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Submission: Privacy and Responsible Information Sharing for the Western Australian public sector

The Queensland Office of the Information Commissioner (**OIC**) welcomes the opportunity to provide a submission in response to the Privacy and Responsible Information Sharing for the Western Australian public sector (**Discussion Paper**).

About the OIC

The OIC is an independent statutory body that reports to the Queensland Parliament. We have a statutory role under the *Right to Information Act 2009* (**RTI Act**) and the *Information Privacy Act 2009* (**IP Act**) to facilitate greater and easier access to information held by government agencies. We also assist agencies to understand their obligations under the IP Act to safeguard personal information that they hold.

OIC's statutory functions include mediating privacy complaints against Queensland government agencies, issuing guidelines on privacy best practice, initiating privacy education and training, and conducting audits and reviews to monitor agency performance and compliance with the RTI Act and the IP Act. Our office reviews agency decisions about access to information, mediates privacy complaints and monitors and reports on agency compliance to Parliament.

The Information Privacy Act in Queensland

Queensland's *Information Privacy Act 2009* (**IP Act**) recognises the importance of protecting the personal information of individuals. It creates a right for individuals to access and amend their own personal information and provides rules or 'privacy principles' that govern how Queensland government agencies collect, store, use and disclose personal information. OIC has regulatory oversight of Queensland Government agencies' compliance with requirements under the IP Act. Queensland government agencies include local governments, Queensland State Government departments, public universities, hospitals and health services and public authorities.

OIC's submission

Legislated Privacy Framework

As noted in the Discussion Paper, Western Australia (**WA**) is one of only two jurisdictions in Australia without overarching privacy legislation - noting the existence of privacy-specific administrative instructions in South Australia.

The Office of the Information Commissioner is an independent statutory authority.

The statutory functions of the OIC under the Information Privacy Act 2009 (Qld) (IP Act) include commenting on the administration of privacy in the Queensland public sector environment.

This submission does not represent the views or opinions of the Queensland Government.

Rapid advances in technology enable ever increasing volumes of information, including personal information, to be shared seamlessly without borders. The importance of harmonised privacy laws across jurisdictions has been the finding of a number of reviews and inquiries, including by the Australian Law Reform Commission.

Adoption of a legislated privacy regime will provide OIC with greater confidence and support for information sharing and data flows between agencies located in this state to WA. This issue has arisen in the context of national information and data sharing initiatives in the past years, including NAPLAN, National Drivers Licence Verification, Domestic and Family Violence and the National Redress Scheme.

OIC also considers that state and local government coverage of privacy and data protection are critical for Australia to attain adequacy status under the European General Data Protection Regulation (**GDPR**).

Attaining adequacy statues under the GDPR will assist Australia economically as well in service delivery, particularly in areas such as Health and Education where international data flows and research are critically important.

Privacy Principles

OIC supports a nationally consistent approach to privacy laws that reflect developments at a national and international level, where practical. This includes ensuring laws are fit for purpose for the digital age and alignment of privacy principles across jurisdictions. The issues associated with lack of harmonisation and differing privacy standards across jurisdictions have been well documented by a number of inquiries and reviews.[1]

For these reasons, in its submission to the 2016 statutory review of the *Right to Information Act 2009* and the *Information Act 2009* (**statutory review**), OIC recommended Queensland amalgamate the IPPs and NPPs to create a single set of privacy principles that align with the Australian Privacy Principles (**APPs**), to the extent of their relevance to the Queensland jurisdiction.

Privacy Breach Management

The IP Act does not require agencies to notify affected individuals or the Information Commissioner of a privacy breach. Public sector agencies are encouraged to incorporate data breach notification into its information management processes and voluntarily report data breach incidents to OIC.

Queensland Government Departments have obligations to report information security incidents to QGCIO in meeting their security incident reporting requirements under the Information security policy (IS18:2018). In 2018-19 OIC received a total of 24 notifications of privacy breaches.[2] This reflects increased agency awareness and public expectations.

In its submission to the Queensland Government's statutory review of our Acts, OIC recommended the introduction of a mandatory data breach notification scheme in Queensland. In addition to allowing affected individuals to take remedial steps to lessen the adverse consequences that may arise from a data breach, OIC considers that

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[1] See for example, Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report 108 (2008); Australian Law Reform Commission, *Serious Invasions of Privacy in the Digital Era*, Report 123 (2014)

[2] Office of the Information Commissioner Queensland, 2018-19 Annual Report at page 30.

a data breach notification scheme is an important transparency and accountability measure to build trust and confidence in government. Given the significant economic and reputational costs associated with data breaches, mandating notification of data breaches can be an effective tool to require entities to improve their privacy, data handling and data security practices.

In OIC's view the introduction of the Notifiable Data Breaches Scheme under the Privacy Act and similar schemes in other jurisdictions, such as the EU and UK, sets an important precedent for state and territory privacy regulatory regimes. OIC further notes that the implementation of recommendations arising out of the statutory review of our Acts is a matter for the Queensland Government.

Privacy Oversight Models

While privacy oversight models vary across jurisdictions, it is OIC's view that privacy oversight should sit with the Office of the Information Commissioner, or equivalent body responsible for access to information. This combination works well and is a proven model in jurisdictions nationally and internationally. Notably Canada, British Colombia, the UK, New Zealand (for personal information), Australia's OAIC, NSW IPC, NT and more recently Victoria.

Having privacy and right to information functions in the one entity provides a number of advantages. For example, there is synergy between all functions of the OIC, as the activities of one function support and complement the work of another. For example, OIC's monitoring and assistance functions improve the quality of agency practice in the collection and handling of personal information which minimises demand for our external review and privacy complaints services.

Scope of Legislated Privacy Framework

Queensland's IP Act only applies to Queensland Government agencies, which include Ministers, Queensland State Government Departments, public universities and hospital and health services, Local Government and Public Authorities. The IP Act (other than the access and amendment application provisions) does not apply to Government Owned Corporations (GOCs), individuals, the private sector or community organisations unless a contracted service provider is contractually bound to comply with the privacy principles.

Queensland GOCs, the private and community sector could be covered under the Commonwealth's privacy legislation if these entities have an annual turnover of more than $3 million per annum. Even where an entity would ordinarily be covered by the Privacy Act, the IP Act may apply to a bound contracted service provider because exceptions apply.

Role of the Privacy Commissioner

In accordance with Queensland's IP Act, the privacy complaints role of privacy commissioner (as delegate of the Information Commissioner) is limited to mediation of accepted privacy complaints (ss171-173). If a settlement cannot be reached in the complaint, the complainant can ask OIC to refer the complaint to the Queensland Civil and Administrative Tribunal (QCAT). QCAT has the power to hear and determine the subject matter of the privacy complaint. The individual and the agency will be the parties to the hearing before QCAT. After hearing the evidence and representations of the parties, QCAT may find the complaint or any part of it proven. In that instance QCAT may make an order restraining the agency from repeating any act or practice, order

the agency to carry out certain acts, award compensation to the complainant not exceeding $100,000 and/or make further orders against the agency.

The Information Commissioner may decline to deal with or to further deal with a complaint, including where it does not relate to personal information of the complainant (s.168(1)(a)) or there is a more appropriate course of action available under another Act to deal with the substance of the complaint (s.168(1)(d)). In 2018-19 we accepted 13 complaints. During the same year we received 98 complaints and finalised 92.

In response to the Queensland Government's statutory review of our Acts, OIC recommended broadening the existing powers provided by section 167 of the IP Act for the purposes of making preliminary inquiries and amending the IP Act to provide the Privacy Commissioner with an 'own motion' power to investigate an act or practice whether or not a complaint has been made. This power would complement OICs existing audit and evaluation function, which is critical to providing Parliament, agencies, the community and OIC with assurance and information about agencies' legislative compliance and good practice.

Data Sharing

There is increasing recognition in democratic countries across the world of the benefits of openness, transparency and accountability. Greater openness and transparency delivers a range of tangible benefits including greater public engagement, improved service delivery and restoring trust and confidence in government.

Opening up government-held information, including data, is consistent with, and an important part of Queensland's right to information 'push model'. OIC supports data sharing and release strategies and initiatives that maximise disclosure of government-held information to the community, carefully balanced with other important public interests such as appropriately safeguarding the community's privacy. Emerging technologies present ongoing complex challenges for agencies including re-identification of data.

OIC notes that the approach to privacy and data sharing laws varies across jurisdictions with the Australian Government proposing a comprehensive legislative framework for data sharing and release.

There is also legislation at a State level that provides for data sharing, for example, in New South Wales, the *Data Sharing (Government Sector) Act 2015* facilitates data sharing between the Data Analytics Centre and other government agencies. Other examples include the South Australian *Public Sector (Data Sharing) Act 2016* and Victorian *Data Sharing Act 2017*. Queensland does not currently have stand-alone data-sharing legislation.

Yours sincerely

Rachael Rangihaeata
Information Commissioner