



## Community Organisations' Submission to the Review of Right to Information and Privacy laws

19 November 2013

## Introduction / Background

This submission is in response to the Right to Information Act 2009 (Qld) (**RTI Act**) and the Information Privacy Act 2009 (Qld) (**IP Act**) Chapter 3 Discussion Paper (**Discussion Paper**), released by the Hon. Jarrod Bleijie MP, Attorney-General and Minister for Justice, during August 2013.

This submission has been prepared by a number of community organisations<sup>1</sup> to respond to the issues of most importance and relevance to the ongoing operations and business of a number of community organisations, including:

- **Queensland Council of Social Service Inc (QCOSS)**, Queensland's leading force for social change to eliminate poverty and disadvantage. With more than 600 members, QCOSS undertakes informed advocacy and supports a strong community service sector. QCOSS's key activities focus on providing effective policy advice, working to strengthen responsive community services and having productive partnerships with government, private sector, the media and the sector. This work is done with a Queensland free of poverty and disadvantage front of mind.
- **Queensland Association of Independent Legal Services Inc**, which leads and supports funded and unfunded community legal centres operating throughout Queensland. QAILS members have over 30 years of service delivery experience providing free information, advice and referral, casework and representation to marginalised and disadvantaged Queenslanders;
- **Capricornia Training Company**: CTC Apprentices is Central Queensland's leading group training and employment company, founded in 1986 with a commitment to developing a skilled local workforce in Central Queensland and creating additional employment and training to meet the needs of industry. In keeping with its strong commitment to the development and support of vulnerable people in our communities, CTC also delivers a range of programs that support young people in their journey into adulthood, preparing them to become strong, independent, and responsible for their self-efficacy.
- **Roseberry Community Services Limited** has been assisting socially and financially disadvantaged members of our Gladstone and Rockhampton community for more than 25 years. Our organisation assists people through providing homes, strengthening families and supportive pathways for young people;
- **Healthy Communities** is a community based, non government health promotion charity focussed on fighting HIV and promoting the health of LGBTI Queenslanders.
- **Women's Health Awareness Group of Gladstone Inc** has over 20 years of experience in providing health services to women 15 years and over, a sexual assault support service for male and female victims including children over the age of 10. Counselling, referral, support and information are offered free and programs and events are low cost to the disadvantaged. We also support other groups that use our venue breast and other cancer, MS Support Group, alcohol and addiction support. Our clients value the confidential policies our services provide.
- **Capricorn Community Development Association** is an independent, non-funded incorporated community organization that facilitates communities in the Rockhampton and Capricorn regions to find solutions to their challenges;

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<sup>1</sup> With *pro bono* legal assistance from Barry Dunphy, Eleanor Dickens and Michael Lucy of Clayton Utz, who we thank for their assistance.

- **ARC Disability Services Inc** is a community based organisation with a long history in the Cairns and Far North supporting children and adults who have a disability and their families and support networks. Established in 1976 by a group of parents with a vision for their children, we pride ourselves on being person focused, friendly, flexible and fun! Our Vision is that people who have a disability are empowered to reach their full potential, dreams and aspirations, enabling them to enjoy a fulfilling life of their choosing as valued members of the community. We work collaboratively with our service users, their support networks and the community to facilitate a range of options and opportunities which promote active participation for all.
- **St Vincent de Paul Society Queensland** aspires to live the gospel message by offering a *hand up* to those within our community most often overlooked, by respecting their dignity, sharing our hope, and encouraging them to take control of their own destiny. The Society serves everyone, regardless of creed, opinion, colour or origin.
- **National Disability Services** is the Australian peak body for non-government disability services. Through the provision of information, representation and policy advice, NDS promotes and advances services which support people with all forms of disability to participate in all domains of life.
- **COTA Queensland** co-creates social change with people as they age through engaging with people throughout Queensland to develop policy, advocate on systemic issues and facilitating community education.

(together the **Community Organisations**).

This submission primarily responds to Question 4.6 in the Discussion Paper, which asks if the RTI Act and Chapter 3 of the IP Act should apply to the documents of contracted service providers when they are performing functions on behalf of government.

These submissions relate to the Community Organisations in their capacity as recipients of State Government funding. As part of the funding arrangements entered into by the Community Organisations, the Community Organisations have stringent reporting obligations, including provision in the funding agreements for the relevant State Government departments to request various documentation as and when required to ensure transparency and probity.

Clients of the Community Organisations are, in the vast majority, clients who are societally marginalised or disadvantaged, and unable to source other assistance. In that respect, the Community Organisations fulfil a vitally important social service role, including by relieving the "on-flow" pressure that would generally pass to State Government bodies in the absence of such assistance being able to be obtained.

### **Current RTI Act and IP Act exposure**

At present, the Community Organisations are not subject to any provisions of the RTI Act and Chapter 3 of the IP Act.

However, by virtue of some of the funding arrangements with the Federal and State Governments, the Community Organisations are generally obliged to comply with the personal information and amendment regime established under the relevant Information Privacy Principles (**IPPs**) as provided for under Schedule 3 of the IP Act and/or the relevant National Privacy Principles (**NPPs**) (and the Australian Privacy Principles (**APPs**) once they commence in March 2014) as provided for by the Privacy Act 1988 (Cth) (**Privacy Act**). Some social service providers consider themselves to be bound by the relevant provisions of Chapter 2 of the IP Act insofar as they are contracted service providers.

## Don't extend the RTI Act to the Community Organisations

This submission primarily responds to Question 4.6 in the Discussion Paper, which asks if the RTI Act and Chapter 3 of the IP Act should apply to the documents of contracted service providers when they are performing functions on behalf of government.

**The Community Organisations submit that the RTI Act and Chapter 3 of the IP Act should not be extended to apply to the documents of contracted service providers insofar as an extension of this nature could capture the Community Organisations.**

The Community Organisations make no submission as to the issue of whether there is merit generally in extending the RTI Act and Chapter 3 of the IP Act to contracted service providers. Rather the Community Organisations submit that if the State Government was minded to adopt such an extension, bodies such as the Community Organisations should be expressly exempt from such an extension.

In support of this position, the Community Organisations submit that:

- (a) In exercising their functions and operations, the Community Organisations generally do not undertake functions of government. We are not government agencies, and ought not to be regulated as government agencies. Whilst the Community Organisations acknowledge that the term "functions of government" is a term of broad legal meaning, the Community Organisations suggest that the scope of this term would not extend to capture services and functions such as case management, legal services, tenancy support and counselling to under-privileged members of the community. Consequently, at a factual level, documents and information received or generated by the Community Organisations in performing these functions would not fall within the range of documents said to be evidencing the "functions of government". Given these circumstances, should any consideration be given to the extension of the RTI Act and Chapter 3 of the IP Act to the documents of contracted service providers, it should be clear that entities such as the Community Organisations are not subject to such an extension;
- (b) In connection with the submission in paragraph (a) above, whilst the Community Organisations acknowledge that appropriate accountability mechanisms are required to be in place where public funds are applied and expended for any purpose, the Community Organisations submit that appropriate mechanisms are already in existence and being applied. In these circumstances, it is not necessary to extend the application of the RTI Act and Chapter 3 of the IP Act to the documentation of the Community Organisations. Further to this submission, the Community Organisations note that:
  - (i) The Community Organisations are appropriately and closely monitored by virtue of provisions in their funding agreements with Government. These agreements generally provide the relevant funding departments the power to compel any documents from the Community Organisations relating to the provision of services as may be required. Measures such as these are of course designed to ensure that public monies provided to community services are being applied and expended appropriately; and
  - (ii) State Government agencies providing funding are, obviously, open to the standard application of the RTI Act. Any public interest in ensuring that the Community Organisations are properly applying funding may be demonstrated through enquiries and subsequent RTI applications being made through the relevant funding agencies.
- (c) The extension of the RTI Act and Chapter 3 of the IP Act to the Community Organisations would require these entities to expend significant funds and apply resources to deal with RTI Act / IP Act issues. This would see funds and resources otherwise able to be

dedicated to provide community services instead diverted to dealing with RTI Act / IP Act issues. In particular:

- (i) RTI access requires, in practice, the allocation of significant time and resources. The costs incurred include those of dedicated internal decision makers or legal staff, as well as the cost of outsourcing, in appropriate cases, relevant work;
- (ii) The processing of RTI applications can require the dedication of extensive time by legal and administrative staff who are making the final decisions under the RTI Act; and
- (iii) Consideration must also be had to the potential impact on the other staff within the Community Organisations who may have knowledge about the information being sought, or who know about context in which the information was received or created, and/or clients themselves, whose information may be subject to potential release and therefore need to be consulted.

Having regard to the above, the Community Organisations submit that the costs associated with extending the RTI Act to apply to the Community Organisations would be largely thrown away, with the end-result simply being the ultimately otherwise unnecessary diversion of funds from the Community Organisations' service delivery.

### **Don't extend Chapter 3 of the IP Act to the Community Organisations**

As detailed above, the Community Organisations may be, by virtue of either their funding arrangements or Chapter 2 of the IP Act, subject to the alternative personal information and amendment regimes established under the IPPs and/or NPPs (soon to be APPs).

From a resourcing point of view it is wasteful for the Community Organisations to be subject to the personal information access and amendment regimes in both Chapter 3 of the IP Act; and the alternative personal information and amendment regimes established under the IPPs and/or NPPs (soon to be APPs). In this regard the Community Organisations submit that such an outcome would render the Community Organisations subject to unnecessary regulatory duplication in circumstances where, as addressed above, administrative and funding support is already limited, and any diversion directly impacts upon the Community Organisations' abilities to effect service delivery to clients.

### **Conclusion**

For the reasons set out above, the Community Organisations strongly submit that the RTI Act and Chapter 3 of the IP Act should not be extended to apply to the documents of contracted service providers insofar as an extension of this nature could capture the Community Organisations.

Any attempt to extend the application of these Acts to the Community Organisations would:

- duplicate existing reporting/accountability mechanisms;
- duplicate existing information privacy protections;
- impose significant resource burdens and significantly increase red tape; and
- divert resources from frontline services to vulnerable clients.

For these reasons, the Community Organisations strongly encourage the review to maintain the existing coverage of the RTI Act and IP Act as these Acts relate to the work of the Community Organisations and similar organisations.

If you have any queries, please contact James Farrell on (07) 3392 0092 or [director@qails.org.au](mailto:director@qails.org.au)