Office of the Chief Executive Officer
Level 2, 15 Green Square Close
Fortitude Valley QLD 4006

GPO Box 2765
Brisbane QLD 4001

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RTI and Privacy Review
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4 001

By email: FeedbackRTIandprivacy@justice.qld.gov.au

Dear Sir / Madam

Queensland Urban Utilities' submission on the review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009* Discussion Paper

Thank you for the opportunity to provide a submission on the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009* Discussion Paper ("the Discussion Paper").

The Central SEQ Distributor-Retailer Authority, trading as Queensland Urban Utilities ("QUU"), is a statutory authority established under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (Qld) ("DR Act") and taken to be an agency under the *Right to Information Act 2009* ("RTI Act") and the Information Privacy Act 2009 ("IP Act ").[1]
As background, QUU is responsible for the provision of water and wastewater services in the geographic area of its five participating local governments which are:

- Brisbane City Council;
- Ipswich City Council;
- Lockyer Valley Regional Council
- Scenic Rim Regional Council; and
- Somerset Regional Council.

As such, in providing water and wastewater services, QUUs functions necessarily also include charging customers for these services and managing customer enquiries, service requests and complaints.

Since its establishment on 1 July 2010, QUU has received numerous requests for information under the RTI Act and the IP Act, and in processing these applications,

[1] Sections 17 and 17A of the DR Act.

has identified a number of issues and challenges the subject of this discussion paper.

***Information Privacy Act 2009* (Qld)**

1.0 No comment.

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

QUU provides water and wastewater services to approximately 1.3 million residents in South East Queensland. There are circumstances where it would be beneficial to customers for information to be shared between agencies, without agencies requiring customers to provide consent to the transfer of such data. This is particularly administratively burdensome when the transfer of information is required on a large scale.

For example, QUU requires access to Centrelink data in order to provide eligible pensioners with Brisbane City Council ("BCC") and State Government water rebates. Eligible customers previously provided consents for the transfer of information to BCC when BCC provided water and sewerage services, however now that these services have been transferred to QUU, it is arguable that the consents originally given to BCC cannot be transferred to QUU. To obtain new consents from the 70,000 or so eligible QUU customers would be extremely administratively and financially onerous for QUU. Further, given that the target customer base is pensioners, this also places an unnecessary burden on this demographic and may result in a low response rate. The bottom line is that eligible pensioners may miss out on getting the water rebates applied to their water and wastewater accounts.

In circumstances such as these it would be preferable, for both the agencies and the individuals, that the information is shared between agencies rather than requiring individuals to provide consents or information to multiple agencies.

3.0 Should the definition of personal information in the IP Act be amended to bring it in line with the definition in the Commonwealth Privacy Amendment Act 2012?

QUU has no issue with the proposed amendment to the definition of "personal information".

4.0 No comment.

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

Yes. As organisations look for ways to make administrative and economic efficiencies and to remain commercially viable and technologically relevant to meet the requirements of their customers, it is inevitable that the online environment, both domestic and international, will become more and more important. Accordingly, section 33 of the IP Act should be amended to

distinguish between temporary and low risk overseas transfers of information and higher risk storage of personal information on overseas servers.

6.0 No comment.

7.0 No comment.

8.0 Should the IP Act provide more detail about how complaints should be dealt with?

While the IP Act provides very little guidance to agencies on how they are to deal with privacy complaints, most agencies are otherwise required to have in place a general complaints management process, within which privacy complaints would fall, compliant with relevant Codes, regulations or Australian Standards for complaints management.

As such, it may prove administratively onerous to have duplicate complaints processes within the one agency. What may be useful, however, is a prescribed privacy complaint notice or application form, the submission of which would make it clearer to agencies the date from which timeframes commence, and that a privacy complaint has, in fact been made, so the complaint can be channelled more effectively to the relevant privacy officer within the agency (in QUU's case, the Privacy Officer role sits outside the general complaints management process).

9.0 Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged?

There are many factors that may affect the way in which a privacy complaint is dealt with and the time it takes for a privacy complaint to be investigated and addressed. Accordingly, the IP Act needs to provide some flexibility to ensure due process can be carried out. Perhaps a more effective benchmark would be providing that an individual cannot make a complaint to the Information Commissioner unless the individual has first complained to the agency; the individual has received a response but considers the response to be inadequate; or at least 45 business days have elapsed since the complaint was made and the individual has not received any response or been advised by the agency a reasonable timeframe in which a response is to be provided considering the individual circumstances of the case.

10.0 No comment.

11.0 No comment.

12.0 Should the definition of 'generally available publication' be clarified? Is the Commonwealth provision a useful model?

Yes, the definition of 'generally available publication' should be clarified to include those documents available for a fee. The nature of such documents is that, as long as the prescribed fee is paid, anyone can access the document,

disclosure is not dependant on any proprietary right in the information contained within.

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

No. It would be very difficult for agencies to control the collection or disclosure verbally, of personal information and it would be difficult to prove such a breach. Agencies are required to have policies and procedures in place to guide staff on its privacy obligations. However, despite an agency having the most stringent privacy handling and management processes, such instruments are still only as effective as the employees' will to abide by them. If the State did decide to go down this route, perhaps a defence provision could be included, proof of which is the demonstration by the agency of the implementation of all reasonable and appropriate policies, procedures, training etc.

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?

Yes, as referred to above in 13.0, agencies can have in place a myriad of mitigation measures against loss and misuse, but ultimately they are reliant on employees complying with them. There needs to be an element of reasonableness so as not to place too great a compliance burden on agencies.

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

No. individuals may provide information to an agency that the agency has no use for or is not administratively prepared to deal with. This may place an unnecessary additional administrative and financial burden, as well as liability, on the agency to deal with the unwanted or non-useful personal information in accordance with the IPPs. If the personal information was not requested by an agency, it is unlikely that it will be dealt with in such a way as to be in breach of the IPPs in any regard, therefore the risk is low.

***Right to Information Act 2009* (Qld)**

1.0 No comment.

2.0 No comment.

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?

To minimise confusion for applicants and minimise extensive cross-referencing and communications between the agency and an applicant prior to the commencement of the processing period (25 working days), the relevant right of access provisions for personal and non-personal information should be contained in the one piece of legislation.

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?

If there is further clarification required between an agency and an applicant to ensure the application can be processed under the correct Act, the processing period should not commence until the application meets all relevant criteria and can clearly be processed in accordance with the provisions of one Act.

3.2 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, all timeframes should be consistent throughout the Acts.

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, the RTI Act should include a document that is not in the possession of an agency or Ministers as a ground on which access may be refused under section 47(3).

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?

If a document that is not in the possession of an agency or Ministers becomes a ground on which access may be refused under section 47(3) of the RTI Act (as proposed, above), then it would be a reviewable decision.

4.3 Should the timeframe for making a decision that a document or entity is outside the scope of the Act be extended?

The timeframes for providing information and seeking information are not consistent throughout the Acts. It would simplify a decision maker's process by streamlining the timeframes for all other processes (10 business days, 15 business days and 20 business days) outside of the processing period (25 business days).

4.4 No comment

4.5 No comment

4.6 No comment.

5.1 No comment.

5.2 Would agencies benefit from further guidance on publication schemes?

The provisions in the Act and available Ministerial guidelines provide clear instruction about the requirement for a publication scheme as well as information to be included in a publication scheme.

5.3 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 access application form should be retained as it provides applicants with a consistent set of statements that require a response to make the application compliant with the requirements of the Acts. If the current access application form was no longer mandatory or discontinued, it is likely that agencies would see an increase in non-compliant applications, therefore increasing the resources required to manage these application to compliant status. It has been argued that the requirement to apply on a form is unnecessarily bureaucratic, creating red tape, however it could also be argued that requiring applicants to digest the relevant legislative provisions setting out the prescribed application requirements is just as onerous.

6.2 Should the amendment form be retained? Should it remain compulsory?

Yes, as per comments in 6.1, 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?

No. There should be a consistent approach to certified document so as not to create confusion.

6.4 Should agents be required to provide evidence of identity?

Where an agent is acting or representing a person making an application, and the agent is not a registered solicitor or a representative of a law firm, the agent should be required to provide evidence of identity.

6.5 Should agencies be able to refund application fees for additional reasons? If so, what are appropriate criteria for refund of the fee?

The reasons currently provided for in the Act are sufficient.

6.6 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?

The Act sets out the minimum processing period of 25 business days. Where an agency requests an extension to the processing period, the extension should commence from Day 26 until the end of the extension period. In these instances, the Minister or agency would have already determined that they would require an extension as the investigation and decision would not be finalised within the prescribed minimum 25 business day processing period and/or do not wish to make a deemed decision for an application.

6.8 No comment.

6.9 Is the current system of charges estimate notices beneficial for applicants? Should removing the charges estimate notice system be considered?

In QUU's experience, the majority of applications require less than 5 hours processing time so no charges are payable. Where charges are payable, the applicants usually revise the scope of their application such that the number of hours of processing time is reduced to less than 5 hours. In our experience this system has been effective in streamlining applications so the applicant can access targeted and specific information.

6.10 Should applicants be limited to receiving two charges estimate notices?

Yes. Two charges estimate notices is sufficient to serve the intended purpose. Further charges estimate notices would create additional administrative burden on agencies and prolong the processing period.

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. In accordance with the provisions of the RTI Act and RTI Regulation, an agency can charge an applicant for processing their application where the agency can determine the processing time frame will take longer than 5 hours.

In accordance with the provisions of the RTI Act an applicant can confirm, narrow or withdraw their application within the prescribed period, otherwise the application is taken to be withdrawn. This should be a sufficient process whereby an applicant can seek a review of the decision made in relation to the charges estimate notice.

6.12 No comment.

6.13 Should the threshold for third party consultations be reconsidered?

In accordance with the current third party provisions in the RTI Act, decision-makers are required to consult with third parties where they are considering releasing information and disclosure of the information may reasonably be expected to be of concern to the third party. If this threshold is reduced, a greater onus will be placed

on decision-makers to determine the impact that disclosing the information will have on the third party.

Decision-makers are not in a qualified position to determine how releasing information may impact a third party.

6.14 Should the Acts set out the process for determining whether the identity of applicants and third parties should be disclosed?

No, this is better left at the discretion of the decision-maker on a case-by-case basis rather than being prescribed in legislation.

Perhaps the RTI application form could contain a consent provision for third party consultation to streamline the process.

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?

If documents are held by two agencies, then the agencies must determine which agency officially owns the documents given the functions performed by the agency and the relationship between the functions and the documents. Once a determination is made, the applicant can be advised and the relevant agency owner will process the application.

6.16 No comment.

6.17 No comment.

6.18 No comment.

7.1 No comment.

7.2 No comment.

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?

To make it easier for decision-makers, part 3 and 4 should be combined and where applicable the duplicated factors removed.

7.4 No comment.

7.5 No comment.

7.6 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, Schedule 2, Part 1 item 4 of the RTI Act should be clarified to ensure protection to documents produced or received by the Commission, after the Commission ceases to exist, due to the broad powers of a Commission to require the production of documents, including those that may be sensitive or contentious.

7.8 Is it appropriate or necessary to continue the exclusion of Commission documents from the RTI Act beyond the term of the Inquiry?

Yes, as set out in 7.7, above.

7.9 No comment.

7.10 No comment.

8.1 No comment.

8.2 Should fees and charges be imposed equally on all applicants? Or should some applicants pay higher charges?

Charges should be imposed equally.

8.3 No comment.

8.4 No comment.

8.5 No comment.

9.1 Should internal review remain optional? Is the current system working well?

QUU has no issue with the current optional internal review process.

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?

In certain circumstances it may be beneficial for the Commissioner to have the power to remit matters to agencies for internal review. *9.3 No comment.*

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?

Flexibility to extend the time in which agencies have to make internal review decision would be beneficial to deal with cases of extenuating circumstances.

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, the RTI Act should provide that documents released as a result of an informal resolution settlement are authorised under the Act to provide legal protection to agencies. Perhaps once an informal resolution settlement is reached, a direction can be issued under the RTI Act that has this legal effect.

9.6 No comment.

10.1-10.5 No comment.

11.1 No comment.

Yours faithfully

ROBIN LEWIS
Acting Chief Executive Officer
Queensland Urban Utilities