

Office of the Information Commissioner
Queensland

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Committee Secretary
Senate Legal and Constitutional Affairs Committee
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By email: legcon.sen@aph.gov.au

Dear Ms Dunstone

Inquiry into the Freedom of Information Amendment (New Arrangements) Bill 2014

I refer to your letter of 31 October 2014 and thank you for inviting me to provide a submission to the Legal and Constitutional Affairs Legislation Committee (**the Committee**) in relation to the Inquiry into the Freedom of Information Amendment (New Arrangements) Bill 2014 (**the Bill**) addressing issues that may be of relevance.

By way of background, the Queensland Office of the Commissioner (**QOIC**) is an independent statutory body initially established in 1992¹ and continued under the *Right to Information Act 2009* (Qld). The statutory role of the QOIC includes:

- external review of decisions made by Queensland Ministers and public sector agencies about access to, and amendment of, documents
- mediation of privacy complaints
- promotion of information rights and responsibilities; and
- fostering improvements in the quality of right to information and information privacy practices.

QOIC has conducted independent external review of agency and Minister decisions since 1992. In 2009 the QOIC was given statutory functions relating to privacy and assistance and monitoring under the *Right to Information Act 2009* (Qld) and the *Information Privacy Act 2009* (Qld). QOIC has now had over 5 years performing the range of functions under the legislation and has an established level of demand for its services.

I understand that the objectives of the new arrangements set out in the Bill are to “*increase the efficiency of FOI and privacy processing, reduce confusion and minimise the cost burden for applicants and agencies*”, and provide for only one level of external review. The new arrangements disband the Office of the Australian Information Commissioner and divide specific functions amongst a

¹ Under the repealed *Freedom of Information Act 1992* (Qld).

number of entities, including the Administrative Appeals Tribunal, the Commonwealth Ombudsman and the Attorney-General's Department.

I note that freedom of information² oversight models vary across Australian and New Zealand jurisdictions and aspects of such models may be of interest to the Committee in its consideration. For example, in Queensland QOIC does not have a complaint jurisdiction however some matters regarding processing, such as insufficient searches by an agency in response to an application, are able to be raised as a basis for external review. In our experience a large proportion of applicants raise both insufficient search and decision-making issues. If such issues were dealt with by different entities³ it would increase the complexity, cost and burden for applicants in resolving issues that relate to the one application. There are also efficiencies for such issues to be dealt with in one review process as additional documents located are then required to be considered in decision making. If additional documents are located during an external review, they can be dealt with as part of the same review.

In Queensland there is one tier of external review. An applicant who is dissatisfied with an agency or Minister decision can seek an independent external merits review by the Information Commissioner. There is no fee for an external review.

The QOIC model provides a flexible informal resolution external review service staffed by specialists with technical expertise and knowledge of relevant law and government practices. In 2013-14 89% of finalised applications were resolved informally, without a decision. The Office has continuously improved the efficiency and effectiveness of the external review process, with particular success in early resolution strategies. Applicant and agency satisfaction rates continue to exceed performance targets.

A participant in an external review may appeal to the Queensland Civil and Administrative Tribunal (**QCAT**) against an external review decision only on a question of law. 500 applications were finalised in 2013-14. During that period three appeals were made to QCAT and two were dismissed.⁴

The QOIC has been able to realise the advantage of having privacy and freedom of information functions in the one organisation, including assistance and monitoring functions. The effectiveness of the external review function has been enhanced through the synergy of the additional statutory functions the Office has performed since 2009. The Office is able to quickly respond to issues by supporting agencies through guidance and training to improve the quality of decision making and practices to reduce demand for formal applications that may subsequently be reviewed by the Office. Similarly, our performance monitoring

² For ease of reference references to freedom of information in this submission are to both freedom of information and right to information.

³ For example, insufficient searches as a processing matter to be dealt with by an Ombudsman and decision making by a tribunal.

⁴ Note: An application for a statutory order of review may also be made to the Supreme Court. No applications have been made since the right of appeal to QCAT commenced in 2009.

activities have deterred poor agency practices and led to significant improvement in application handling.

Freedom of information applications frequently involve complex issues relating to privacy and expert privacy advice can readily inform external review. Community expectations on government to proactively publish more information, including raw data, require agencies to ensure they carefully consider and deal with privacy issues appropriately to safeguard personal information. Providing guidance and advice to government agencies on these issues necessarily requires broader expertise that is more easily provided when functions sit within the one entity.

Since the *Right to Information Act 2009* and the *Information Privacy Act 2009* commenced there has been a significant increase in ongoing external review demand. In November 2013 I made a submission to the Queensland Government on the review of the *Right to Information Act 2009* and the *Information Privacy Act 2009* including recommendations that would assist in managing such demand and reviews more effectively.⁵ Such recommendations include mandatory internal review and broadening the ability of QOIC to remit applications to agencies where appropriate. This review is also expected to streamline the operation of the legislation and facilitate achievement of its objectives.

In summary, there are a range of independent freedom of information oversight models that the Committee may wish to consider aspects of in relation to the issues raised.

Please find attached a copy of the 2013-14 Annual Report of the QOIC for your reference.⁶ Please contact me if you require further information.

Yours sincerely

Rachael Rangihaeata
Information Commissioner

⁵ <http://www.oic.qld.gov.au/publications/submissions>

⁶ <http://www.oic.qld.gov.au/about/our-organisation/our-performance/annual-reports>