that this provision could be reviewed and amended to simplify the exception. This could be achieved by omitting the wording for the second part of the exception within s. 33(d)(iii) i.e. the individual would be likely to give his/her agreement.

Under the *Privacy Act 1988* (Cwlth) the word 'disclosure' is used in APP 8 (cross border disclosure of personal information). It appears preferable to use the word 'disclosure'.

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

Under section 166 of the IP Act, privacy complaints to the OIC can be lodged only after the complainant has first lodged a complaint with the relevant entity and at least 45 business days have elapsed since the complaint was made to the entity.

If an agency has dealt with a complaint in less than 45 business days then the applicant should be able to lodge a privacy complaint with the OIC without waiting for the 45 days to elapse.

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

This agency believes that there should be a time limit on when privacy complaints can be referred to QCAT as this ensures that applications to QCAT are made in a timely manner and agency records have not been lawfully disposed of under Retention and Disposal Schedules.

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

This agency has not been subject to a compliance notice under the IP Act and practical comments on the suitability of powers to investigate matters subject to a compliance notice by the Information Commissioner is limited in this respect.

However, on perusal of the powers under section 197 of the IP Act, the Information Commissioner appears to have limited powers in relation to obtaining information which, under section 197(2) of the IP Act allows the information commissioner to require a person to give information in written form. This qualification is restrictive and should be wider to include other ways of obtaining information, such as requesting documents from the person or officer of a corporation. The powers given to the information commissioner on external review under section 116 of the IP Act are considered to be adequate.

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

The IP Act defines 'generally available information' as:

Generally available information *means a publication that is, or is to be made, generally available to the public, however it is published.*

The Commonwealth provision of 'generally available publication' is succinct and provides a useful model as follows:

> ***generally available publication*** means a magazine, book, article, newspaper or other publication that is, or will be, generally available to members of the public:
> (a) whether or not it is published in print, electronically or in any other form; and
> (b) whether or not it is available on the payment of a fee.

Reference to the internet or other social media that is accessible by the public should be considered for inclusion.

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?

In line with Australian Privacy Principle 11 of the *Privacy Act 1988* (Cwth) which deals with the security of personal information, IPP 4 should be amended to provide that an agency must take steps as are reasonable in the circumstances to protect the information from misuse, interference, loss, unauthorised access, modification or disclosure.

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

This agency considers that the words 'ask for' under IPPs 2 and 3 should be replaced with the word 'collect'.

'Collect' is broader and captures instances where agencies collect information from individuals without asking for the information. It provides safeguards in relation to relevance and accuracy of the personal information being collected whether requested from the individual or not and places an onus on agencies to ascertain whether personal information is relevant and complete which is in line with the objects of the IP Act.

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

This agency wishes to provide the following comments for consideration in amendments to the RTI Act and IP Act.

(a) The processing period as defined in section 18 of the RTI Act and section 22 of the IP Act is a period of 25 business days from the day the application is received by the agency or Minister. It is the interpretation of the information commissioner that during the longer processing period (section 35 RTI Act and section 55 IP Act) an agency cannot issue a charges estimate notice (section 36 RTI Act) or undertake a third party consultation (section 37 RTI Act and section 56 IP Act).

The longer processing period under section 35 of the RTI Act and section 22 of the IP Act should be included in the definition of "processing period" so that charges estimate notices and third party consultations are not invalidated. In large and complex applications, an agency may exceed 25 business days simply in locating records from archives and may not have capacity to issue a charges estimate notice within the 25 business days (processing period).

(b) Section 19 of the RTI Act provides that information may be accessed other than by application under this Act. Similarly section 42 of the IP Act provides that personal information may be accessed or amended other than by application under this chapter.

Neither of these sections provide clarity about the reason for including these provisions and they do not appear to add any value. Clarification about whether an agency or Minister can refuse to deal with an application under section 19 of the RTI Act or section 42 of the IP Act should be included.

(c) Section 24 of the RTI Act defines how an access application must be made by an applicant and section 33 provides the steps that must be taken if an application is noncompliant with the application requirements.

Similarly section 43 and 44 of the IP Act defines how an access or amendment application must be made and section 53 provides the steps that must be taken if an application is noncompliant with the application requirements.

It is submitted that the wording in the RTI Act and IP Act should be amended so that section 24 of the RTI Act includes reference to section 33 and sections 43 and 44 of the IP Act includes a reference to section 53.

(d) Section 30(5) and 31(2) of the RTI Act and section 50(5) and 51(2) of the IP Act provides that a principal officer of an agency or Minister may not delegate the power to deal with an application to the extent it involves making a healthcare decision or appointing a healthcare professional but may appoint an appropriately qualified healthcare professional to make a healthcare decision in relation to an application.

Similarly section 77 of the RTI Act and section 92 of the IP Act both specify that only a principal officer of an agency, Minister or appointed healthcare professional may give a direction under these sections to direct that access to a document is not to be given to the applicant directly but to be given to a qualified healthcare professional nominated by the applicant and approved by the agency or Minister.

In the repealed *Freedom of Information Act 1992* (Qld), the equivalent section 44(3) allowed a delegate of the principal officer or Minister to make these decisions which would expedite decision making.

It is submitted that delegated senior decision makers under the RTI Act and IP Act should be able to make these decisions on behalf of the principal officer and therefore the relevant sections should be amended accordingly.

(e) Section 46(1)(b) of the RTI Act states that an application fee must be refunded to the applicant when an agency or Minister makes a deemed decision. It is submitted that this section be removed.

An application fee should be non-refundable even if a decision is a deemed refusal as an agency inevitably has commenced processing and acknowledging the application and searching for documents which incurs costs on an agency. An agency rarely fails to commence actioning an application as soon as it is received and becomes compliant with the relevant application requirements.

(f) Section 53 of the RTI Act and section 42 of the IP Act allows an agency or Minister to refuse access to a document if the applicant can reasonably access the document under another Act, or an arrangement made by the agency whether or not an fee or charge is involved; the document is reasonably available for public inspection or in a public library;

or the document is commercially available. The phrase 'commercially available' should be defined to include the internet and other social media where the document can be accessed.

(g) Section 59 of the RTI Act declares that no processing charge is payable in relation to a document to the extent that the document contains information that is personal information for the applicant. It is submitted that this section should be removed.

This agency contends that an otherwise non-personal document should not be considered a personal document simply because it contains an applicant's name. It is submitted that these documents should be subject to the usual processing charges.

(h) Section 66 of the RTI Act and section 82 of the IP Act provide that an applicant must make a written request to an agency or Minister that an applicable processing or access charge be waived. It is submitted that the word "written" be removed, so that applicants who submit certified copies of concession cards with their application do not need to further provide written requests specifically asking for charges to be waived.

(i) Section 83 of the RTI Act and section 97 of the IP Act provides that an internal review must be decided within 20 business days after the internal review application is made.

As an internal review is a review de novo, a longer processing period than the current 20 business days may be required. It is submitted that the 20 business days does not provide adequate time for an internal review officer to:

- undertake additional searches for documents in complex cases; or
- undertake a third party consultations.

It is also submitted that internal review officers should be able to seek longer processing periods from applicants for complex RTI or IP applications.

(j) Section 94 of the RTI Act provides grounds for when the information commissioner may decide not to deal with all or part of an external review.

It is submitted that applicants who have not paid the relevant processing and/or access charges to access documents released under RTI should not be able to apply for an external review. Applicants should pay the relevant charge and access documents first before applying for an external review.

It is submitted that in these cases, the information commissioner should be given powers to refer the applicant to the agency to pay processing charge and access the documents before they will accept an external review application.

(k) Section 114 of the RTI Act and section 17 of the IP Act allows the information commissioner to declare that a person is a vexatious applicant.

It is submitted that agencies should be given the power to refuse applications on the grounds that the applicant is vexatious. Principal Officers can be delegated to make these decisions under the same protections as are currently established for the information commissioner. This would assist agencies in avoiding applications that are made by the same person who has repeatedly engaged in access or amendment actions, the repeated engagement involves an abuse of process or the action in which the person engages is manifestly unreasonable. These applicants are clearly manipulating the RTI Act to burden agencies and seek documents for no real purpose.

(l) Section 6(1) of the *Right to Information Regulation 2009* (RTI Regulation) and section 4(1) of the *Information Privacy Regulation 2009* (IP Regulation) allow an agency or Minister to apply modest charges for access to documents. Section 6(1)(b) of the RTI Regulation and section 4(1)(b) of the IP Regulation provide that the access charge for A4 black and white photocopy is 0.25 cents per page. Section 6(2) of the RTI Regulation and section 4(2) of the IP Regulation do not allow an agency or Minister to charge for providing documents on a disc.

It is submitted that the A4 black and white photocopy charge be increased and an access charge for colour photocopies be included. It is also submitted that charges apply for providing documents on a USB stick or other storage device.