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

UnitingCare Queensland Responses to 2016 Consultation Paper

1) UnitingCare Queensland (UCQ) services are provided through our extensive service network of well-known and respected brands including; Blue Care (BC), UnitingCare Community (UCC), Lifeline, Australian Regional and Remote Community Services (ARRCS) in the Northern Territory and UnitingCare Health (UCH) including Wesley and St Andrew's hospitals in Brisbane, The Sunshine Coast Private Hospital at Buderim and St Stephen's Hospital Hervey Bay. We have supported Queensland communities for over 100 years. Our 15 000 staff and 9 000 volunteers care for and support people from all walks of life, including older people, people with a disability, children, families and Indigenous people. We are one of the largest service providers in the state, and a leader in person centred care.

2) We hold contractual agreements with several agencies of both Commonwealth and State Governments, to provide a wide range of services including acute and sub-acute health care services, community health, aged care, disability, early childhood, child safety, domestic violence, community recovery, crisis counselling and community services. For the purposes of these contractual agreements; UCC, Blue Care and UCH are bound contracted service providers as provided for in the *Information Privacy Act 2009* (IP Act.)

3) As bound contracted service providers, UCC, Blue Care and UCH must comply with the IP Act and either the Information Privacy Principles (IPP) contained in Schedule 3 or the National Privacy Principles (NPP) contained in Schedule 4 for service delivery purposes depending on the contractual terms of the relevant contract.

4) As an organisation with an annual turnover in excess of $3M, UnitingCare Queensland must comply with the *Privacy Act 1988* and the Australian Privacy Principles (APP) contained in Schedule 1.

5) UnitingCare Queensland endorses the submissions previously made by UnitingCare Community and Blue Care in response to the 2013 Discussion Paper, and notes the Queensland Government will also take those responses into account for this review.

6) Following is responses to specific questions from the 2016 Consultation Paper on the Review of the *Right to Information Act 2009* and the *Information Privacy Act 2009*

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?

UCQ does not support the extension of the RTI Act and Chapter 3 of the IP Act NFPNGOs because:

i. Compliance with these extensions would increase the administrative burden and cost for NFPNGOs (unless sufficient additional specific funds were provided) thus reducing resources available from existing funds for service delivery to clients. UCQ must comply with the Commonwealth *Privacy Act 1988* currently under review by the Federal Parliament.

ii. Evidence of a demand for such an extension is not demonstrated, nor evidence that such an extension will improve contractual compliance, service delivery quality, client outcomes or financial accountability for expenditure of public funds.

iii. Contractual terms adequately provide for NFPNGO financial and performance monitoring and compliance, with access to relevant NFPNGO documents being achieved via the Queensland government agency through which the NFPNGO is contracted.

iv. UCQ notes and supports the QCOSS and QPILCH 2013 submissions in relation to this question.

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?

i. The Queensland Government Service Agreement – Standard Terms requires contracted organisations to comply with Parts 1 and 3 or, in relation to funding provided by a Health Agency, Parts 2 and 3, of Chapter 2 of the IP Act in relation to the discharge of the organisation's obligations under the Service Agreement as if the organisation were the contracting agency;

ii. The Queensland Government Service Agreement – Standard Terms requires organisations wishing to enter into a subcontract under the head agreement to first obtain funding agency approval and to ensure subcontracts are consistent with the terms imposed on the head contractor in the agreement with the Queensland Government.

iii. Where UCQ is the head contractor receiving government funds for service delivery, UCQ requires privacy compliance in agreements with subcontractors, be it compliance with the Commonwealth or Queensland regime as applicable.
iv. While UCQ's primary submission is that the Queensland privacy regime should be aligned with the Commonwealth regime and the APPs to eliminate confusion, duplication, compliance cost and administrative burden, legislative amendment to achieve NFPNGO subcontractor privacy compliance would be supported provided such an amendment does not result in more confusion and duplication than already exists.

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?

UCQ supports a consistent approach to legislative privacy protection which eliminates confusion, duplication and wasted expenditure.

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

UCQ supports a discretionary approach to scheduling in scope documents in relation to both the RTI and IP Acts enabling a common sense approach based on what is beneficial for the organisation and the client in the circumstances of the particular case.

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?

i. UCQ reiterates the advantages and disadvantages set out in the 2013 UnitingCare Community submission.
ii. UCQ endorses the perceived benefits of replacing the IPPs and NPPs with the APPs or aligning them, as mentioned in the 2016 consultation paper, not least because Queensland's public and private hospitals would be subject to the same privacy principles.
iii. Organisations which have an annual turnover of more than $3M, and in some other prescribed circumstances when the annual turnover may be less, are required to comply with the Privacy Act and the APPs.
iv. Organisations which contract with the Queensland government for service delivery purposes are required to comply with either the IPPs or the NPPs as bound contracted service providers for the delivery of the service under the contract.
v. Having only one set of privacy principles to understand and comply with will reduce the complexity and confusion for all concerned. It is expected that there should be a concomitant improvement in service provider understanding of privacy obligations and requirements and therefore compliance.
vi. Advantages from the client or patient perspective include improved ease and clarity in understanding:
    1) Which privacy legislation and principles are applicable to their particular situation;
    2) what is meant by personal information, including sensitive and health information;
    3) how the privacy principles apply to personal information, including sensitive and health information, that the client or patient gives to the service provider,
    4) what the service provider's obligations are in handling personal information, including sensitive and health information both generally and in any particular circumstance thus resulting in more meaningful communication about service provider obligations e.g. to obtain client or patient consent for use or disclosure of personal information and what giving consent means;
    5) what the client's or patient's rights are and more meaningful communication with the service provider about exercise of those rights e.g.
        a. to access to their own personal information, including sensitive and health information;
        b. to amend personal information;
        c. to make a complaint, to whom and how.
vii. For organisations, compliance with only one privacy regime and set of privacy principals will significantly reduce administrative and compliance costs for privacy training, implementation, management, monitoring and evaluation, enhancement and improvement.

25 Should the definition of 'personal information' in the IP Act be the same as the definition in the Commonwealth Act?
UCQ submits that the having the same definition of personal information in the IP Act and the Privacy Act is an essential part of the process of reforming the privacy legislation applicable to Queensland organisations to reduce complexity, administrative burden and costs associated with privacy compliance, and the use of consistent terminology as between the Commonwealth and Queensland regimes.

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?
As is noted in the consultation paper, the IP Act defines both the terms "use" and "disclosure". The IPPs contain separate principles for use (IPP 10) and disclosure (IPP 11), whereas the NPPs and the APPs have one principle covering use or disclosure (NPP 2, APP6). APP 6 adopts the purposive approach to use or disclosure, with some specific distinctions between agencies and organisations for disclosure. UCQ submits this approach is preferable and more straight forward.

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?
UCQ submits that consistent use of terminology is essential, and the use of terms "transfer" further compound and already complex matter. Section 33 of the IP Act seeks to address the same matter as is addressed by APP 8 – cross border disclosure of personal information which is preferable.

28 Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged? How should this be approached?
UCQ supports an approach which requires the complaint to be first made to and addressed by the organisation concerned. The issue is that the complaint is addressed not the time frame. Discretion could be given to the OIC to accept a complaint if the time taken by the organisation is unreasonable.

30 Are additional powers necessary for the Information Commissioner to investigate matters potentially subject to a compliance notice under the IP Act?
UCQ submits that the OIC requires adequate powers to properly perform its functions. An individual may make a complaint to the OICQ about a breach of the privacy principles by a bound contracted service provider. UCQ submits consistency between the Commonwealth and Queensland Information Commissioners would be highly desirable. Furthermore if the Queensland legislation and APPs were aligned (however that is achieved), the OICQ would be better able to take advantage of the work done by the OAIC thus reducing duplication and associated costs. UCQ supports more cooperation between the OICQ and the OAIC to reduce duplication, confusion and complexity and to promote consistency as between the Commonwealth and Queensland privacy regimes.

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?
UCQ submits such an amendment is sensible and practicable.

33. Should the words 'ask for' be replaced with 'collect' for the purposes of IPPs 2 and 3?
UCQ supports this amendment on the grounds that terminology should be consistent. As noted UCQ supports the adoption of the APPs to avoid confusion and if that approach is not adopted, the use of terminology which is consistent with the Commonwealth legislation and the APPs.