QUEENSLAND UrbanUtilities

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3 February 2017

RTI and Privacy Review
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4001

By email: FeedbackRTIandprivacy@justice.qld.gov.au

Dear Sir / Madam

Queensland Urban Utilities submission on the review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009* Consultation Paper

Thank you for the opportunity to provide a submission as part of the 2016 consultation on the Review of the *Right to Information Act 2009* and *Information Privacy Act 2009* (**Review**). I note that Queensland Urban Utilities submitted a response in relation to the 2013 consultation on the Review. Please find **enclosed** at Annexure 1 a copy of Queensland Urban Utilities 2013 submission, for reference.

The Central SEQ Distributor-Retailer Authority trading as Queensland Urban Utilities (**QUU**) is a statutory authority established under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (Qld) (**DR Act**) and an agency under the *Right to Information Act 2009* (Qld) (**RTI Act**) and the *Information Privacy Act 2009* (Qld) (**IP Act**).[1]

As background, QUU is responsible for the provision of water and wastewater services in the geographic area of its five shareholding local governments:

- Brisbane City Council;
- Ipswich City Council;
- Lockyer Valley Regional Council;
- Scenic Rim Regional Council; and
- Somerset Regional Council.

As such, when providing water and wastewater services, QUUs functions necessarily also include charging customers for these services and managing customer enquiries, service requests and complaints.

[1] Sections 17 and 17A of the DR Act.

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Since its establishment on 1 July 2010, QUU has received over 90 requests for information under the RTI Act and IP Act, and in processing these applications, has identified a number of issues and challenges the subject of this submission.

QUU responses to questions asked in the 2016 Consultation Paper

1. No comment.

2. No comment.

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

   Prior to July 2010, water and wastewater services in South East Queensland were undertaken by the respective local governments. In 2007 the Queensland Government proposed a restructure of the water industry in South East Queensland to improve economic and service delivery outcomes to the community, including improving water supply coordination and management, delivering improved and more efficient water service and wastewater services to customers and improving the management of water and wastewater infrastructure.[2]

   This restructure included creating new integrated retail and distribution authorities (**Distributor-Retailers**) to deliver water and wastewater services to customers within a particular area. Under the DR Act, QUU was established with the primary function of undertaking water and wastewater services in the geographic area of its five shareholding local governments.

   QUU's governing legislation also allows it to perform "business or other functions it considers appropriate"[3], which provides for, or contemplates the Distributor-Retailers undertaking other business or commercial enterprises outside its core public functions.

   Accordingly, QUU supports, in principle, the exclusion of certain entities (such as Distributor-Retailers) from the application of the RTI Act, when operating in a commercial capacity and in competitive marketplaces, on the basis that compliance with the RTI Act places an additional administrative and financial burden on Distributor-Retailers, negatively affecting its competitive neutrality, and hindering its ability to respond positively to ever increasing public pressure to reduce water and sewerage costs for customers.

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?***

   QUU does not believe it is necessary for contracted service providers to be subject to the RTI Act and Chapter 3 of the IP Act in relation to the performance of government services. Government and many agencies are subject to comprehensive procurement, due diligence and tendering practices when engaging service providers to ensure transparency, fairness, value for money, accountability and also the integrity and viability of tenderers.

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[2] Section 3 of the DR Act
[3] Section 11(3) of the DR Act

Further, the additional costs and administrative burden on contractors may deter the smaller, local service providers from tendering for government work, or alternatively, contractors may attempt to on-charge (overtly or covertly) the cost of complying with the RTI and IP Acts to the principal, thus increasing contract costs.

However, should there be support for the extension of the application of RTI and privacy legislation to contracted service providers, QUU's preferred option is the adoption of the approach in section 6C of the Commonwealth's *Privacy Act 1988* whereby agencies maintain responsibility for the processing of applications, however contracted service providers are required to provide documents to the relevant agency upon request.

5. No 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?***

Yes, QUU believes obligations for contracted service providers are dealt with adequately under the IP Act. Further, QUU does not believe it is appropriate for the privacy obligations to extend to sub-contractors. This is because it would place an additional onus on agencies to actively manage sub-contractors with whom it does not have a direct contractual relationship, and make agencies responsible for actions by third parties that are largely outside an agency's control (again because of the lack of a direct contractual relationship).

Accordingly, for ease of management, control and enforcement, QUU believes this onus best sits with the contracted service provider, to effectively manage their own sub-contractors, with the head contractor being adequately motivated by the current contractual obligation with the relevant agency to comply with the privacy principles.

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?***

No. To minimise confusion for applicants and minimise cross-referencing and communications between the agency and an applicant prior to the commencement of the processing period (25 working days), the right of access provisions for personal and non-personal information should be contained in the one piece of legislation.

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

In QUU's experience, the scope of an application is not reduced through the provision of a schedule of documents but through direct consultation with an applicant. The compilation of a schedule of documents can be a particularly onerous exercise for an agency if the scope is very broad and often documents are still being uncovered and collected by agencies up until the last days of the prescribed period.

In our experience, RTI officers have a fairly good idea at the outset of the prescribed period of the volume of documents in scope and the time it will take to collect the documents (and often whether the scope is excessive to the actual purpose of the applicant's application), but will not know exactly what documents and how many are in scope (as is currently required) until the investigation is almost complete. By this stage significant agency resources and time has already

gone into the investigation and collection of the documents, only to determine that many of the documents aren't actually relevant. Accordingly, this requirement contributes to delays in processing and the need for agencies to request a longer processing period.

We generally find an initial conversation with the applicant to talk through the scope and purpose of the application and to advise the type and volume of documents held by the agency is the most productive and efficient way to determine whether the scope provided is actually going to meet the applicant's needs. A more targeted scope generally reduces the internal resources required to process the application, which in turn reduces charges payable by the applicant and more generally increases applicant satisfaction and reduces the need for subsequent RTI applications.

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?***

In accordance with the current third party provisions in the RTI Act, decision-makers are required to consult with third parties where they are considering releasing information and disclosure of the information may reasonably be expected to be of concern to the third party. If this threshold is reduced, a greater onus will be placed on decision-makers to determine the impact that disclosing the information will have on the third party.

Decision-makers may not be in a qualified position to determine how releasing information may impact a third party, or have sufficient insight into the business operations of the third party to make an assessment as to the significance of the concern for that party.

In the alternative, however, QUU agrees that the current third party consultation provisions do place an administrative burden on agencies and contribute to delays, however, balanced with the increased likelihood of review actions by third parties (which are also resource intensive) and the lack of practical benefit of a review right (noting it is difficult to contain information once it has been made public), QUU supports keeping the current requirement – being 'information reasonably to be expected to be of concern'.

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?***

As raised in response to Question 9, above, QUU agrees with the sentiment that once documents have been disclosed, there may be little practical benefit to a review right as the damage may already be done. This is particularly the case when the applicant is a media outlet, which is often the case.

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

QUU would like to see an express exemption against the disclosure of drafts of documents that ultimately result in a 'final' version being disclosed. Many draft documents, by their nature, contain inaccurate or misleading information, are not fully considered or are not representative of the relevant department or agency's view. This in turn can mislead and confuse the applicant and even cause detriment, should the applicant seek to rely on the information.

Further, within organisations, a fear of public release of information can result in officers not making all relevant information available to decision makers, resulting in ill-considered or misinformed decisions, and result in an unwarranted lack of public confidence in the organisation.

12. ***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.***

    Yes, QUU believes that the public interest balancing test should be simplified as there are too many steps and factors to consider when assessing an application. The prescriptiveness of this process can be complex, confusing and exhaustive, adding to an already administratively burdensome process.

    Perhaps the overarching principles of pro-disclosure unless there is an overriding public interest against disclosure could be set out legislatively, with the actual decision making considerations dealt with in guidelines (but still reviewable).

    Alternatively, consideration could be given to the simpler process set out in the Government Information (Public Access) Act 2009 (NSW). Under the NSW Act, there is a general public interest in favour of the disclosure of government information, unless there is an overriding public interest against disclosure which outweighs the considerations in favour of disclosure. The NSW Act schedules a non-exhaustive list of conclusively presumed factors against disclosure in the public interest, and tables the only other considerations that may be taken into account against disclosure. While the NSW Act is more restrictive, its simplicity may be preferable.

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 to high and (c) there are no two part thresholds? If so please provide details.***

    QUU supports amendments that result in the simplification of the decision making process as it is likely to result in more efficient use of time and resources, a reduction in costs for both agencies and applicants, as well as an increased understanding and acceptance of the process by both parties.

14. ***Are there new public interest disclosure factors that 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?***

    Yes, QUU believes there are a few additional factors favouring non-disclosure in the public interest which could be added.

    QUU would like to see factors regarding information which could reasonably be expected to prejudice a deliberative process of government extended to agencies (not just government), as it is in other jurisdictions (such as NSW and Victoria). Exempt information should include opinions, advice or recommendations prepared by an officer of an agency; and records of consultations or deliberations between officers of agencies and between agencies

and Ministers, when in relation to official business. QUU believes there is an argument that disclosure of this information could impede innovative proposals and problem solving or alternatively "bind" agencies to misguided or ill-informed ideas or activities.

QUU would also support proposals that further protected the commercial interests of agencies, and where the activities are being undertaken in a competitive marketplace or are ancillary to an agencies core public function. For example, QUU's SAS Laboratory offers sampling and laboratory testing services in a competitive market, but is subject to the regulatory regimes of a public authority.

Finally, QUU supports the inclusion of a further factor in the public interest test against disclosure, if the agency knows the information to be wrong or inaccurate.

15. No comment

16. No comment

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

    In QUU's experience, the majority of RTI requests are in relation to specific customer matters, and therefore the information requested is unlikely to be of a broad public interest. Accordingly it would be unlikely that an extension of the disclosure log requirements to agencies such as QUU would result in the publishing of more useful information or information that would be in the greater public interest. QUU therefore believes it is appropriate that agencies maintain the discretion as to what documents to include in the agencies disclosure log, so as to keep the log relevant and not overly cumbersome.

18. No comment

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

    With the rise in social media platforms and agencies generally having a greater online presence, there are many more options available for the dissemination of information. Providing greater flexibility to agencies in the way they publish information online would likely reduce the duplication of information, make the management of an agency's online presence more efficient, and enable simpler and more targeted access to information.

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. QUU believes that an applicant should be required to apply for an internal review prior to seeking an external review from the OIC. By requiring the applicant to go through the internal review process, it gives an agency the opportunity to consider any new information, reassess the initial decision-making process or rectify any errors, in an effort to resolve the issue promptly and efficiently.

Yes. The OIC should be able to require an agency to conduct an internal review prior to accessing an application for external review. An internal review can be more cost effective for both the agency and the OIC, and result in a more timely decision for the applicant. There may also be occasions where unfortunately, due to statutory time pressures, decisions are not fully considered or where documents are discovered after the decision has been made. An internal review enables an agency to address and settle these issues promptly. Regarding more complex disputes, it is likely these would be identified fairly quickly resulting in a prompt referral to 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. QUU agrees that the current review process set out in the RTI Act is appropriate and adequate in the circumstances and that any perceived benefit of a direct appeal to QCAT would be outweighed by the resulting expense to all parties, delay in resolution of the issue and loss of flexibility in dealing with the issue more informally.

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

No QUU believes OIC's existing powers are appropriate to support its' monitoring, auditing and reporting functions.

23. ***Is the information provided in the RTI 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?***

Yes. Generally the information provided in the RTI and Privacy Report is useful. There are however, some requirements or statistics requested from agencies (such as the requirement to advise the number of pages that have been redacted in each application and the reasons for the redaction) that can be onerous and time consuming for agencies to provide, and where a higher level overview is sufficient.

24. No comment

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

QUU supports an alignment of the definition of 'personal information' in the IP Act to the definition in the Commonwealth Act, for consistency.

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?***

QUU provides water and wastewater services to approximately 1.4 million residents in South East Queensland. There may be circumstances (ie. application of a government-funded subsidy to utility charges) where it would be beneficial to customers for information to be shared between agencies, without agencies requiring customers to provide consent to the transfer of

such data. The obtaining of consents is particularly administratively and financially burdensome: 1) for agencies when the transfer of information is required on a large scale; and 2) for certain demographics, such as pensioners, where there is a reluctance or inability to utilise online services or electronic resources.

In circumstances such as these it would be preferable, for both the agencies and the individuals, that the information is shared between agencies rather than requiring individuals to provide consents or information to multiple agencies.

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

Yes. As organisations look for ways to make administrative and economic efficiencies and to remain commercially viable and technologically relevant to meet the requirements of their customers, it is inevitable that the online environment, both domestic and international, will become more and more important. Accordingly, section 33 of the IP Act should be amended to distinguish between temporary and low risk overseas transfers of information and higher risk storage of personal information on overseas servers.

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

There are many factors that may affect the way in which a privacy complaint is dealt with and the time it takes for a privacy complaint to be investigated and addressed. Accordingly, the IP Act needs to provide some flexibility to ensure due process can be carried out.

Perhaps a more effective benchmark would be providing that an individual cannot make a complaint to the Information Commissioner unless the individual has first complained to the agency; the individual has received a response but considers the response to be inadequate; or at least 45 business days have elapsed since the complaint was made and the individual has not received any response or been advised by the agency a reasonable timeframe in which a response is to be provided considering the individual circumstances of the case.

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

Yes. Without a time limit as to when a complaint can be made to QCAT, there is a possibility that a complaint may be referred to QCAT some years later, by which time relevant documents or information may no longer be available, or relevant officers within the agency may be unable to recall the full particulars of the original complaint or may have left the position/organisation.

In this event, it may unduly prejudice an agency's ability to respond or defend itself or reduce the agency's ability to take corrective action in order to reduce the potential damage associated with a privacy complaint or breach.

30. No comment

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

Yes, the definition of 'generally available publication' should be clarified to include those documents available for a fee. The nature of such documents is that, as long as the prescribed fee is paid, anyone can access the document, disclosure is not dependant on any proprietary right in the information contained within.

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

Yes, agencies can have in place a myriad of mitigation measures against loss and misuse, but ultimately it is reliant on each individual employee complying with these measures. There needs to be an element of reasonableness so as not to place too great a compliance burden (administratively, financially etc.) on agencies, at a time when agencies are focusing on efficiencies in these areas, in order to meet customer expectations of economy and ease of access to information.

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

No. Individuals may provide information to an agency that the agency has not asked for, has no use for, or is not administratively prepared to deal with. This may place an unnecessary additional administrative and financial burden, as well as liability, on the agency to deal with the ancillary information in accordance with the IPPs. If the personal information was not requested by an agency, it is unlikely that it will be dealt with in such a way as to be in breach of the IPPs in any regard, therefore the risk is low.

34. No comment

Yours sincerely

[redacted]

LOUISE DUDLEY
Chief Executive Officer
Queensland Urban Utilities

Annexure 1

Queensland Urban Utilities 2013 Submission on the review of the *Right to Information Act 2009* and the *Information Privacy Act 2009*

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By email: FeedbackRTIandprivacy@justice.qld.gov.au

Dear Sir / Madam

Queensland Urban Utilities' submission on the review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009* Discussion Paper

Thank you for the opportunity to provide a submission on the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009* Discussion Paper ("the Discussion Paper").

The Central SEQ Distributor-Retailer Authority, trading as Queensland Urban Utilities ("QUU"), is a statutory authority established under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (Qld) ("DR Act") and taken to be an agency under the *Right to Information Act 2009* ("RTI Act") and the Information Privacy Act 2009 ("IP Act ").[1]
As background, QUU is responsible for the provision of water and wastewater services in the geographic area of its five participating local governments which are:

- Brisbane City Council;
- Ipswich City Council;
- Lockyer Valley Regional Council
- Scenic Rim Regional Council; and
- Somerset Regional Council.

As such, in providing water and wastewater services, QUUs functions necessarily also include charging customers for these services and managing customer enquiries, service requests and complaints.

Since its establishment on 1 July 2010, QUU has received numerous requests for information under the RTI Act and the IP Act, and in processing these applications,

[1] Sections 17 and 17A of the DR Act.

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has identified a number of issues and challenges the subject of this discussion paper.

***Information Privacy Act 2009* (Qld)**

1.0 No comment.

2.0 *Does the IP Act inappropriately restrict the sharing of information? If so, in what ways? Do the exceptions need to be modified?*

QUU provides water and wastewater services to approximately 1.3 million residents in South East Queensland. There are circumstances where it would be beneficial to customers for information to be shared between agencies, without agencies requiring customers to provide consent to the transfer of such data. This is particularly administratively burdensome when the transfer of information is required on a large scale.

For example, QUU requires access to Centrelink data in order to provide eligible pensioners with Brisbane City Council ("BCC") and State Government water rebates. Eligible customers previously provided consents for the transfer of information to BCC when BCC provided water and sewerage services, however now that these services have been transferred to QUU, it is arguable that the consents originally given to BCC cannot be transferred to QUU. To obtain new consents from the 70,000 or so eligible QUU customers would be extremely administratively and financially onerous for QUU. Further, given that the target customer base is pensioners, this also places an unnecessary burden on this demographic and may result in a low response rate. The bottom line is that eligible pensioners may miss out on getting the water rebates applied to their water and wastewater accounts.

In circumstances such as these it would be preferable, for both the agencies and the individuals, that the information is shared between agencies rather than requiring individuals to provide consents or information to multiple agencies.

3.0 *Should the definition of personal information in the IP Act be amended to bring it in line with the definition in the Commonwealth Privacy Amendment Act 2012?*

QUU has no issue with the proposed amendment to the definition of "personal information".

4.0 No comment.

5.0 *Should section 33 be revised to ensure it accommodates the realities of working with personal information in the online environment?*

Yes. As organisations look for ways to make administrative and economic efficiencies and to remain commercially viable and technologically relevant to meet the requirements of their customers, it is inevitable that the online environment, both domestic and international, will become more and more important. Accordingly, section 33 of the IP Act should be amended to

distinguish between temporary and low risk overseas transfers of information and higher risk storage of personal information on overseas servers.

6.0 No comment.

7.0 No comment.

8.0 Should the IP Act provide more detail about how complaints should be dealt with?

While the IP Act provides very little guidance to agencies on how they are to deal with privacy complaints, most agencies are otherwise required to have in place a general complaints management process, within which privacy complaints would fall, compliant with relevant Codes, regulations or Australian Standards for complaints management.

As such, it may prove administratively onerous to have duplicate complaints processes within the one agency. What may be useful, however, is a prescribed privacy complaint notice or application form, the submission of which would make it clearer to agencies the date from which timeframes commence, and that a privacy complaint has, in fact been made, so the complaint can be channelled more effectively to the relevant privacy officer within the agency (in QUU's case, the Privacy Officer role sits outside the general complaints management process).

9.0 Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged?

There are many factors that may affect the way in which a privacy complaint is dealt with and the time it takes for a privacy complaint to be investigated and addressed. Accordingly, the IP Act needs to provide some flexibility to ensure due process can be carried out. Perhaps a more effective benchmark would be providing that an individual cannot make a complaint to the Information Commissioner unless the individual has first complained to the agency; the individual has received a response but considers the response to be inadequate; or at least 45 business days have elapsed since the complaint was made and the individual has not received any response or been advised by the agency a reasonable timeframe in which a response is to be provided considering the individual circumstances of the case.

10.0 No comment.

11.0 No comment.

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

Yes, the definition of 'generally available publication' should be clarified to include those documents available for a fee. The nature of such documents is that, as long as the prescribed fee is paid, anyone can access the document,

disclosure is not dependant on any proprietary right in the information contained within.

13.0 Should the reference to 'documents' in the IPPs be removed; and if so, how would this be regulated?

No. It would be very difficult for agencies to control the collection or disclosure verbally, of personal information and it would be difficult to prove such a breach. Agencies are required to have policies and procedures in place to guide staff on its privacy obligations. However, despite an agency having the most stringent privacy handling and management processes, such instruments are still only as effective as the employees' will to abide by them. If the State did decide to go down this route, perhaps a defence provision could be included, proof of which is the demonstration by the agency of the implementation of all reasonable and appropriate policies, procedures, training etc.

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

Yes, as referred to above in 13.0, agencies can have in place a myriad of mitigation measures against loss and misuse, but ultimately they are reliant on employees complying with them. There needs to be an element of reasonableness so as not to place too great a compliance burden on agencies.

15.0 Should the words 'ask for' be replaced with 'collect' for the purposes of IPP 2 and 3?

No. individuals may provide information to an agency that the agency has no use for or is not administratively prepared to deal with. This may place an unnecessary additional administrative and financial burden, as well as liability, on the agency to deal with the unwanted or non-useful personal information in accordance with the IPPs. If the personal information was not requested by an agency, it is unlikely that it will be dealt with in such a way as to be in breach of the IPPs in any regard, therefore the risk is low.

Right to Information Act 2009 (Qld)

1.0 No comment.

2.0 No comment.

2.1 Should the right of access for both personal and non-personal information be changed to the RTI Act as a single entry point?

To minimise confusion for applicants and minimise extensive cross-referencing and communications between the agency and an applicant prior to the commencement of the processing period (25 working days), the relevant right of access provisions for personal and non-personal information should be contained in the one piece of legislation.

3.1 Should the processing period be suspended while the agency is consulting with the applicant about whether the application can be dealt with under the IP Act?

If there is further clarification required between an agency and an applicant to ensure the application can be processed under the correct Act, the processing period should not commence until the application meets all relevant criteria and can clearly be processed in accordance with the provisions of one Act.

3.2 No comment.

3.3 Should the timeframe for section 54(5)(b) be 10 business days instead of calendar days, to be consistent with the timeframes in the rest of the Act?

Yes, all timeframes should be consistent throughout the Acts.

4.1 Should the Act specify that agencies may refuse access on the basis that a document is not a document of an agency or a document of a Minister?

Yes, the RTI Act should include a document that is not in the possession of an agency or Ministers as a ground on which access may be refused under section 47(3).

4.2 Should a decision that a document is not a 'document of the agency' or a 'document of a Minister' be a reviewable decision?

If a document that is not in the possession of an agency or Ministers becomes a ground on which access may be refused under section 47(3) of the RTI Act (as proposed, above), then it would be a reviewable decision.

4.3 Should the timeframe for making a decision that a document or entity is outside the scope of the Act be extended?

The timeframes for providing information and seeking information are not consistent throughout the Acts. It would simplify a decision maker's process by streamlining the timeframes for all other processes (10 business days, 15 business days and 20 business days) outside of the processing period (25 business days).

4.4 No comment

4.5 No comment

4.6 No comment.

5.1 No comment.

5.2 Would agencies benefit from further guidance on publication schemes?

The provisions in the Act and available Ministerial guidelines provide clear instruction about the requirement for a publication scheme as well as information to be included in a publication scheme.

5.3 No comment

6.1 Should the access application form be retained? Should it remain compulsory? If not, should the applicant have to specify their application is being made under legislation?

Yes, the access application form should be retained as it provides applicants with a consistent set of statements that require a response to make the application compliant with the requirements of the Acts. If the current access application form was no longer mandatory or discontinued, it is likely that agencies would see an increase in non-compliant applications, therefore increasing the resources required to manage these application to compliant status. It has been argued that the requirement to apply on a form is unnecessarily bureaucratic, creating red tape, however it could also be argued that requiring applicants to digest the relevant legislative provisions setting out the prescribed application requirements is just as onerous.

6.2 Should the amendment form be retained? Should it remain compulsory?

Yes, as per comments in 6.1, above.

6.3 Should the list of qualified witnesses who may certify copies of identity documents be expanded? If so, who should be able to certify documents for the RTI and IP Acts?

No. There should be a consistent approach to certified document so as not to create confusion.

6.4 Should agents be required to provide evidence of identity?

Where an agent is acting or representing a person making an application, and the agent is not a registered solicitor or a representative of a law firm, the agent should be required to provide evidence of identity.

6.5 Should agencies be able to refund application fees for additional reasons? If so, what are appropriate criteria for refund of the fee?

The reasons currently provided for in the Act are sufficient.

6.6 No comment.

6.7 Should a further specified period begin as soon as the agency or Minister asks for it, or should it begin after the end of the processing period?

The Act sets out the minimum processing period of 25 business days. Where an agency requests an extension to the processing period, the extension should commence from Day 26 until the end of the extension period. In these instances, the Minister or agency would have already determined that they would require an extension as the investigation and decision would not be finalised within the prescribed minimum 25 business day processing period and/or do not wish to make a deemed decision for an application.

6.8 No comment.

6.9 Is the current system of charges estimate notices beneficial for applicants? Should removing the charges estimate notice system be considered?

In QUU's experience, the majority of applications require less than 5 hours processing time so no charges are payable. Where charges are payable, the applicants usually revise the scope of their application such that the number of hours of processing time is reduced to less than 5 hours. In our experience this system has been effective in streamlining applications so the applicant can access targeted and specific information.

6.10 Should applicants be limited to receiving two charges estimate notices?

Yes. Two charges estimate notices is sufficient to serve the intended purpose. Further charges estimate notices would create additional administrative burden on agencies and prolong the processing period.

6.11 Should applicants be able to challenge the amount of the charge and the way it was calculated? How should applicant's review rights in this area be dealt with?

No. In accordance with the provisions of the RTI Act and RTI Regulation, an agency can charge an applicant for processing their application where the agency can determine the processing time frame will take longer than 5 hours.

In accordance with the provisions of the RTI Act an applicant can confirm, narrow or withdraw their application within the prescribed period, otherwise the application is taken to be withdrawn. This should be a sufficient process whereby an applicant can seek a review of the decision made in relation to the charges estimate notice.

6.12 No comment.

6.13 Should the threshold for third party consultations be reconsidered?

In accordance with the current third party provisions in the RTI Act, decision-makers are required to consult with third parties where they are considering releasing information and disclosure of the information may reasonably be expected to be of concern to the third party. If this threshold is reduced, a greater onus will be placed

on decision-makers to determine the impact that disclosing the information will have on the third party.

Decision-makers are not in a qualified position to determine how releasing information may impact a third party.

6.14 Should the Acts set out the process for determining whether the identity of applicants and third parties should be disclosed?

No, this is better left at the discretion of the decision-maker on a case-by-case basis rather than being prescribed in legislation.

Perhaps the RTI application form could contain a consent provision for third party consultation to streamline the process.

6.15 If documents are held by two agencies, should the Act provide for the agency whose functions relate more closely to the documents to process the application?

If documents are held by two agencies, then the agencies must determine which agency officially owns the documents given the functions performed by the agency and the relationship between the functions and the documents. Once a determination is made, the applicant can be advised and the relevant agency owner will process the application.

6.16 No comment.

6.17 No comment.

6.18 No comment.

7.1 No comment.

7.2 No comment.

7.3 Does the public interest balancing test work well? Should the factors in Schedule 4 Parts 3 and 4 be combined into a single list of public interest factors favouring non-disclosure?

To make it easier for decision-makers, part 3 and 4 should be combined and where applicable the duplicated factors removed.

7.4 No comment.

7.5 No comment.

7.6 No comment.

7.7 Are the current provisions in the RTI Act sufficient to deal with access applications for information created by Commissions of Inquiry after the commission ends?

No, Schedule 2, Part 1 item 4 of the RTI Act should be clarified to ensure protection to documents produced or received by the Commission, after the Commission ceases to exist, due to the broad powers of a Commission to require the production of documents, including those that may be sensitive or contentious.

7.8 Is it appropriate or necessary to continue the exclusion of Commission documents from the RTI Act beyond the term of the Inquiry?

Yes, as set out in 7.7, above.

7.9 No comment.

7.10 No comment.

8.1 No comment.

8.2 Should fees and charges be imposed equally on all applicants? Or should some applicants pay higher charges?

Charges should be imposed equally.

8.3 No comment.

8.4 No comment.

8.5 No comment.

9.1 Should internal review remain optional? Is the current system working well?

QUU has no issue with the current optional internal review process.

9.2 If not, should mandatory internal review be reinstated, or should other options such as a power for the Information Commissioner to remit matters to agencies for internal review be considered?

In certain circumstances it may be beneficial for the Commissioner to have the power to remit matters to agencies for internal review. *9.3 No comment.*

9.4 Should there be some flexibility in the RTI and IP Acts to extend the time in which agencies must make internal review decisions? If so, how would this best be achieved?

Flexibility to extend the time in which agencies have to make internal review decision would be beneficial to deal with cases of extenuating circumstances.

9.5 Should the RTI Act specifically authorise the release of documents by an agency as a result of an informal resolution settlement? If so, how should this be approached?

Yes, the RTI Act should provide that documents released as a result of an informal resolution settlement are authorised under the Act to provide legal protection to agencies. Perhaps once an informal resolution settlement is reached, a direction can be issued under the RTI Act that has this legal effect.

9.6 No comment.

10.1-10.5 No comment.

11.1 No comment.

Yours faithfully

ROBIN LEWIS
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