Crime and Corruption Commission
QUEENSLAND

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2016 Consultation on the Review of the *Right to Information Act 2009* and *Information Privacy Act 2009* – Consultation Paper

Submission by the
Crime and Corruption Commission

Contents

Crime and Corruption Commission
GPO Box 3123, Brisbane QLD 4001

Level 2, North Tower Green Square
515 St Pauls Terrace
Fortitude Valley QLD 4006

Phone: 07 3360 6060
(toll-free outside Brisbane: 1800 061 611)
Fax: 07 3360 6333
Email: mailbox@ccc.qld.gov.au

www.ccc.qld.gov.au

Responses to questions posed in the Consultation Paper

7. Has anything changed since 2013 to suggest there is no longer support for one single point of access under the RTI Act for both personal and non-personal information?

To reiterate our 2013 position, it is the Crime and Corruption Commission's **(CCC)** view that the right of access for personal and non-personal information should be changed to the *Right to Information Act 2009* (Qld) **(RTI Act)** as a single entry point. Such a change would decrease the levels of confusion experienced by applicants who are often unclear about the appropriate Act under which to make an access application.

This confusion is enhanced by the fact that, when assessing applications under the *Information Privacy Act 2009* (Qld) **(IP Act)**, decision-makers must:

(a) have regard to relevant exemptions and public interest factors contained in the RTI Act; and

(b) when making decisions, direct applicants who have requested access to information under the IP regime, back to factors and exemptions contained in the RTI Act.

It is submitted that a return to a single Act may assist in decreasing frustrations felt by applicants who are attempting to navigate what is already a very complex regime.

8. Noting the 2013 response, should the requirement to provide a schedule of documents be maintained?

In a general sense, the production and issue of a schedule of documents in access applications may be useful for applicants as the schedule sets out the documents relevant to the scope of the access application, including class, and time required to review the documents, where estimated processing time and costs are included in an initial charges estimate notice.

However, the majority of documents assessed by the CCC are covered under exemption categories and are not released. As permitted under the RTI Act, exempt information is not included in the schedule of documents. Therefore, producing a schedule of documents provides little value to the applicant other than setting out the documents being considered for release. The CCC considers it appropriate to abolish this requirement.

9. Should the threshold for third party consultations be changed so that consultation is required where disclosure of documents would be 'of substantial concern' to a party?

If there was a change to the threshold for third party consultation from 'reasonable concern' to 'substantial concern', the CCC recommends the OIC provide guidance to decision-makers to ensure consistent interpretation of 'substantial concern' when determining if third party consent is required.

11. Are the exempt information categories satisfactory and appropriate? Are further categories of exemption needed? Should there be fewer exemptions?

The CCC supports the existing exemption that applies to the CCC – the CCC exempt information provision – under Schedule 3, section 10(4) of the RTI Act.

However, there is one issue which may be best addressed by legislative amendment in order to provide certainty. As a result of the amendments made under the *Crime and Misconduct and Other Legislation Amendment Act 2014* **(CMOLA Act)** it is not certain that documents held by the CCC which involve "official misconduct" come within the corruption function as per the definition of corrupt conduct in section 15 of the CC Act.

12. Given the 2013 responses, should the public interest balancing test be simplified; and if so how? Should duplicated factors be removed is there another way of simplifying the test?

The CCC considers the public interest tests in Schedule 4, Parts 3 and 4 to be duplicates (with the qualification that one is slanted towards non-disclosure due to public interest in same, while the other is not), and therefore of little utility to decision-makers. The CCC supports the removal of duplicate public interest factors.

15. Are there benefits in departmental disclosure logs having information about who has applied for information, and whether they have applied on behalf of another entity?

The CCC supports the continued provision of non-mandatory requirements for statutory bodies like the CCC to publish details of access applications and documents released on their disclosure logs under section 78A of the RTI Act.

20. Should internal review remain optional? Should the OIC be able to require an agency to conduct an internal review after it receives an application for external review?

The CCC has an internal review process and delegated decision-makers for internal review applications. Consistent with internal review not being required under the IP Act, the CCC supports internal review remaining optional under the RTI Act.

21. Should applicants have a right to appeal directly to QCAT? If so, should this be restricted to an appeal on a question of law, or should it extend to a full merits review?

The CCC reiterates its 2013 view that it supports the current review model whereby the OIC conducts an external review, before any appeal to QCAT may be lodged. Providing a mechanism whereby applicants have an appeal right to QCAT may serve to impose additional burdens upon QCAT, for matters that could have been dealt with efficiently by the OIC.

24. What would be the advantages and disadvantages of aligning the IPPs and/or the NPPs with the APPs, or adopting the APPs in Queensland?

The CCC supports the harmonisation of aligning Federal and State information privacy principles, bur recognises there may be a substantial amount of work for individual agencies to align to the 'adopted' principles.

25. Should the definition of 'personal information' in the IP Act be the same as the definition in the Commonwealth Act?

The CCC supports the harmonisation of the Federal definition of 'personal information' with the IP Act.

28. Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged? How should this be approached?

Currently, an individual may make a privacy complaint to the information commissioner only where the individual has first made a complaint to the relevant agency under the agency's complaints management system; at least 45 business days has passed since the complaint was made; and the individual has either not received a response or received an inadequate response.

The IP Act may provide more flexibility around the timeframe for complaints to be lodged with the OIC by stating that individuals may make a privacy complaint to the information commissioner where:

- The individual has made a complaint to the relevant agency under the relevant agency's complaints management system; and
- The individual and the relevant agency have exhausted all available options to resolve the individual's complaint; and
- Within 45 business days of the date of the complaint, the individual has received a response from the relevant agency that the individual considers to be inadequate; or
- 45 business days have elapsed from the date the complaint was made to the relevant agency and the individual has not received a response from the agency.

The additional third point would allow an individual who has, within 45 business days received a response they consider inadequate, to escalate their complaint to the Information Commissioner.

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

The CCC supports the harmonisation of the Federal definition of 'generally available publication' with the IP Act.

Other issues not raised in Consultation Paper

Extension of time for internal reviews

Currently the RTI Act and IP Act do not provide for decision-makers of internal review applications to consult with the applicant to either extend the processing time or consult with third parties.

Under the RTI Act and IP Act, the decision-maker for an internal review application is tasked with making a decision as if the original decision for the access application had not been made. However, the decision-maker for an internal review application does not have the option to seek an extension of the processing period to provide a considered decision or seek an extension of the processing period to consult with relevant third parties (if required). These extensions are available to the original decision-maker and are not available to the decision-maker for an internal review application.

The CCC supports amendments to these Acts to allow internal review decision-makers the extension of time options available to the original decision-maker.

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