

**2016 CONSULTATION ON THE REVIEW OF THE RIGHT TO INFORMATION ACT 2009 AND INFORMATION PRIVACY ACT 2009: RESPONSES OF THE QUEENSLAND POLICE SERVICE**

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

The QPS continues to support the primary object of the RTI Act to give a right of access to information in the government's possession or under its control unless, on balance, it is contrary to the public interest to do so. The 'push model' of information release serves as an effective mechanism to achieve this objective. The QPS is committed to identifying opportunities to achieve greater openness and accountability in accordance with the RTI Act's object, with recent examples of proactive measures including the release of comprehensive regional and district crime statistics profiles, and the publication of the QPS records retention and disposal schedule and associated handbook.

**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 QPS supports the privacy object of the IP Act to provide for the fair collection and handling in the public sector environment of personal information, and a right of access to, and amendment of, personal information in the government's possession or under its control unless it is contrary to the public interest to do so. A number of suggestions were made in the 2013 submission regarding amendments which would improve the operation of the IP Act.

**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? Is so, in what way? Is there justification for treating some GOCs differently to others?**

No submission.

**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?**

Whilst the QPS maintains its position from 2013 that the RTI Act and Chapter 3 of the IP Act should not apply to government contracted service providers, adopting the approach of the Commonwealth FOI Act which requires the government agency to retrieve documents from contractors in particular circumstances may be appropriate, particularly in terms of promoting transparency and accountability of government.

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

No submission.

**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?**

No submission.

**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 QPS continues to support a single point of access under the RTI Act for both personal and non-personal information. The reasons for this are outlined in some detail in the QPS' 2013 submission.

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

For the reasons outlined in the QPS' 2013 submission, the QPS would support removing the requirement to provide 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 QPS submission on this issue in 2013 remains unchanged. The QPS has not found the current threshold for third party consultations to have had a substantial impact on resources.

**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?**

There may be little utility in a right of review for a party who should have been but was not consulted about an application where the documents have already been disclosed. The current threshold which applies to third party consultations provides some protection against the likelihood of this happening, although if the threshold is raised to 'substantial concern' it may become more of an issue.

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

Generally, the QPS regards the existing exempt information categories as satisfactory and appropriate and refers to its 2013 submission on the issue, including recommending the addition of section 93AA of the *Evidence Act 1977* to the provisions listed in Schedule 3, section 12 of the RTI Act.

**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?**

In its 2013 submission, the QPS outlined the advantages and disadvantages of the public interest balancing test in its current form. The QPS accepts that combining Part 3 and Part 4 of Schedule 4 of the RTI Act may be an effective way to simplify the test. Any amendment should also make it clear that the factors included are not an exhaustive list.

**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.**

The QPS is satisfied with the existing public interest factors. The observations on this issue in the 2013 submission remain relevant.

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

The QPS has not identified any new public interest factors which should be added to Schedule 4, nor has it identified any public interest factors which are no longer relevant and should be removed.

**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?**

No submission.

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

No submission.

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

No submission.

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

Yes.

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

The QPS regards publication schemes as a useful mechanism to provide information about the operations of an agency to members of the public.

**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 QPS supports internal review remaining optional. As outlined in the 2013 QPS submission, there is clear preference among applicants for this model which provides them with maximum flexibility and from the perspective of the QPS it has generally been a successful model. For these reasons, the QPS is of the view that the OIC should not be able to require an agency to conduct an internal review after it receives an application for external review.

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

No submission.

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

The QPS submits that the existing powers of the OIC to obtain documents for the purposes of its performance monitoring, auditing and reporting functions are adequate and further powers are not necessary for the purposes of these particular functions.

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

The QPS submits that these are policy matters for the Queensland Government. The Annual Report in its current form provides detailed information to Parliament about the operation of the RTI and IP Acts in the context of the various government agencies. It is a matter for the Government whether the

current form and content of the Annual Report is appropriate or whether other information, or another form of reporting, is desirable.

**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?**

The QPS does not support the adoption of the APPs. The IPPs were a deliberate, considered choice for the Queensland information privacy model and have now been in place for eight years. They are well-established and well-understood by agencies and a body of law has now developed around them. The IPPs are embedded in current agency practices and any change now would involve a very significant administrative burden on agencies.

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

The QPS supports amending the definition of 'personal information' in the IP Act to that of the Commonwealth Privacy 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?**

In its 2013 submission, the QPS outlined the issues it faces with the sharing of information by virtue of the IP Act. These issues are still relevant, and the modification suggested therein would be desirable. There are a number of existing statutory regimes which currently regulate the ability of the QPS to share information with other agencies. As a result, adopting a 'use' model is unlikely to have any real benefit to the QPS.

**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.**

The QPS' position on the issue of section 33 of the IP Act has not changed since its 2013 submission. The QPS notes the OIC's comments on this issue in its 2013 submission and would support an amendment to section 33 to refer to 'disclosure', rather than the 'transfer', of information outside Australia.

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

The difficulties faced by the QPS with respect to the timeframes for complaints under the IP Act were outlined in its 2013 submission and remain relevant. The OIC's suggestion in its 2013 submission that adopting the Victorian model may overcome the concerns associated with the Queensland provision may be an effective approach.

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

No submission.

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

The QPS submits that the existing powers of the Information Commissioner to investigate matters potentially subject to a compliance notice under the IP Act are adequate and that additional powers are not necessary.

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

The definition of 'generally available definition' should be clarified. The Commonwealth provision is a useful model in that regard.

**32. Should IPP4 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?**

The QPS notes that there has been judicial consideration of this issue. In *APX v Queensland Police Service* [2013] QCAT 680 Senior Member O'Callaghan found (at [120]) that *'the proper construction of PP 4 is that an agency having control of a document containing personal information must ensure that the document is protected by security safeguards adequate to provide the level of protection that can reasonably be expected to be provided.'*

If legislative amendment is nevertheless considered desirable, QPS would support amending IPP4 to require agencies take 'reasonable steps' to protect information.

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

The QPS would support replacing the words 'ask for' with 'collect' for the purposes of IPPs 2 and 3.

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

No submission.