THE UNION FOR QNU NURSES AND MIDWIVES

QUEENSLAND NURSES' UNION

Submission to The Department of Justice and Attorney-General

Review of the *Right to Information Act 2009* and *Information Privacy Act 2009*

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Introduction

The Queensland Nurses' Union (QNU) thanks the Department of Justice and Attorney-General for providing the opportunity to make a submission to the Review of the *Right to Information Act 2009* (the RTI Act) and *Information Privacy Act 2009*.

Nurses and midwives form the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNU is the principal health union in Queensland covering all categories of workers that make up the nursing workforce including registered nurses (RN), registered midwives, enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 54,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNU.

The QNU has submitted many Right to Information (RTI) requests relevant to our campaigns and the need to ensure patient safety.

In recent years there has been a decline to public reporting in relation to patient safety. National and international studies have irrefutably proven the number, skill mix and practice environment of nurses/midwives directly affects the safety and quality performance of health services[1]. This has led to an increased need for the QNU to access information via the RTI process.

The QNU has noted there is a lack of standardization and consistency in the application of the RTI legislation. The following comments relate to the RTI Act only. Our submission draws on those experiences.

Question 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?

- Since 2013, the push model has become effective with decision-makers less resistant to release the information under a RTI Application (the application).
- In 2013, the QNU lodged around 30 applications. At that time, the devolved governance structure of Health and Hospital Boards (HHS) had not long been in effect and decision-

1 Queensland Nurses' Union, *Ratios Save Lives*, 2015
http://www.qnu.org.au/DocumentsFolder/Ratios%20website/Original%20claims%20document.pdf

makers were reluctant to release "corporate" information such as internal communications in the Minister's office regarding HHS matters such as

- reviews, restructures, performance, implementation plans;
- reduction/disestablishing/establishment of FTEs;
- redundancies;
- voluntary redundancies;
- redeployment of staff;
- graduate nurse positions; nurses employed on 457 Visas;
- and Departmental restructure.

- "Push back" from around half of the HHSs occurred, with resistance and refusal to process the RTI applications. The reasons ranged from "non-compliance of the application" (which was later processed without changes) to responses such as "it would cause an unreasonable diversion of resources to process the application" (s41 RTI Act).
- We queried the decision-makers regarding the scope of the application in order to try and reduce the resources required to respond to our requests;
- The Department of Health (DoH) were helpful in some instances where they spoke to the HHSs, who then processed the applications after the scope of the application was clarified or negotiated to reduce duplication of documents or release personal information.
- Moving forward, subsequent applications have met with less resistance, however some HHSs continue to refuse to deal with an application in the first instance under section 41 of the RTI Act.
- For example, Sunshine Coast HHS has refused to deal with all five applications we lodged in 2013. The QNU has a current application, initially lodged in March 2015, that is the subject of a pending decision from the Office of the Information Commissioner (OIC). This application related to the release of information surrounding the Sunshine Coast University Hospital and a "private funding agreement" with the Sunshine Coast HHS. This extreme delay in processing the application circumvents the reasons why the information was requested in the first instance – this application was triggered by issues including the death of a patient, our members concerns and media reports.
- In the above example, when we asked the decision-maker how many documents were located to justify the reason given for the delay as "volume of documents", it became apparent that no searches had been made and it was the decision-maker's subjective perception that the application would "cause" this to happen.
- In another example, the QNU was informed "there was a big brown cupboard stacked full of paper files and the HHS would need to employ a full-time worker for at least six weeks just to locate relevant documents". This was indicative of the filing system and internal processes rather than reflective of their obligations under the objectives of the RTI Act to be transparent.
- Decision-makers could meet the Objects of the RTI Act more efficiently and transparently if the RTI Act required them to be more accountable for their responses,

for example by providing objective evidence of searches and detailed reasons for the real diversion of resources and why this has occurred.

- A further reason for resistance to process an application may be a conflict of interest, perceived or real. For example, the Sunshine Coast HHS has a funding agreement with a private provider (Ramsay) to provide health services. Whilst the HHS is subject to the RTI Act, it does not apply to Ramsay despite the public monies it receives to provide a service. In the case of the Sunshine Coast HHS processing the QNU's applications, Ramsay has been a third party who has objected to any information being released for reasons related to the "business agreement" being "private and confidential".
- To a certain extent there is an exemption for information not to be disclosed if it relates to business and commercial-in-confidence (Schedule 4, Part 4, section 7 RTI Act) and this has been relied on for *every* occasion that the QNU has lodged an application with either a HHS or DoH Regulatory Unit, either by the HHS or the private provider as a relevant third party that the application affects.

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?

- It has always been the QNU's position with respect to applications that private providers should be subject to the same level of accountability and transparency as the DoH and the HHSs on the basis they have been provided with public monies to provide public health care services. Therefore, it is in the public's interest for information to be released.
- The QNU's applications involving private providers have related to service agreements, patient safety matters – such as numbers of staff, policy and procedures, complaints, sentinel reports and adverse event documents - have met with resistance on every occasion from both HHSs and the private providers as a relevant third party.

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

- Under section 36 (1)(b)(i) of the RTI Act a schedule of documents (the schedule) should be maintained to:
    (1) provide transparency of documents held by an Agency; and
    (2) a tool to reduce the scope or cost of an application.
- In regards to transparency, an applicant does not know what documents are held if they are not informed by the Agency.
- The schedule also provides an explanation of how the documents have been reviewed and a succinct summary of the reason that specific information may have been excluded or redacted.

- It provides the applicant with an opportunity to check if all information has been received was reviewed.
- Further, the timing of the provision of the schedule can either be of great assistance to help the applicant reduce the scope or cost of an application or render the schedule perfunctory.
- The RTI Act refers to the schedule being provided "before the end of the process" which in the majority of cases has been at the very end stage when the documents are released.
- The QNU has, as a matter of practice, requested the schedule be provided together with the cost estimate to aid in reviewing the scope of the application or to reduce the cost. Without the schedule, the applicant does not have direct knowledge of the documents being held or their content in order to negotiate a reduced scope or cost.
- Each HHS has dealt with the QNU's requests differently. Some HHSs have provided the schedule, whereas others simply refuse to provide the schedule until after a reduced scope or cost has been negotiated.
- This means applicants are being disadvantaged and forced to make blind decisions to commit to a cost, which can amount to hundreds of dollars or be prohibitive in some instances, prior to their application being processed.
- We discussed this issue with the OIC and the DoH which resulted in all parties agreeing it would be best practice for the schedule to be provided at the time of the cost estimate, however given the RTI Act only required the schedule to be provided "before the end of the processing period", it is open for the decision-makers to provide it once the reduced scope or cost of the application has been agreed.
- This is an area that needs serious attention.

Question 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? AND Question 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?

- In our view it holds no value to change the third party consultation threshold. Given the objectives of the RTI Act, it serves a purpose to remain transparent to all or any concerned party throughout the process.
- Exemptions made because of "substantial concern" allow subjective decision-making and invariably enable the decision-maker to exclude parties.
- The process is currently accessible to all applicants from various demographic and educational backgrounds. Amendments that serve to exclude these factors are contrary to the principles of transparency.

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

- In relation to public interest exemptions in Schedule 4 of the RTI Act, we suggest including matters relating to private health providers who receive public monies to provide health services to public patients.
- The current use of the exemption regarding "commercial confidence" (Schedule 4, Part 4, Section 7) continues to inhibit every application the QNU lodges if a private health provider is a relevant party to the application.
- The examples given above refer to the Sunshine Coast HHS and Ramsay, however the QNU has also experienced these issues with Belmont Private Hospital and the Mater.

Question 16. Have the 2012 disclosure log changes resulted in departments publishing more useful information? and
Question 18. Is the requirement for information to be published on a disclosure log 'as soon as practicable' after it is accessed a reasonable one?

- It is very helpful to have the disclosure logs as this is a tool that is reviewed prior to every application being lodged.
- It would be helpful for all logs to have the requirement to detail the information requested rather than refer to "application ID numbers" – currently, different HHSs have different formats for their logs.
- Some disclosure logs are not easily accessible and are revealed through entering a series of links on the home page of the agency.
- The timeframe to publish in the disclosure log 'as soon as practicable' at times leads to information not being accessible for up to six months due to a backlog of work in the agency. If the disclosure log is being used for research purposes, then this material is not publicly available until such time it has been published. This is a deterrent and in some instances where there is a lengthy delay, does not serve the purpose or intention of having the released information published.
- To clarify, an entry is made into the log that the information has been disclosed, however there have been delays in uploading the published material. In the past, we have contacted the agency to obtain the information, however as the QNU was not the applicant, we have had to wait for the agency to publish it online before we could access it.
- It is not uncommon for agencies to experience heavy workloads due to staffing issues or "hot topics" requiring urgent priorities and hence delays are then a flow on effect for publishing.

- Standardising the process would maintain consistency and enable all users to utilise the log effectively and efficiently.

Question 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?

- No internal review lodged by the QNU has ever resulted in a decision to refuse to deal with an application being set aside or amended.
- All internal reviews have resulted in the decision-maker's decision being confirmed.
- Strategically, the QNU has opted on most occasions to give the original decision-maker the opportunity to review the decision prior to taking the matter externally to the OIC, however in some instances this merely protracts the timeframe in which the final decision is made.
- With the exception of one outstanding external application for review (with a formal written decision from the OIC pending), all internal review decisions taken to the OIC (approximately 6 applications since 2013) have reached a negotiated outcome that would have been achievable at the internal review stage if the grounds for review were considered without bias.

In summary, the QNU seeks transparency of the provision of health services in relation to patient safety, satisfaction and quality outcomes. This is dependent on the sufficient staffing and skill levels of nurse and midwives.

Whilst in recent years there has been a philosophical shift in the provision of RTI legislation, there needs to be a mandate to ensure a consistent and standardised approach to and application of the legislation.

The QNU opines the RTI process is one of a number of methods by which the transparency of information can be achieved. A cultural shift is required that promotes public reporting in the first instance, followed by the RTI process which is an important and complimentary tool for government to share information in the public interest.