Department of Transport and Main Roads

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

	Question	Comments
1.1	Is the Act's primary object still relevant? If not, why not?	It is felt the primary objective of the Act is still relevant and should remain. However, if amendments are made to the Act the current objective may need to be reviewed. Compliance with the acts should not be perceived as a legal obligation as it is an essential part of open and transparent government.
1.2	Is the 'push model' appropriate and effective? If not, why not?	As per 1.1
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?	Yes - The access provisions for both personal and non-personal information should reside in the *Right to Information Act 2009* (RTI Act). The current arrangement creates unnecessary confusion for applicants and some decision makers. Access decisions made under the *Information Privacy Act 2009* (IP Act) have a tendency to be confusing to applicants. Decisions are made under the IP Act, however where information is refused, the decision maker is required to refer to legislative provisions in the RTI Act. Under the *Freedom of Information Act 1992* (repealed) the personal and non-personal provisions were easier for applicants and decision makers to understand and less of an administrative burden on agencies.
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?	Yes - However if point 2.1 was implemented there would be no need.
3.2	Should the requirement for an agency to again consider whether the application can be made under the IP Act be retained?	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

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 - However clarification with regards to 'under the control' must be clear as the example used on the discussion paper regarding documents sent for archiving are still documents 'under the control' of an agency. The issue with CNI has again arisen regarding this provision. Clarity would be helpful and reduce unnecessary costly arguments.
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?	Yes
4.3	Should the timeframe for making a decision that a document or entity is outside the scope of the Act be extended?	Yes - given the size of Queensland, sometimes it is difficult for agencies to firstly locate particular documents, decide they are outside the scope of the RTI Act, all within 10 business days.
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?	Yes - all GOC's need to come under the RTI Act as they are government entities and the public have a right to know how decisions are made.
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?	Yes - if the Corporation has the same funding and reporting arrangements as a GOC. This issue needs to be resolved as the current lack of clarity has been costly to government (CNI).
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?	No - This would have an impact on contract service providers and delays to processing period may be incurred. Internally (within agencies), contracts should be clear on what documents/reporting should be provided to the agency and only those documents referred to in contract as part of reporting should be considered as a document of the agency or under the control of an agency.
5.1	Should agencies with websites be required to publish publication schemes on their website?	Yes - the need for publication schemes originally came about due to the lack of consistency with agency websites. However, for smaller agencies, the cost of a website/ publication scheme and also the usefulness needs to be considered.
5.2	Would agencies benefit from further guidance on publication schemes?	Yes - working towards more consistency would be helpful and hopefully over time administrative costs would be reduced. Agencies would also benefit on guidance on the retention of material on publication schemes.
5.3	Are there additional new ways that government can make information available?	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 application form is useful to some degree, however, making it compulsory completely negates the primary purpose of the Act. As long as the applicant provides all required information, then the application should be considered valid.
6.2	Should the amendment form be retained? Should it remain compulsory?	Yes - this allows for agencies to easily check correct details etc. of the amendment request.
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?	Yes - in some situations, due to location of applicant, it is difficult for applicant to obtain certification from listed witnesses. Could possibly be extended to include a QPS officer.

6.4	Should agents be required to provide evidence of identity?	No - as long as the applicant has clearly identified the agent by name, company name, address etc. in the letter of authority there should be no need for the agent's evidence of identity. ID from an agent has proven of no benefit whatsoever in the processing of RTI/IP applications. Maybe there should be some form of time limit placed on authority documents e.g. must be dated within last six months.
6.5	Should agencies be able to refund application fees for additional reasons? If so, what are appropriate criteria for refund of the fee?	Yes - if the agency provided incorrect advice to the applicant prior to lodging the application, (for example being told that agency has documents when it did not, when it should have been another agency etc.).
6.6	Are the Acts adequate for agencies to deal with applications on behalf of children?	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?	Yes - the further specified period should begin at the end of the initial processing period. If there are issues around when the specified time actually commences, simply amend Section 35 to state the period starts at the end of the initial processing period. Another consideration is that an actual date be specified, not a period, with this being the new due date. This would clarify to the Applicant the new due date for the receipt of their access decision.
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?	Yes - obviously there would need to be communication made with the applicant to gauge their views, however in any event, the OIC is going to informally resolve the matter by asking the agency to continue to process application.
6.9	Is the current system of charges estimate notices beneficial for applicants? Should removing the charges estimate notice system be considered?	Yes - the charges estimate notice (CEN) enables applicants and agencies to work together to reconsider/reduce the scope of the application and work towards the processing of an application at a reasonable cost. One recommended amendment would be that where no charges are payable, a CEN should not be required to be issued.
6.10	Should applicants be limited to receiving two charges estimate notices?	Generally agencies have the ability to negotiate reducing/amending scope with the applicant prior to issuing second CEN, however in some cases, the ability to issue a third CEN would be seen as 'working' with the applicant. What needs to be avoided is the administrative burden where an applicant comes back with a very minor change in wording and the whole process starts again. Most applicants negotiate in good faith with agencies, however some applicants are loath to negotiate. Where applicants are not willing to negotiate with an agency, the agency must be empowered to issue a decision on the basis the applicant was not willing to negotiate and the application is considered as being 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?	No - the charges estimate notice (CEN) is not reviewable at present and should remain so. The CEN process if operated correctly offers enough opportunities for applicants and agencies to negotiate the scope of an application. Agencies as part of the CEN are already open to questioning from applicants if they think the estimated time or cost is too high. To open the CEN process to review would potentially be an unnecessary administrative burden on government.
6.12	Should the requirement to provide a schedule of documents be maintained?	No - the schedule of documents should be optional, which an agency can produce as part of the charges estimate process (CEN). The current process is an unnecessary administrative burden on agencies. For larger applications a CEN is generally based on an estimate of the time it could take to process an application and therefore details of the type and number of documents would not be available/or lack accuracy, meaning a schedule cannot be produced or if produced, lack accuracy/benefit.
6.13	Should the threshold for third party consultations be reconsidered?	There is no doubt the lowering of the threshold for third party consultations has increased the number of consultations being undertaken by agencies. Whether this is good or bad has not been reviewed. Under the repealed Freedom of Information Act there may have been many instances where consultation should have been undertaken, but the decision maker at the time did not believe the third party would have had a "substantial" concern. Getting the balance right will always be difficult and adding back the "substantial" will not stop over cautious decision-makers consulting unnecessarily.
6.14	Should the Acts set out the process for determining whether the identity of applicants and third parties should be disclosed?	Yes - in light of the new disclosure log requirements, this would be beneficial.
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?	Yes - however this would depend on the documents. In addition, the ability to transfer an application achieves the same result by way of the agencies communicating and working together. There also needs to be a simplification of the transfer of monies where an application is transferred or lodged with the incorrect agency. The transfer of application fees between agencies is an unnecessary cost to government. Where an application is transferred from one agency to another, the second agency should only need confirmation the fee has been paid and not for the fee to be transferred.
6.16	How could prescribed written notices under the RTI Act and IP Act be made easier to read and understood by applicants?	Simplify the public interest balancing tests and remove the requirements to identify the irrelevant factors in the test.
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?	The current provisions clearly set out what is required to refuse access and the OIC has already provided a template for agencies to base their decision on. Within agencies maybe what should occur is that these provisions cannot be used by junior or less experienced decision makers. This can be managed by way of delegations, which would remove the need for legislative change.

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?	No
7.1	Do the categories of excluded documents and entities satisfactorily reflect the types of documents and entities which should not be subject to the RTI Act?	Yes
7.2	Are the exempt information categories satisfactory and appropriate?	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?	Yes to both questions, the process needs to be simplified, as it will also assist the applicant understanding the decision.
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?	Yes - more consistency in the threshold is required to assist in decision-making. It should be made clear the public interest factors listed in the Act are but some of the factors a decision maker may have to consider. However, as has been argued by the OIC recently - the list provided in the Act is not exhaustive.
7.5	Does there need to be additional protection for information in communications between Ministers and Departments?	No comment.
7.6	Should incoming government briefs continue to be exempt from the RTI Act?	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 comment.
7.8	Is it appropriate or necessary to continue the exclusion of Commission documents from the RTI Act beyond the term of the Inquiry?	No comment.
7.9	Are provisions in the RTI Act sufficient to deal with access applications for information relating to mining safety in Queensland?	No 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?	Yes - there are sufficient guidelines available to assist decision makers with this type of access requests.
8.1	Should fees and charges for access applications be more closely aligned with fees, for example, for access to court documents?	Yes - the current fees structure needs to be reviewed in detail, however simply adopting the court charging system without adequate analysis is not recommended. TMR has already done some analysis work on a graduated charging scale in which charges rise to match the increased time spent processing a request. It may also be timely to review the free processing time, which is currently set at five hours. Is five hours to high?
8.2	Should fees and charges be imposed equally on all applicants? Or should some applicants pay higher charges?	Fees and charges should be imposed equally on all applicants. If the level of fees and charges were based on the type of applicant it would potentially become an administrative burden on government. In addition, government may be open to criticism in terms of government being discriminatory and not open and accountable.
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?	Yes.
8.4	Should the RTI Act allow for fee waiver for applicants who apply for information about people treated in multiple HHSs?	No comment.
8.5	If so what should be the limits of this waiver?	No comment.
9.1	Should internal review remain optional? Is the current system working well?	Yes - internal review should remain optional.
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?	No comment.
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?	Yes.
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?	Yes - there should be flexibility to extend time to make internal review decisions. The process should be the same as for requesting an extension of time for initial decisions. Applicants seeking an internal and external review should be required under the legislation to clearly set out the grounds upon which they are requesting a review. If they do not clarify the grounds, the agency can then refuse to deal with the application. Some applicants are becoming obstructionists and abuse the system due to the lack of legislative options available to the agency.

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 - this has been a point of contention since the commencement of the acts as decision makers have questioned their authority and protection when releasing the information without a formal decision being made by either the agency or the OIC.
9.6	Should applicants have a right to appeal directly to QCAT? If so, should the Commonwealth model be adopted?	No.
10.1	Are current provisions sufficient to deal with the excessive use of OIC resources by repeat applicants?	No - there should be some consideration given to capping the number of applications that can be made by an individual under the *Information Privacy Act 2009* per financial year. Some applicants have lodged over 10 external review applications in a given year.
10.2	Are current provisions sufficient for agencies?	No - as per point 10.1, there should be some consideration given to capping the number of applications that can be made by an individual under the Information Privacy Act 2009 per financial year. Some applicants have lodged over 10 applications in a financial year, most of which were processed for free under the *Information Privacy Act 2009*. While we are not wishing to discourage people accessing their personal information, some applicants are abusing the process and mechanisms need to be in place to manage such abuse.
10.3	Should the Acts provide additional powers for the OIC to obtain documents in performance of its performance monitoring, auditing and reporting functions?	Yes, where required.
10.4	Should legislative time frames for external review be reconsidered? Is it appropriate to impose timeframes in relation to a quasi-judicial function?	No - if timeframes were to be placed on the OIC, this would have a substantial flow on effect on agencies. At present, depending on an agency's workload, it is sometimes not possible for an agency to comply with OIC due dates and extensions are negotiated. Legislative time frames placed on OIC would place additional resource pressure on them and agencies.
10.5	If so, what should the timeframes be?	N/A
11.1	What information should agencies provide for inclusion in the Annual Report?	What is provided now is adequate. However is there still a need for an annual report to be published? Could agencies not simply be required to publish certain statistics on their website within three months of the end of the financial year? Compliance with this could form part of the desktop audit the OIC already undertakes. This would lessen the need for such a resource intensive process and the statistics would be available in a timelier manner and not a year later.

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?	• The ability to stop the clock when negotiating the scope of the application with the applicant (outside of issuing a CEN). At present under the Act, there is no ability to issue a notice when negotiating the scope, in order to stop the clock. • Provision should be made to exclude any period when an office is closed such as the Christmas shut down period or when an office is closed due to natural disasters. • Agencies should have the ability to decline to handle repeat or vexatious requests that are an abuse of process. The current vexatious provision are too onerous. A provision similar to section 20 of the Tasmanian RTI Act should be considered. • Consideration should be given to a single website for all Disclosure Logs. Maybe it could form part of the Open Data website. • Section 29 of the RTI Act stipulates an agency is not required to search backup system for documents. This provision needs clarification when dealing with electronic documents such as emails. When an officer leaves employment, their mailbox is initially disabled and subsequently removed from the active servers and would only be available via a backup system. • The requirements to satisfy the substantial and unreasonable diversion of resources requirements need to be reviewed. When looking at this provision, what resources of an agency should be taken into account? It should not be harder for a large agency to argue this because it has more resources. It may have more resources, but only a limited allocation for RTI/IP matters.

Department of Transport and Main Roads

Review of the *Information Privacy Act 2009*: Privacy Provisions

	Question	Comments
1	What would be the advantages and disadvantages of aligning the IPPs with the APPs, or adopting the APPs in Queensland?	While adoption of the APPs would achieve consistency with the Commonwealth Privacy Act (Cwlth), if the definition of an Australian Privacy Principles (APPs) agency were to be adopted the privacy regime would apply to a wider audience than just Queensland government agencies. It then becomes a question as to whether the intent of the *Information Privacy Act 2009* (IP Act) is to be limited to Queensland government agencies, as it currently is, or whether it is intended to target a wider audience. Not all of the APPs may be appropriate to Queensland public sector agencies if the definition of an APP agency is not adopted. However, it would also be easier when entering into agreements/contracts with interstate agencies if we were on the same page as the Cwlth. A lot of interstate agencies request information from the Department of Transport and Main Roads (TMR) under their Cwlth Privacy Act, which has no bearing on TMR. To have uniformed principles would mean consistency with requests for information as well as compliance with contractors etc.
2	Does the IP Act inappropriately restrict the sharing of information? If so, in what ways? Do the exceptions need to be modified?	Yes - while some inconsistency in privacy regulations may sometimes affect the sharing of information in national schemes involving the participation of state and territory agencies e.g. NEVDIS and e-Health, it is usually other legislative confidentiality provisions that prohibit the sharing of information, not the IP Act. There is a level of restriction for law enforcement agencies that needs to be considered e.g. customs and the AFP have no legal authority to request information from TMR. If an agency does not have the specific legal authority to request information, they do not receive it. However, it’s the restrictions in our other legislation that override the IP Act when releasing to interstate law enforcements and Cwlth agencies that don't have the specific powers.
3	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*?	Yes - the proposed definition is simpler. A change may take away the confusion over "what can be ascertained" from that information.

4	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?	If it is considered appropriate to change the IPPs to reflect the APPs, is may be appropriate for GOCs to be included in the definition of an agency in the IP Act. If the IPPs remain the same, it is probably appropriate to leave as is.
5	Should section 33 be revised to ensure it accommodates the realities of working with personal information in the online environment?	If the IPPs are changed to reflect the APPs, overseas transfer will be included in APP8. Therefore, should APP8 be broadened to exclude temporary transfer of data? In any case, more work appears to be required in the area of online technology e.g. is there anything in either the IP Act or the Cwlth Privacy Act that deals with cookies or cloud computing or anything that requires a person to agree to privacy terms and conditions before downloading a mobile phone app? It would be beneficial to have the term "transfer" defined in the act and exclude temporary transfers of data for the purposes of email and smart phone (blackberry) email routes. Alternatively, with the view of moving over to the cloud, TMR would see it as desirable that agencies be able to transfer information to those countries with no or limited privacy legislation and contract them to take on the liability for any breaches that occur. This may reduce costs.
6	Does section 33 present problems for agencies in placing personal information online?	No – however, it would be useful if section 33 defined what the term "transfer" means as opposed to "disclosure". Section 23 explains what a disclosure is but there is no guidance about the difference between transfer and disclosure of personal information.
7	Should an 'accountability' approach be considered for Queensland?	Yes
8	Should the IP Act provide more detail about how complaints should be dealt with?	Yes - a basic outline e.g. written, ID required would be beneficial. Other approaches such as nominated officer and compliant management processes etc would best be handled operationally.
9	Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged?	Yes -a standard approach to responding to privacy complaints would be beneficial so as individuals receive the same level of response across the state. Also, once a complainant has received a decision from an agency, they should be able to go to the OIC without waiting the remainder of the 45 business day period.
10	Are additional powers for the Information Commissioner to investigate matters potentially subject to a compliance notice necessary?	No
11	Should a parent's ability to do things on behalf of a child be limited to Chapter 3 access and amendment applications?	While the legal age in Australia is 18, it is widely recognised that not all 'minors' may be in the position of having a parent as defined in the IP Act. Therefore, it may be beneficial to broaden the scope of access and amendment applications for children under the age of 18 as well as people who may have a power of attorney.
12	Should the definition of 'generally available publication' be clarified? Is the Commonwealth provision a useful model?	Yes - the definition needs to be descriptive. Any thought been given to specifically include online publications in the definition?

13	Should the reference to 'documents' in the IPPs be removed; and if so how this would be regulated?	No - but perhaps it could be more defined in the definition in Part 2. Expand the definition of a document to include other forms of capture such as email, images and verbal. TMR has had an instance were a staff member verbally disclosed personal information to a third party. This technically under IPP11 was considered not to be a breach because it wasn't in a document form. Note: If you removed the reference to "document" from the IPPs, this would affect section 13 -16 and schedule one.
14	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
15	Should the words 'ask for' be replaced with 'collect' for the purposes of IPPs 2 and 3?	Yes - it would be good to have consistency across all privacy jurisdictions, and by replacing 'ask for' with 'collect' it would ensure that collection is open and transparent.