Department of Transport and Main Roads response to the 2016 Consultation on the Review of the *Right to Information Act 2009* and the *Information Privacy Act 2009*

Consultation paper questions

	Question	Comments
1	Are the objects of the RTI Act being met? Is the push model working? Are there ways in which the objects could be better met?	Yes, the objects of the RTI Act are being met, however it also needs to be acknowledged that agencies will always have competing demands for the resources available to them. It is considered 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. Since the commencement of the RTI Act in 2009, the Queensland Government has implemented its Open Data strategy, which has greatly assisted with the administrative release of information held by government departments. There are a number of requirements put on port GOCs to follow the intent of the push model that may not provide benefits. For example, as part of the push model, transport GOCs were previously requested to proactively publish interim reports on their website. However, there is no evidence that the public has much use for the information, while the preparation (and approval processes required) incur administrative costs. On the other hand, there may be benefits in certain GOCs proactively publishing certain information. For example, the recently released Maintenance Dredging Strategy (applicable to port GOCs) identified as a key principle that the GOCs be required to provide mechanisms for stakeholders to access data and information from dredging monitoring programs for Great Barrier Reef World Heritage Area ports. This is to increase transparency, and allow better accountability to ensure stakeholders are informed on all aspects of dredging, a highly contentious issue for the ports industry. It is suggested that the kind of information that is proactively released should be reviewed, and regularly assessed to determine if it is in fact beneficial to release.

2	Is the privacy object of the IP Act being met? Is personal information in the public sector environment dealt with fairly? Are there ways that this object could be better met?	Yes, the objects of the IP Act are being met. Personal Information is generally collected and able to be accessed and amended fairly. However, the fair handling of personal information is at times misunderstood by both agency employees and the public. For example, if it is in the possession of an agency for one purpose, the agency may mistakenly use it for another purpose without express or implied permission to do so, such as using information from driver licence records to contact an approved examiner of vehicles when there is no response from the contact details he has provided to the accreditation unit. The public also at times misunderstand this, expecting that because they have told the agency of, for example, a new address to send a receipt that the agency automatically updates all of its records to record this as a new address for all other purposes without any further express or implied direction from the owner of the information.
3	Should the way the RTI Act and Chapter 3 of the IP Act applies to GOCs, statutory bodies with commercial interests and similar entities be changed? If so, in what way? Is there justification for treating some GOCs differently to others?	Not to the extent that it would hinder their ability to compete in the open market. There is justification in treating some GOCs differently to others, as far as different GOCs operate in diverse environments. It is considered that the test on whether certain, or all activities of a GOC are exempt from the RTI Act is whether the information is commercial-in-confidence, and if disclosed publicly, may result in damage to a GOC's commercial interests, intellectual property or trade secrets.
4	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?	Sections 35 and 36 already covers that when an agency enters into a service arrangement with a contracted service provider, the provider is required to abide by the same IPPs as the agency. However, in terms of accessing and amending documents that have been created by the service provider, TMR supports the adoption of an approach similar to section 6C of the Commonwealth FOI Act. All TMR contracts, agreements, memoranda of understanding, etc should currently include terms and conditions which legally bind contractors with the State, their employees, their sub-contractors and agents to comply with the legislation as if they were the State. The public consider them to be acting as agents of the State and therefore to be accountable to the same standards as the State. If the provisions do not apply to contractors and sub-contractors, there is a risk that engaging contractors may be used to circumvent compliance with the RTI and IP Acts.
5	Should GOCs in Queensland be subject to the Queensland's IP Act, or should they continue to be bound by the Commonwealth Privacy Act?	The intent of the creation of the GOCs (as per the GOC Act) is that the GOCs operate, as far as practicable, on a commercial basis and in a competitive environment - as much like private entities as possible. On this basis and to avoid inconsistencies, it is considered GOCs should remain bound by the Commonwealth Privacy Act.
6	Does the IP Act deal adequately with obligations for contracted service providers? Should privacy obligations in the IP Act be extended to sub-contractors?	All TMR contracts, agreements, memoranda of understanding, etc should currently include terms and conditions which legally bind contractors with the State, their employees, their sub-contractors and agents to comply with the legislation as if they were the State. The public consider them to be acting as agents of the State and therefore to be accountable to the same standards as the State. If the provisions do not apply to contractors and sub-contractors, there is a risk that engaging contractors may be used to circumvent compliance with the RTI and IP Acts. TMR believes that sub-contractors should be required to comply with the IP Act.

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?	No, a single point of access is still supported and will make it easier to understand for the public.
8	Noting the 2013 response, 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 will be meaningless.
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?	There is no doubt the lowering of the threshold for third party consultations has increased the number of consultations being undertaken by agencies. TMR supports the threshold being raised to 'of substantial concern'.
10	Although not raised in 2013, is the current right of review for a party who should have been but was not consulted about an application of any value?	No comment.
11	Are the exempt information categories satisfactory and appropriate? Are further categories of exemption needed? Should there be fewer exemptions?	No comment.
12	Given the 2013 responses, should the public interest balancing test be simplified; and if so how? Should duplicated factors be removed or is there another way of simplifying the test?	Yes - more consistency in the threshold is required to assist in decision-making and make it easier for the public to understand decisions. 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. As has been argued by the OIC the list provided in the Act is not exhaustive.
13	Should the public interest factors be reviewed so that (a) the language used in the thresholds is more consistent; (b) the thresholds are not set too high and (c) there are no two part thresholds? If so, please provide details.	No comment. From a legal perspective, consistency is always beneficial as it helps to prevent misinterpretation.
14	Are there new public interest factors which should be added to schedule 4? If so, what are they? Are there any factors which are no longer relevant, and which should be removed?	No comment.
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?	No comment - we have no anecdotal evidence that publishing the name or beneficiary has assisted with achieving the object of the RTI Act. It has caused issues with some applicants who are concerned with their details being published.
16	Have the 2012 disclosure log changes resulted in departments publishing more useful information?	Yes, we are publishing more useful information, however many hours are wasted in publishing information that has no public interest benefit such as motor vehicle debt related RTI applications. For these applications, once the personal information has been removed from the document there is no information of interest left. TMR has made the decision not to publish basically blank documents.
17	Should the disclosure log requirements that apply to departments and Ministers be extended to agencies such as local councils and universities?	No comment.

18	Is the requirement for information to be published on a disclosure log 'as soon as practicable' after it is accessed a reasonable one?	Yes – "soon as practicable" is broad enough to cover a reasonable processing time and competing time pressures. A possible option to consider is publication is to occur as "soon as practicable", but publication must have occurred within three weeks of the documents being supplied to the applicant at the latest.
19	Do agency publication schemes still provide useful information? Or are there better ways for agencies to make information available?	Yes, the publication schemes still provide access to useful information and some form of consistency for members of the public looking for information. The current Ministerial Guidelines need to be reviewed to take into account the changes in web publishing such as Open data and franchise based websites.
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?	Yes. Some applicants consciously require an external decision, considering it more binding and authoritative. Others who hold conspiracy theories may prefer the apparent objectivity of an external review by the OIC.
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?	No, because such a right may be seen to undermine the authority of the OIC. An appeal to QCAT should remain as a decision on a matter of law only.
22	Should the OIC have additional powers to obtain documents for the purposes of its performance monitoring, auditing and reporting functions?	Yes, to ensure legislative compliance is being met. For instance, there are no specific powers for the Privacy Commissioner to investigate a compliance matter, yet they can provide an agency with a compliance notice. It would give privacy compliance teeth if they had this power to also investigate to ensure that an agency is complying to the best of their capacity.
23	Is the information provided in the Right to Information and Privacy Annual Report useful? Should some of the requirements be removed? Should other information be included? What information is it important to have available?	No comment.
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?	Aligning the IPPs and/or the NPPs or adopting the APPs in Queensland would result in consistency, which from a legal perspective is always preferred for clarity of meaning. One consistent set of principles would also result in less confusion for the public and reduce compliance costs for cross border entities. If the same set of principles applied under both Commonwealth and Queensland privacy legislation, there may be less confusion when interacting with or entering into arrangements and agreements, for example, by cross border entities.
25	Should the definition of 'personal information' in the IP Act be the same as the definition in the Commonwealth Act?	Yes, from a legal perspective consistency is always preferred for clarity of meaning. It may also assist agencies and the public who have to deal with disclosure of information under both State and Commonwealth jurisdictions as a result of delegations or appointment as authorised officers under national harmonisation programs. For example, it is an offence under State law to spill oil into coastal waters (section 26 of the *Transport Operations (Marine Pollution) Act 1995*). It is an offence under Commonwealth law to unsafely operate a ship (section 18 of the *Marine Safety (Domestic Commercial Vessel) National Law 2012* (Cwth)). An MSQ officer is appointed as an authorised officer under both the State and Commonwealth legislation. That MSQ officer investigates an oil spill (under State law) which is caused by the unsafe operation of a domestic ship (under Commonwealth law). That officer only collects the names and addresses of persons involved for use in the investigation of both the State and Commonwealth offences. Section 13 of the *Transport Operations (Marine Safety – Domestic*

		Commercial Vessel National Law Application) Act 2016 (Qld) states that the Commonwealth administrative laws apply as laws of this State as if the provisions were a law of the Commonwealth and not the State. If there were consistency between definitions and provisions in both the Commonwealth and State disclosure laws, the application for disclosure would be simplified for the public as well as the officers of the affected government agencies. There may also be a risk of an agency having to refuse disclosure of information under one jurisdiction while at the same time being compelled to disclose it under another.
26	Does the IP Act inappropriately restrict the sharing of information? If so, in what ways? Do the exceptions need to be modified? Would adopting a 'use' model within government be beneficial? Are other exceptions required where information is disclosed?	It is rarely the IP Act that prevents information sharing, but more often the confidentiality provisions in other overriding State legislation. A use model would be beneficial to provide guidance where there is no guidance on information sharing. Whilst information can be shared for law enforcement purposes, it cannot be shared for serving notices to show cause under an administrative purpose, such as the cancellation of accreditation of an approved motor vehicle examiner, for example. TMR may know that its information for the person's address is not accurate (eg officers have been to the address and the premises have been vacated), but they are not able to use the person's driver licence or vehicle registration details to find or check a current address because those addresses were not collected for the purpose of their accreditation, nor can the TMR officers contact the Qld Police Service for them to share information in their possession because cancellation of accreditation is an administrative decision not law enforcement. The "use" model might be okay as long as agencies did not presume that information gathered for one particular project could be substituted for consultation with a stakeholder for another project. For example, information supplied by a stakeholder about their interest in and use of a parcel of land, that is supplied to an agency during a meeting about one infrastructure project, might not necessarily be exhaustive and able to be considered when designing other infrastructure projects that impacts the same parcel of land.
27	Does section 33 (IP Act) create concerns for agencies seeking to transfer personal information, particularly through their use of technology? Are the exceptions in section 33 adequate? Should section 33 refer to the disclosure, rather than the transfer, of information outside Australia?	The increasing use of IT solutions incorporating "cloud computer storage" is of increasing concern to TMR. Where proposed contracts with managed service providers involve accessing personal information in an overseas country from information held in a "cloud". Adherence to be terms of section 33 have resulted in less than optimal solutions being adopted with resulting cost implications. TMR also considers that use of the term "disclosure" would be preferable to the term "transfer". If it is the case that the use of "cloud" technology is the cause of concern, then perhaps the legislation should specifically develop rules governing the use of such technology and its privacy impacts. Section 33 needs to include updated terminologies to cover technological advances. Guidance is needed to define what 'transfer' means to exclude temporary transfer of data such as when information is emailed or routed overseas. It needs to be broad enough to cover future advancements of technology.
28	Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged? How should this be approached?	Public interest should allow the OIC to have flexibility about the timeframe on public interest grounds. For example, if mail has been delayed in being delivered by Australia Post or the person has been ill in hospital and unable to attend to their personal affairs. However, this should be the exception and not the

		rule to prevent matters being lodged after an inordinate delay. Inordinate delay may prejudice the agency as its officers are transferred and memories naturally fade over time. There must be a reasonable expectation of certainty by all persons involved in the process (including third parties) that a matter is concluded after a specified period of time, say 12 months.
29	Should there be a time limit on when privacy complaints can be referred to QCAT?	Yes, for the reasons stated above in question 28, with the same flexibility allowed for public interest considerations. However, there needs to be some sort of time limitation, say 12 months.
30	Are additional powers necessary for the Information Commissioner to investigate matters potentially subject to a compliance notice under the IP Act?	Yes, as per question 22.
31	Should the definition of 'generally available publication' be clarified? Is the Commonwealth provision a useful model?	Yes. It is assumed that publicly available information is only that contained in publications like a newspaper article or online forum, however it also include those registers containing information that is available upon payment of a fee, such as commercial vessels. The Commonwealth provision would be a useful model to start with.
32	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. Whilst a court may infer that reasonableness is implied when determining if compliance with legal obligations is achieved, it is prudent to clearly state this in the legislation. Loss and modification would be beyond an agency's reasonable control. Theft, burning, flooding of a data storage area would be beyond anyone's reasonable control.
33	Should the words 'ask for' be replaced with 'collect' for the purposes of IPPs 2 and 3?	No, collection can occur without asking the individual concerned for consent. For example, next of kin, learner driver, references. If it were replaced with "collect", IPP 2 notices would possibly be required for each collection.
34	Are there other ways in which the RTI Act or the IP Act should be amended?	Under the RTI Act, an internal review of a decision must be made as a new decision as if the original decision had not been made. Considering this requirement, the RTI Act is lacking provisions sanctioning the ability to undertake consultations with third parties and the ability to seek an extension of the time in which a decision can be made. These provisions exist when the original decision was made, however not when an internal review is being made. Although not directly related to the RTI Act, TMR would like the RTI online portal to be completed as originally intended back in 2009. Currently RTI applications can be paid for via the portal, however processing charges and other associated costs cannot, which inconveniences members of the public.