James Cook University Response to the Review into the Right to Information Act 2009 and the Information Privacy Act 2009

Questions asked in this consultation paper

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?

   The balanced between ‘push’ and ‘pull’ is to far towards ‘push’.

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?

   Adequate as it is

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?

   No comment

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?

   Seems reasonable

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?

   No comment

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?

   Yes

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

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

   No – in many instances it is of little use and is very resource intensive with large requests. Taking up administrative time and can prove very costly for the requester.

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?

   No - adequate as it is

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?

    Yes

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

    Think there should be more exemptions similar to the 25 in the UK FOI Act. Don’t agree that there should be fewer exemptions. There should also be absolute exemptions, with no public interest test required and qualified exemptions, where there would be a public interest test, where it would be disclosed if found to be in the public's interest to disclose the information not disclosed if it is not found to be in the public's interest.

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, should be simplified with duplicated factors removed. The requirement for a public interest test would be reduced if absolute and qualified exemptions were introduced.

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.

    It should be reviewed to make it more consistent, the thresholds against disclosure should not be too high and there should be no 2-part thresholds.

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?

Yes, more should be added that line up with the 25 exemptions in the UK FOI Act if the Queensland RTI Act didn't increase the number of exemptions and introduce absolute and qualified exemptions.

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?

    Can't see any benefits of this.

16. Have the 2012 disclosure log changes resulted in departments publishing more useful information?

    N/A

17. Should the disclosure log requirements that apply to departments and Ministers be extended to agencies such as local councils and universities?

    No, the existing arrangements are adequate. There would be an additional administrative burden particularly with mixed requests where personal information would need to be redacted from hundreds of pages in many instances.

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

19. Do agency publication schemes still provide useful information? Or are there better ways for agencies to make information available?

    Provides a useful of index of what's available in certain categories but is resource intensive.

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?

    Remain optional

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, current arrangements adequate.

22. Should the OIC have additional powers to obtain documents for the purposes of its performance monitoring, auditing and reporting functions?

    No, current arrangements adequate.

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, find it of limited use and is very resource intensive to complete the confusing spreadsheet. Any reduction in requirements would be an improvement.

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?

    Adopting the APPs would enable consistency. Certainly it would be useful to have something on direct marketing. A simplification of IPP 11 would assist us in verifying degree qualifications – the NSW equivalent is much simpler.

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

    The IP Act definition is perfectly adequate

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?

    Yes, for example it is difficult to verify the degree qualifications of a graduate without consent. This is becoming more of an issue when you can buy fake degrees online. More exceptions related to the 'ordinary course of business' for entities would be useful. For a university, whose primary purpose is education and research, to be able to confirm qualifications is an important aspect of maintaining the integrity of the higher education system. Under IPP11 it states "*the individual is reasonably likely to have been aware, or to have been made aware, under IPP 2 or under a policy or other arrangement in operation before the commencement of this schedule …..*". The part that says before commencement of this schedule means if we amend a policy or other arrangement today it prevents us from sharing information. We say in our IP Policy we will confirm degrees conferred as it has been published and is therefore in the public domain but the policy was written in response to the IP Act i.e. after the schedule commenced.

27. Does section 33 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?

Some of the requirements appear onerous but having said that with hacking, data mining and so on should expect our personal information to be protected if transferred overseas, with the exception of where the University has an operation overseas i.e. it doesn't leave JCU's possession when it goes to our offshore operation (electronically) or in a hosted cloud environment that is overseas but only accessible by us.

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

    Current timeframes are adequate but perhaps flexibility in limited circumstances when undertaking a complex investigation e.g. having to search server back-up tapes for evidence/material.

29. Should there be a time limit on when privacy complaints can be referred to QCAT?

    Yes, 6 months or a year would seem reasonable.

30. Are additional powers necessary for the Information Commissioner to investigate matters potentially subject to a compliance notice under the IP Act?

    No particular comment

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

    Yes, Commonwealth provision would be useful.

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?

    'Reasonable steps' is preferable.

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

    Have no issue with it staying as 'ask for'.

34. Are there other ways in which the RTI Act or the IP Act should be amended?

    RTI Act – introduce a time and/or cost ceiling. The UK FOI Act has an 'appropriate limit' and if requests are in excess of that limit the agency can

refuse to answer it. Should also be simple arrangements for dealing with vexatious requests where the request is patently unreasonable or objectionable.

This isn't to avoid answering request it's to ensure a balanced and reasonable use of tax payer provided resources. If a request is over the appropriate limit it can be split into a number of requests as long as they are not part of a concerted campaign.

IP Act – simplified IPPs

Greater clarification in the Act should be made in respect of controlled entities – i.e. a separate legal entity covered by the Corporations Act or is a partnership but is a controlled entity should not be covered by either Act.