Review of the Right to Information Act 2009 and Chapter 3 of the Information Privacy Act 2009

Department of Education, Training and Employment - Discussion Paper response

No.	Question.	DETE Response.
1.1	Is the Act's primary object still relevant? If not, why not?	DETE The Act's primary object is still relevant.
1.2	Is the 'push model' appropriate and effective? If not, why not?	DETE The 'push model' is appropriate and effective.
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?	DETE and TAFE[1] Yes. The right of access should be confined to the RTI Act alone for both personal and non-personal information. This will reduce the legislative and administrative burden, prevent duplication of applications and foster consistency of decision making in respect of determinations concerning what is "personal information". Applicants are often confused as to which Act they should make their application under, which results in delays and frustration with the application process. Having the right to access both personal and non-personal information in a single Act will overcome resulting delays and frustrations with the existing processes. IP Amendment should be retained under the IP Act, as amendment of personal information is more aligned with the objects of the IP Act in terms of its focus on governing the management of personal information held by government agencies,

[1] As part of the TAFE Reforms, it must be noted that any amendments to the RTI Act and IP Act resulting from the review of the two pieces of legislation will have practical implications to TAFE Institutes in the future. Specific issues affecting TAFE Institutes have been selected and the responses to those issues have been provided in the context of operational issues which may affect TAFE Institutes once transitioned to TAFE Queensland.

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		which should be accurate and kept up-to-date as necessary.
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?	DETE and TAFE Yes. The processing period should be suspended because the process of assisting an applicant to make their application under either Acts often consumes a significant portion of the processing period. This process is often required to be undertaken in writing and applicants can take weeks to respond. Applicants should be afforded a reasonable opportunity to respond, ie 10-15 business days as is usually given for responding to notices issued under the Act, however this should not be to the disadvantage of the agency or Minister processing the application. The later an applicant responds, the less time the agency has to deal with an application. The current legislation often forces an agency to continue undertaking work on an application to avoid not being able to make a decision on the application before the end of the processing period. This can result in an uneconomical use of time and resources, particularly where the application is withdrawn or where the terms of the application are altered during the consultation process. Noting that the outcome of an IP Act application is a reviewable decision, time should be afforded to agencies to properly process the application to ensure it has diligently considered the application.
3.2	Should the requirement for an agency to again consider whether the application can be made under the IP Act be retained?	DETE and TAFE Yes. The process of considering whether the application can be made under the IP Act is a step that should be undertaken again, in any event, in the course of making a final decision. It is also consistent with the IP Act's purpose of giving

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		individuals a right of access to and amendment of their personal information in the government's control. This process is not a burden on an agency or Minister and acts as a check and balance to ensure that the correct decision is made. In some cases, the decision-maker who comes to issue the prescribed written notice might not be the same person who initiated the process of consulting with the applicant to provide an opportunity to change the application.
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?	DETE and TAFE Yes, for consistency in the IP Act and account for the fact agencies do not operate on weekends, the timeframe for section 54(5)(b) should be based on business days. All timeframes within the legislation should be based on business days, not calendar days.
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?	DETE Yes, the Act should 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.
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?	DETE Yes. This would promote transparency and accountability of the agency's decision making process.
4.3	Should the timeframe for making a decision that a document or entity is outside the scope of the Act be extended?	DETE Yes. The timeframe should align with the processing period for the application so that a single access decision notice may be given for an application (whether or

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		not all or some of the requested documents are documents that are outside the scope of the Act).
4.4	Should the way the RTI Act and Chapter 3 of the IP Act applies to GOCs be changed? If so, in what way?	DETE No, the status quo should be observed.
4.5	Should corporations established by the Queensland Government under the *Corporations Act 2001* be subject to the RTI Act and Chapter 3 of the IP Act?	DETE No, the status quo should be observed.
4.6	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?	DETE & TAFE Yes, the RTI Act and Chapter 3 of the IP Act should apply to the documents of contracted service providers where they are performing functions on behalf of government on the basis that this approach is consistent with the overall objective of the IP Act and RTI Act, which is transparency of the use of public funds and government operations. Whilst, it is noted that the cost of complying with any information access regime may impose an unreasonable cost and administrative burden on those entities and those costs could be passed on to the Government, it is submitted that most contracted service providers already have record keeping and document management obligations which do not need to be reinvented for the sole purpose of complying with the access regime. For example, most contracted service providers have record keeping obligations to comply with taxation laws, professional standards requirements (e.g. accountants and lawyers) or international quality management standards. Further, the cost of complying with the access regime is addressed in Part 6 of the RTI Act and those provisions can

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		extend to contracted service providers.
5.1	Should agencies with websites be required to publish publication schemes on their website?	DETE Yes. Publication schemes provide a mechanism for wider dissemination of government information. Publication schemes have become mechanism for proactive disclosure of government held information employed by governments of all States and territories and the Commonwealth. This uniform approach provides consistency for public access to significant government information. Public access to government information through publication schemes would be expected to improve with greater community awareness of the publication schemes and publication of more informative and useful information that is of interest to the public.
5.2	Would agencies benefit from further guidance on publication schemes?	DETE Yes.
5.3	Are there additional new ways that Government can make information available?	DETE Develop a customer portal. Allow customers to register and receive an ID and enable certain classes of government information to be accessed and updated by them online via secure VPN hosted by the government. TAFE Due to the functionality and limited data available for websites, it is recommended that Government explore whether information can be made available by agencies

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		through cloud computing solutions.
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?	DETE: Yes and Yes. An application form assists applicants to understand what is required of them and assists agencies by reducing the amount of explanation or follow up that has to be undertaken to make applications compliant before processing can begin. Perhaps the application process should be by means of a responsive online form that requires answers to questions before the application can progress.
6.2	Should the amendment form be retained? Should it remain compulsory?	DETE: Yes and Yes. See 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?	DETE No. The current list of qualified witnesses is sufficient.
6.4	Should agents be required to provide evidence of identity?	DETE Yes.
6.5	Should agencies be able to refund application fees for additional reasons? If so, what are appropriate criteria for refund of the fee?	DETE Yes. An agency should be able to refund an application fee when the application is mistakenly made under the RTI Act for documents that are available under another access scheme. To avoid disputes in this regard however, the legislation

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		would need to set out the criteria to be met for this type of refund. In the alternative, the RTI online portal and other RTI information resources should place greater emphasis on: (a) alerting prospective applicants that the application fee cannot be refunded once the application is made, except in the relevant circumstances set out in the Act; and (b) encouraging prospective applicants to first contact the relevant Agency or Minister before making an application to determine whether access to the relevant documents might be available by another means.
6.6	Are the Acts adequate for agencies to deal with applications on behalf of children?	DETE The Act adequately deals with applications on behalf of children where both parents retain equal parental responsibility for their child. Difficulties often arise however in circumstances where parenting orders govern the allocation of parental responsibility for a child. The issue of allocation of parental responsibility for a child is an important consideration when determining a parent's legal entitlement to information and/or whether disclosure of particular information is in the best interests of a child. In an effort to overcome these difficulties: • the legislation could require an applicant to provide certified copies of relevant orders where an application is made by a 'parent', as the term is defined under the legislation and the application is for access to personal

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		information of a child. • RTI decision makers should be able to consult broadly about an information release to determine if an application is made genuinely on behalf of a child or is in fact made simply by a parent pursuing their own interests which may or may not be congruent with the child's interests. • It is recommended that consideration be given to including provisions to protect a child's interest. For example: applications on behalf of children have a default requirement that they be signed by both birth parents. If not, then there should be an obligation upon the applicant to explain why both parents have not signed – this will enable decision makers to grasp if there are likely to be issues that exist contrary to the child's best interests (for example domestic violence where a parent and child are in hiding from the other parent) or where the parent is engaged in litigation with the other parent or where the applicant seeks information to use against an independent child. Additionally, in situations where children are living independent of parents or who are likely to be Gillick competent (given their age), it should be mandatory to consult with them, or to take reasonable steps to do so, prior to making a decision about access. Existing processes also do not take into account , directly, the potential risk to the child's relatives or other persons who may be caring for them from an applicant, particularly in heated family law matters or cases of domestic violence. In such matters access to information which tends to reveal the location of a child may

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		also inadvertently lead to identification of the location of the related parties. TAFE It is noted that the Acts provide for access made by parents on behalf of children. However, it is submitted that the Acts do not provide adequate protection to children in particular children aged 16 or 17 years who may be concerned if their personal information is released to parents. This is even more important if the child is estranged from the parent or living independently, which is a common circumstances for TAFE Institute students. It is noted that whilst section 50 of the RTI Act allows agencies not to disclose information to a parent where on balance, it is contrary to the public interest, practically, agencies do not usually have all the information necessary to consider whether disclosure to the applicant parent is in the best interest of the child or otherwise. It is recommended that positive obligations are inserted in the Acts to require parents, at the time of making the application, to state on oath whether there are any circumstance that they are aware of that would deter disclosure of the child's personal information to them and concurrently, ensure that the agency has the ability to consult with the child, therefore extending the provisions outlined in section 50(3) of the RTI Act.
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?	DETE A further specified period should begin at the end of the initial processing period (which would include the additional 10 business days that is stipulated where consultation were undertaken during the initial 25 business day period). A request for further time should not displace the initial processing period, but extend the period from after the last day.

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6.8	Should an agency be able to continue to process an application outside the processing period and further specified period until they hear that an application for review has been made?	DETE Yes. An Agency or Minister should be entitled to continue to process an application beyond the processing period and before advice of an application for external review is made.
6.9	Is the current system of charges estimate notices beneficial for applicants? Should removing the charges estimate notice system be considered?	DETE If there are no charges payable then the requirement to provide a charges estimate notice and schedule of documents should not apply. The charges estimate notice system should remain for any application for non-personal documents for which charges are payable. TAFE Yes, the current system of charges estimate notices is beneficial for applicants however it creates an administrative burden on agencies in itemising the estimated time and cost in processing an application. It is recommended that the RTI Act is amended to make it clear whether agencies should continue to process the application and make a decision on access, or whether the applicant must exhaust their review rights and receive a final decision on whether charges are payable before the application can progress.
6.10	Should applicants be limited to receiving two charges estimate notices?	DETE Yes. The legislation needs to provide certainty for the process of providing an opportunity to narrow an application. It would be uneconomical for applicants to be afforded an indefinite number of opportunities to narrow an application.

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		While the charges estimate notice process formalises the process of engaging with an applicant in relation to charges, including by limiting the number of formal notices that may be given, it does not curtail an agency or Minister's capacity to engage informally with an applicant to discuss and explore options for narrowing the scope of an application before the applicant must confirm, narrow or withdraw an application. It is also open to an applicant to engage with the agency or Minister so that different options may be vetted before the application is formally confirmed, narrowed or withdrawn.
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?	DETE Yes. Allowing a decision about the amount of a charge payable for an application to be reviewed would be consistent with the objective of transparency and accountability in government decision-making. The applicant should be entitled to apply for either internal or external review, as is the case with an access decision.
6.12	Should the requirement to provide a schedule of documents be maintained?	DETE A schedule of documents should only be provided to an applicant when a charges estimate notice is required to be provided and the applicant requires that a schedule be provided.
6.13	Should the threshold for third party consultations be reconsidered?	DETE The threshold should be amended to 'substantial concern'.

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6.14	Should the Acts set out the process for determining whether the identity of applicants and third parties should be disclosed?	DETE: Yes. To provide certainty for applicants and decision-makers, the Act should deal with the process for determining whether the identity of applicants and third parties should be disclosed.
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?	DETE Yes. Circumstances arise from time to time where the public resources, and costs for an applicant, involved in dealing with a request are more efficiently preserved through one agency making a decision on an application on the same documents.
6.16	How could prescribed written notices under the RTI Act and IP Act be made easier to read and understood by applicants?	DETE The Commissioner could publish template decision notices for use by agencies (similar to the Commonwealth Information Commissioner's approach).
6.17	How much detail should agencies and Ministers be required to provide to applicants to show that information the existence of which is not being confirmed is prescribed information?	DETE The legislation is sufficient in relation to this.
6.18	Should applicants be able to apply for review where a notation has been made to the information but they disagree with what the notation says?	DETE Yes.
7.1	Do the categories of excluded documents and entities satisfactorily reflect the types of documents and entities which should not be	DETE

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	subject to the RTI Act?	Yes.
7.2	Are the exempt information categories satisfactory and appropriate?	DETE Yes.
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?	DETE Schedule 4, Part 3 and 4 factors should be combined into a single list. This would simplify the public interest balancing process.
7.4	Should existing public interest factors be revised considering • some public interest factors require a high threshold or several consequences to be met in order to apply • whether a new public interest factor favouring disclosure regarding consumer protection and/or informed consumers should be added • whether any additional factors should be included?	DETE The following public interests could be added: (a) the public interest in protecting and informing consumers.
7.5	Does there need to be additional protection for information in communications between Ministers and Departments?	DETE & TAFE Yes, there needs to be additional protection for information in communications between Ministers and Departments to enable Government to function effectively. Further, it is recommended that protection is extended to communications between Ministers and entities covered by the RTI Act and IP Act which report directly to the Minister (e.g. statutory bodies).

No.	Question.	DETE Response.
7.6	Should incoming government briefs continue to be exempt from the RTI Act?	DETE Yes. The exemption promotes full and frank disclosure of information to the Incoming Minister and new government by agency employees.
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?	DETE No.
7.8	Is it appropriate or necessary to continue the exclusion of Commission documents from the RTI Act beyond the term of the Inquiry?	DETE Yes.
7.9	Are provisions in the RTI Act sufficient to deal with access applications for information relating to mining safety in Queensland?	The Department is not in a position to comment.
7.10	Are the current provisions in the RTI Act sufficient to deal with access applications for information about successful applicants for public service positions?	DETE The current provisions, together with relevant OIC decisions, provide sufficient guidance for decisions relating to applications for information about successful applicants for public service positions.
8.1	Should fees and charges for access applications be more closely aligned with fees, for example, for access to court documents?	DETE Yes. Fees applicable to commercial organisations (e.g. newspapers) seeking to profit from the use of information through sales of newspapers should be charged fees more aligned to the cost incurred by agencies in providing the information.

No.	Question.	DETE Response.
8.2	Should fees and charges be imposed equally on all applicants? Or should some applicants pay higher charges?	DETE Refer to response to 8.1 above.
8.3	Should the processing period be suspended when a non-profit organisation applicant is waiting for a financial hardship status decision from the Information Commissioner?	DETE Yes.
8.4	Should the RTI Act allow for fee waiver for applicants who apply for information about people treated in multiple HHSs?	DETE Not applicable to the Department.
8.5	If so what should be the limits of this waiver?	DETE Not applicable to the Department.
9.1	Should internal review remain optional? Is the current system working well?	DETE Internal review should remain optional as the current system is working well.
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?	DETE N/A.
9.3	Should applicants be entitled to both internal and external review where they believe there are further documents which the agency has not located?	DETE Yes.

No.	Question.	DETE Response.
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?	DETE There should be some flexibility in the RTI and IP Acts. The Acts state that the reviewer is required to make a fresh decision as if the reviewable decision had not been made, which can often mean that the reviewing officer must consider thousands of documents in a shorter period, without the opportunity to extend the processing period where the need arises. The process for extending the processing period at internal review should be the same as that for initial decisions.
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?	DETE: Yes, by specific provision dealing with release in such circumstances.
9.6	Should applicants have a right to appeal directly to QCAT? If so, should the Commonwealth model be adopted?	DETE The status quo should be preserved. The department should avoid reference to QCAT on a merits basis, given the cost and administrative burden that would occur as a result. It would also overload QCAT with issues that are appropriately dealt with in the first instance by the OIC and require extra costs and resources to agencies due to the need to deal with matters brought to QCAT.
10.1	Are current provisions sufficient to deal with the excessive use of OIC resources by repeat applicants?	The OIC is best placed to comment on the legislation in this regard.

No.	Question.	DETE Response.
10.2	Are current provisions sufficient for agencies?	DETE No. Repeat applications consume unreasonable amounts of the Department's RTI resources. Agencies should have some ability to decide not to process an application where the application is frivolous and vexatious or lacking in substance or an applicant engages in unreasonable conduct. Agencies should have the ability to refuse to deal with an application of an unreasonable repeat applicant where it has expended a certain amount of resources (e.g. 60 processing hours on processing applications of that applicant).
10.3	Should the Acts provide additional powers for the OIC to obtain documents in performance of its performance monitoring, auditing and reporting functions?	DETE Yes. Statutory powers for the OIC to obtain documents in performance of its performance monitoring, auditing and reporting functions should be sufficient to enable the OIC to undertake those tasks in a way that does not conflict with existing obligations of Agencies and Ministers under statutory provisions which prohibit release of information required of the OIC. As an example, under the IP Act, *Education (General Provisions) Act 2006*, section 426 and *Vocational Education Training and Employment Act 2000*, section 286.
10.4	Should legislative time frames for external review be reconsidered? Is it appropriate to impose timeframes in relation to a quasi-judicial function?	DETE No.
10.5	If so, what should the timeframes be?	No comment.

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11.1	What information should agencies provide for inclusion in the Annual Report?	DETE The recent changes to the reporting requirements are adequate.
12.1	Are there any other relevant issues concerning the operation of the RTI Act or Chapter 3 of the IP Act that need to be changed?	DETE Yes. The following matters could be considered for potential change: 1. When an applicant applies for internal review on a very specific aspect of the initial decision to be reviewed (ie refusal of a particular document(s) or sufficiency of search), the internal review decision maker should be entitled to only decide upon the applicant's specific concern(s), rather than making a fresh decision as if the reviewable decision had not been made; and 2. An equivalent provision to that provided by section 15A of the *Freedom of Information Act 1982* (Cth) could be introduced to enforce employees' entitlements to employee records under the *Public Service Regulation 2008*.

Trim ref: 13/401451

Review of the Information Privacy Act 2009: Privacy Provisions

<u>Department of Education, Training and Employment - Discussion Paper response</u>

No.	Question.	DETE Response.
1.0	What would be the advantages and disadvantages of aligning the IPPs with the APPs, or adopting the APPs in Queensland?	<u>DETE</u> The disadvantages of such an alignment would be: • having to categorise personal information into sensitive and non-sensitive. This categorisation will apply to existing stores of personal information and to all future collections of personal information. This is the ultimate form of "red tape" and will be extremely burdensome of DETE given the present size of personal information data held by DETE and the amount that is collected each year; and • the cost and operational burden that would be necessary to give effect to the changes (ie through updating existing privacy notices, policies and guidelines and effecting organisational awareness of those changes). Advantages of aligning the IPPS with the APPs, or adopting the APPs in Queensland, include: • uniformity of the privacy principles for entities in Queensland by providing a single set of principles that apply to both agencies and organisations; • providing a simpler and more streamlined privacy regime in Queensland. Generally DETE supports the adoption of a consistent approach to privacy regulation in Australia. However, the new APPs have been designed to regulate both private entities and Commonwealth Government agencies. It would be our view that the IPPs should reflect the APPs as they relate to government agencies – with care being taken to ensure that the different requirements of government

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		agencies are appropriately recognised. In particular we are concerned about the operation of the following APPs in the context of government agencies: • APP 4 (Unsolicited Information): Government agencies may receive large quantities of unsolicited personal information. The requirements in APP 4 may be unduly onerous. • APP 8 (Cross Border Disclosure of Personal Information): This is discussed further below in relation to s.33 of the IP Act but generally DETE would not support the adoption of any provision similar to APP 8. TAFE[1] It would be an advantage for Queensland to adopt the APPs to minimise administrative burden and avoid confusion and duplication of privacy principles.
2.0	Does the IP Act inappropriately restrict the sharing of information? If so, in what ways? Do the exceptions need to be modified?	DETE DETE's view is that the IP Act inappropriately restricts the sharing of information where it would be in the best interests of the child for agencies to have information about the child. For example, where children are not attending school DETE experiences difficulty in obtaining addresses of children's parents form other agencies for the purpose of attempting to reengage children with school. A possible exception to consider is the sharing of information between agencies to

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		enable an agency to act in the best interests of the child.
3.0	Should the definition of personal information in the IP Act be amended to bring it into line with the definition in the Commonwealth Privacy Amendment Act 2012?	DETE Yes. To ensure uniformity and clarity in dealings with personal information by Agencies, Ministers and GOCs, the definition should be replaced in line with timeframe for the amendments to the *Privacy Act 1988* (Cth), which is to take effect from March 2014.
4.0	Should government owned corporations in Queensland be subject to the Queensland's IP Act, or should they continue to be bound by the Commonwealth Privacy Act?	DETE Avoiding inconsistencies and gaps in coverage makes it preferable for GOCs to continue to be bound by the Commonwealth Privacy Act.
5.0	Should section 33 be revised to ensure it accommodates the realities of working with personal information in the online environment?	DETE Yes. Government entities are increasingly utilising technology as a way of conducting their affairs and engaging with the community. It is appropriate that the IP Act reflect these advancements and changes. An area which requires particular consideration is cloud computing and what impact this form of storing and transferring information has on an agency's compliance with the IPPs. DETE supports the replacement of Section 33 by a principle that reflects the accountability approach as recommended by the ALRC (the accountability approach is discussed in more detail below). In regard to issues raised by the adoption of common business practices – such as smartphone and email – DETE would prefer that, rather than changing the

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		legislation, the QOIC continue to provide guidance and advice. It has been recognised that the better approach to regulating areas affected by changes in technology is to retain flexible regulatory language – such as "transfer" and "reasonable" – supported by the regulatory Guidance.[2] DETE notes the detailed guidance which has been issued so far by the QOIC and supports the continued provision of such support by the regulator. TAFE Yes, section 33 of the IP Act should be revised to ensure it accommodates the realities of working with personal information in the online environment especially when it is a technicality that information is relayed via an overseas server for the communication to be transmitted from an Australian device to an Australian device.
6.0	Does section 33 present problems for agencies in placing personal information online?	DETE Yes.
7.0	Should an 'accountability' approach be considered for Queensland?	DETE DETE strongly supports the adoption of an accountability approach – although its preference would be for a provision as recommended by the ALRC rather than APP 8. An accountability approach to cross border data flows would significantly

[2] ALRC Report 108 "For your information" Volume 1 Chapter 4, p235

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		simplify the adoption of cloud computing services by the Department. Section 33 reflects the provisions of NPP9 (with some modification), which as of March 12, 2014 will be replaced by APP 8. Given that NPP 9 will no longer be in effect, maintaining a provision at the State level that reflects that superseded principle is no longer appropriate. As well, it is our view that the adequacy approach adopted by Section 33 (and NPP 9) does not provide the most appropriate protection for Queenslanders and places too onerous a burden on departments who must navigate their way through the complex series of possible exceptions that may apply. The accountability approach is supported internationally (appearing in both the APEC Framework and the new OECD Privacy Guidelines) as a more appropriate regime for protecting the interests of individuals whose personal information is being provided to overseas organisations. It is both timely and appropriate for Queensland Government to re-visit its preferred approach to cross border flow provisions for Queensland agencies. Although DETE supports the development of consistent privacy regimes we do not believe that the interests of consistency outweigh the issues for government agencies that would arise from the adoption of the accountability approach contained in APP 8. We believe that the provision is unduly onerous, difficult to apply and inconsistent with international approaches to accountability. DETE's strong preference is for a simple and appropriate accountability regime, consistent with international frameworks, as proposed by the ALRC.

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8.0	Should the IP Act provide more detail about how complaints should be dealt with?	DETE No, the current provisions adequately set out the privacy complaint process.
9.0	Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged?	DETE No, the current provisions adequately set out the privacy complaint process.
10.0	Are additional powers for the Information Commissioner to investigate matters potentially subject to a compliance notice necessary?	DETE No further investigation powers necessary.
11.0	Should a parent's ability to do things on behalf of a child be limited to Chapter 3 access and amendment applications?	DETE Yes. The power of a parent as described in the discussion paper is not consistent with the common law relating to the capacity of children to make decisions in their own right as outlined in Gillick v West Norfolk and Wisbech Area Health Authority [1985] 3 All ER 402 and adopted by the High Court of Australia in Secretary of the Department of Health and Community Services v JWB and SMB (1992) 175 CLR 218. An example of legislation that recognises this capacity is s.426(4)(2) EGPA.
12.0	Should the definition of 'generally available publication' be clarified? Is the Commonwealth provision a useful model?	DETE Yes. Consistency with the Commonwealth provision would be useful. There is no reason for there to be different definitions of this term at the State and Commonwealth levels.

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		Also, to clarify the issue in respect of payment of a fee.
13.0	Should the reference to 'documents' in the IPPs be removed; and if so how would this be regulated?	DETE Yes. The law should apply to all information collected in the performance of the agency's functions, regardless of whether the information is reduced to writing. Perhaps a way to regulate this would be to use drafting similar to s. 426(1)(b) of the EGPA. A classic example of where this is relevant is where staff gets information over the telephone or otherwise orally and, without making a note of the information, immediately disclose it to someone else. The provisions could apply to information transmitted whether verbally or in writing. DETE's view is that the wording of the IPPs should be as consistent as possible with the APP's subject to our reservations stated in response to Question 1.
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?	DETE DETE supports the amendment of IPP4 to provide that an agency must take reasonable steps to ensure information is protected against loss and misuse. Further, information security risks are frequently raised as barriers to adopting cloud computing services. Moving from the current strict liability for the security of personal information to an obligation to take reasonable steps to ensure security is in place would help to remove security-based inhibitions.
15.0	Should the words 'ask for' be replaced with 'collect' for the purposes of IPPs 2 and 3?	DETE Yes. This would reflect the automatic collection of personal information that

No.	Question.	DETE Response.
		happens all the time now. However, it should not apply to unsolicited collection of personal information. It would also provide greater consistency with other privacy regimes and remove any issues regarding differences between the terms and the reason for the use of "ask for" rather than the more commonly used "collect".

Trim ref: 13/401455