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RTI and Privacy Review  
Department of Justice and Attorney-General  
By email: [FeedbackRTIandprivacy@justice.qld.gov.au](mailto:FeedbackRTIandprivacy@justice.qld.gov.au)

Dear Sir/Madam

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

The Office of the Australian Information Commissioner (OAIC) welcomes the opportunity to provide comments to the review of Queensland's *Information Privacy Act 2009* (Qld) (the IP Act) and *Right to Information Act 2009* (Qld) (RTI Act).

### **The Office of the Australian Information Commissioner**

The OAIC is an independent statutory agency headed by the Australian Information Commissioner, supported by the Freedom of Information (FOI) Commissioner and the Privacy Commissioner. The OAIC brings together the functions of information policy and independent oversight of privacy protection and FOI in one agency, to advise the development of consistent, workable information policy across all Australian Government agencies.

### **National consistency in privacy regulation**

In April 2009, the former Office of the Privacy Commissioner (OPC) provided a submission to the Queensland Government on the exposure drafts of the Right to Information and Information Privacy Bills. The OPC's comments aimed to assist the process of achieving national consistency in privacy regulation across Australian jurisdictions, as recommended in the Australian Law Reform Commission's Report 108: *For Your Information: Australian Privacy Law and Practice*.<sup>1</sup>

The OAIC remains strongly in favour of national consistency. The review of the IP Act is timely given recent amendments to Commonwealth privacy legislation.

### **Reforms to the *Privacy Act 1988* (Cth)**

The *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth) was introduced into the Federal Parliament on 23 May 2012 and passed with amendments on 29 November 2012. The Act introduces a number of significant changes to the *Privacy Act 1988* (Cth) (Privacy Act), which commence on 12 March 2014. In brief, these changes include:

- replacement of the Information Privacy Principles and National Privacy Principles with a single set of new, harmonised, privacy principles that will regulate the handling of

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<sup>1</sup> The report is available at [www.oaic.gov.au/information-policy/information-policy-resources/information-policy-reports/open-public-sector-information-from-principles-to-practice](http://www.oaic.gov.au/information-policy/information-policy-resources/information-policy-reports/open-public-sector-information-from-principles-to-practice).

personal information by Australian government agencies and businesses – the Australian Privacy Principles (APPs)

- enhanced powers for the Australian Information Commissioner
- changes to credit reporting laws.

Further information on the changes is available on the OAIC's website.<sup>2</sup>

Queensland's review of the privacy provisions of the IP Act provides an opportunity to update the Act to achieve consistency with the amended Privacy Act. The OAIC considers that there is considerable merit in a nationally consistent regulatory framework, and notes that one of the objects of the amended Privacy Act is 'to provide the basis for nationally consistent regulation of privacy and the handling of personal information.' We would welcome amendments to the IP Act that seek to achieve consistency with the amended Privacy Act. This will increase clarity for entities which are required to comply with privacy legislation in multiple jurisdictions and reduce compliance burdens.

We note that the discussion paper on the review of the IP Act makes reference to further amendments to the Privacy Act through the introduction of mandatory data breach notification provisions which it states will take effect in March 2014. The Privacy Amendment (Privacy Alerts) Bill 2013 (Cth), which would have introduced these new requirements, was passed by the House of Representatives in June 2013 but was not passed by the Senate before the Parliament was prorogued on 5 August 2013. It is a matter for the new Government as to whether it will reintroduce mandatory data breach notification legislation.

### **Access to information reform**

With regard to your review of the RTI Act, we would like to draw your attention to the recent review of the Commonwealth access to information regime which may be of interest as a point of comparison. Dr Allan Hawke AC's review of the *Freedom of Information Act 1982* (Cth) (FOI Act) and *Australian Information Commissioner Act 2010* (Cth) was tabled in the Australian Parliament on 2 August 2013.<sup>3</sup> The review began two years after reforms to the FOI Act in 2009-10 which sought to create a cultural change in favour of disclosure of government information unless there are compelling public interest reasons for withholding it, and put a greater emphasis on the proactive publication of information by government agencies.

The Information Commissioner and FOI Commissioner made a submission to Dr Hawke which covered a range of issues including the impact of the 2009-10 reforms, how the FOI Act could be made more effective, exemptions in the FOI Act, and the role of FOI fees and charges. In a few cases, the OAIC recommended reforming aspects of the FOI Act modelled on provisions of the RTI Act.<sup>4</sup> Specific areas where the Commissioners drew on the RTI Act included

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<sup>2</sup> [www.oaic.gov.au/privacy/privacy-act/privacy-law-reform](http://www.oaic.gov.au/privacy/privacy-act/privacy-law-reform)

<sup>3</sup> The report is available at [www.ag.gov.au/Consultations/Pages/ReviewofFOIlaws.aspx](http://www.ag.gov.au/Consultations/Pages/ReviewofFOIlaws.aspx).

<sup>4</sup> The submission is available at [www.oaic.gov.au/news-and-events/submissions/foi-submissions/review-of-freedom-of-information-legislation](http://www.oaic.gov.au/news-and-events/submissions/foi-submissions/review-of-freedom-of-information-legislation). The Commissioners also made a supplementary submission to Dr Hawke, available at [www.oaic.gov.au/news-and-events/submissions/foi-submissions/review-of-freedom-of-information-legislation-supplementary-submission](http://www.oaic.gov.au/news-and-events/submissions/foi-submissions/review-of-freedom-of-information-legislation-supplementary-submission). The OAIC's advice to the Australian Government in response to Dr Hawke's recommendations is also available on our website, at [www.oaic.gov.au/news-and-](http://www.oaic.gov.au/news-and-)

recommendations about introducing faster, more effective review processes, more practical statutory timeframes and time-limited exemptions for specific classes of documents under the FOI Act.

Also of possible relevance to your review is the Information Commissioner's February 2012 *Review of Charges under the Freedom of Information Act 1982* (Charges Review) which involved an in-depth analysis of the FOI charges regime at the Commonwealth level and made several recommendations taken up by Dr Hawke in his report.<sup>5</sup>

Although the matters raised in the Commissioners' submission to Dr Hawke and the Charges Review are specific to the Commonwealth FOI Act, some of the same legislative considerations for open government may arise in considering reforms to the RTI Act.

Thank you for the opportunity to provide a submission to the review. We hope that these comments are of assistance.

Yours sincerely



Prof John McMillan  
Australian Information Commissioner

November 2013

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[events/statements/foi-statements/dr-allan-hawke-review-of-foi-and-aic-acts/hawke-review-advice-to-government.](#)

<sup>5</sup> The report is available at [www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-reports/review-of-charges-under-the-freedom-of-information-act-1982](http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-reports/review-of-charges-under-the-freedom-of-information-act-1982).