Queensland Government Chief Information Office response to the following discussion papers:

1. Review of the *Information Privacy Act 2009*: Privacy Provisions
2. Review of the *Right to Information Act 2009* and Chapter 3 of the Information Privacy Act 2009

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

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

QGCIO response:

Yes, the IP Act still restricts the sharing of information. We note that the current exceptions include circumstances where: individuals have consented, lessens a threat to life, health or safety; required by law, or necessary for law enforcement reasons.

We believe it is difficult to make a direct connection to threat of life, health and safety, and believe that the IP act should be broadened to allow agencies to have the flexibility to share information between government agencies, where it will assist in service delivery (whether internal or external). For example, a case worker working in agency 'x', should have access to information they need to make decisions about their client. The information they need may originate from agency 'y' for example, it could include data about how many days of school a child has missed, – and whilst this information doesn't directly threaten life, health, or safety, will contribute to decisions that the case worker may make about their client.

Information sharing between agencies needs to be made based on risk and a greater good assessment. For example the risk of not sharing the information is often much greater that the risk that the information would be improperly used through making it more open between agencies.

QGCIO recommends an explicit statement in the legislation that if greater good can be shown it is a reasonable defence in case of a privacy breach.

In addition the QGCIO recommends that the legislation be amended to more easily enable agencies to share information within the Queensland government to contribute to service delivery (both internal and external) on a need to know basis. For example, not all information is automatically made available, but is un-restrictively made available to those who need it.

Furthermore remove the use of "exclusions" and instead make a stronger statement within the IP Act to enable agencies in the Queensland Government to freely share information between agencies. The focus is on the boundary "outside of Government" and all agencies are treated as a part of the broader Queensland Government. This will shift the traditional boundary from around the custodial agency to a wider boundary around the Queensland Government as a whole.

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?

QGCIO response:

Yes, the QGCIO agrees that the definition of personal information should be amended to bring it into line with the commonwealth definition, in particular:

a) The removal of the reference to a database from the definition.
b) That the privacy principles should apply to information about an individual who is 'identified or reasonably identifiable' rather than information about an individual whose 'identity' is apparent, or reasonably ascertainable. This places a focus on the individual, rather than an identity.

4.0 Should government owned corporations in Queensland be subject to the Queensland's IP Act, or should they continue to the bound by the Commonwealth Privacy Act?

QGCIO response:

The QGCIO believes we should include GOCS within the scope of the Qld IP Act. Particularly where the Commonwealth legislation will place restrictions on the ability for GOC's to adopt cloud services from overseas. In addition, there may be benefit in enabling Queensland government agencies to more easily share information with GOCs.

However controls need to be establish to ensure that no commercial conflicts arise where GOC's can get access to Queensland government information for commercial advantage.

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

QGCIO response:

Yes, the QGCIO believes that the IP Act should be revised to ensure it accommodates the realities of working with personal information in the online environment. In particular the recent Commission of Audit Report has made a strong statement around cloud based computing. Specifically that "the Government utilise as appropriate cloud-based computing and other emerging technologies as enablers to complement its 'ICT as a service' strategy". As such the IP Act should not restrict the option of utilising (where appropriate) overseas service providers. Instead emphasis should be place in ensuring that contracts address concerns and are appropriately managed.

6.0 Does section 33 present problems for agencies in placing personal information online?

7.0 Should an "accountability" approach be considered for Queensland?

QGCIO response:

The QGCIO believes that section 33 can be perceived to present problems for agencies when adopting cloud services from overseas providers and providing secure limited web access to appropriate service delivery entities. Noting the exceptions the QGCIO believes that once again a greater good exception needs to be considered.

Agencies moving applications to cloud based environment are unsure of the physical location of the information stored and used by that application and in many cases this may be overseas/offshore to Australia. The Act needs to make a distinction between the storage of personal information used within a secure government application that happens to be online versus the publishing of personal information made accessible to internet users.

The QGCIO believes that an accountability approach is essential if the acceptable conditions (e.g. greater good) for use of private information are to be less onerous.

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

QGCIO response:

Yes, the reference to "documents" should be removed as it doesn't reflect the flexible consumption of information in the new technology era. The wording can easily be amended to focus on the information, rather that the "container" and/or "format" it is being accessed, used or stored in. Some example wording for some IPP's provided:

IPP1 – An agency must not collect personal information unless - …

IPP4 – An agency having control of personal information must ensure that – (a) the information is protected against….

IPP5 – An agency having control of personal information must take all reasonable steps to ensure that a person can find out – (a) whether the agency has control of the personal information

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?

QGCIO response:

Agree, QGCIO recommends that the element of reasonableness be included as no information can be utilised whilst also being kept 100% secure at the same time. The only way to ensure that information is protected against loss and misuse is to totally lock it down and not use it, and this would defeat the purpose.

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

QGCIO response:

Yes, QGCIO agrees that the words 'ask for' be replaced with 'collect' for the purposes of IPP2 and IPP3. This is in line with the realities of how information can be gathered in the digital era e.g. CCTV footage, and where people complete online forms where the agency hasn't 'asked' for the information.

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

1.1 Is the Act's Primary object still relevant? If not, why not?

QGCIO response:

Yes, the object of the act is still relevant.

1.2 Is the 'push model' appropriate and effective? If not, why not?

QGCIO response:

Yes, the push model is appropriate, however how effectively it's been implemented is the question. The mandates to proactively release data has been around for many years, but it's only recently with the open data initiative that Queensland seems to be making progress. This is probably in part due to the technological capability allowing this to be easier, but also that the leadership behind the open data has been stronger and more targeted than any other initiative in the past. However there still remain many cultural issues with there still being reluctance by agencies to release information.

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?

QGCIO response:

As long as existing IP Act provisions are maintained then it would make sense to have a single process for accessing any releasable government information. If both Acts are to be maintained, a service could be established to make a determination for each FOI application as to which Act it needs to be processed under.

3.2 Should the requirement for an agency to again consider whether the application can be made under the IP Act be retained?

QGCIO response:

Again an assessment process which applications are filtered through before deciding which Act an application is to be processed under would help alleviate this issue.

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?

QGCIO response:

A commitment has been made to increase transparency and accountability within the Queensland Government. As such where a document of an agency or a document of a Minister has been used for decision making it should be made available.

Establishing custodianship processes related to document ownership when documents are being created would help identify whether documents are "agency documents" or "ministerial documents". There is a linkage here to the agency information management strategy and process. However documents held by a Minister which do not relate to the affairs of an agency' (e.g. party political documents) should not be processed by agencies, unless these documents have been used for agency decision making.

Furthermore the QGCIO believe that the term "document" is it too definitive and doesn't allow for the progressive nature of electronic information being consumed/used in all types of formats.

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.

QGCIO response:

Yes, the government has made a commitment to increased transparency. In particular, government is increasingly looking to the private sector to provide the government with advice, information and services, which will form a basis for government decision making. As such there is a degree of visibility and accountability needed to access background information to understand why a decision was made. The risk is that in the absence of the ability to ascertain clear accountability that Queensland Government will be perhaps in some circumstances be held to account unfairly. Work is needed to ensure that contracting organisations are aware that when contracting to government, related information is subject to RTI – this could be achieved through provisions in contract.

Some exemptions for volunteer and genuine community service groups should be allowed as they could not cope with extra reporting and their contribution would be lost.

5.1 Should agencies with websites be required to publish publication schemes on their website?

QGCIO response:

The purpose of a publication scheme was originally designed to ensure that agencies publish a minimum set /types of information (the 7 classes of information). Publication schemes were also established in an era where the information itself was not routinely nor proactively available online (and people needed to know what was available and how to find it).

Whilst the QGCIO has no issues with the types of information that agencies need to publish, we think that the emphasis should not be on publishing the publication scheme but rather on publishing the information content itself. For example on some agency websites, the publication scheme really only acts as a navigation to lead you to where the actual information is. With the move to publishing more and more data, these publication schemes will just become larger. There need to be some flexibility on how people can find information and how it can be consumed, rather than thinking in the traditional sense. Changes to information and service delivery channels will change faster than legislation. The key thing whether through a central open data portal, commercially rss services / itunes or binary services is that the information can be found.

5.3 Are there additional new ways that Government can make information available?

QGCIO response:

The United States Data Portal utilises an "Open Data Directive" to prescribe specifically what agency obligations are with respect to publication and is an additional step which makes clear and in detail what the minimum requirements are for publishing government information. Queensland may benefit from a similar approach.

Risk is an obstacle for many agencies in publishing more information. Increasing acceptable risk (in a measured) way as Queensland Government "as a whole" will assist agencies in publishing more information.

7.2 Are the exempt information categories satisfactory and appropriate?

QGCIO response:

If the outcome of the RTI is to support transparency and accountability, then Cab documents whose release will not damage national security, law enforcement and public safety information etc. could be removed from the automatic exception category.