

**Submission by the**

**Office of the Information Commissioner**

**Legal Affairs and Community Safety Committee**

**INQUIRY INTO A HUMAN RIGHTS ACT FOR QUEENSLAND**

**April 2016**

*The Queensland Office of the Information Commissioner is an independent statutory authority. This submission does not represent the views or opinions of the Queensland Government.*

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

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other states.<sup>1</sup> 'All human rights are universal, indivisible and interdependent and interrelated'.<sup>2</sup>

'The right to privacy is recognised as a fundamental human right (although not an absolute right) in the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* (ICCPR) and a number of other international instruments and treaties.<sup>3</sup> Article 17 of the ICCPR, to which Australia is a signatory, provides:

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
2. *Everyone has the right to the protection of the law against such interference or attacks*

While Australia has obligations at international law regarding human rights, a treaty only becomes a 'direct source of individual rights and obligations' when it is directly incorporated by legislation. In the absence of a national bill of rights, limited protection of human rights may be found in the Australian constitution, common law and legislation.<sup>4</sup>

Australia remains the only democracy in the world without a national bill of rights<sup>5</sup>. As Chief Justice French noted 'there have been frequent criticisms of Australia's perceived

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<sup>1</sup> <http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>

<sup>2</sup> Clause 5 Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993

<sup>3</sup> *Serious Invasions of Privacy in the Digital Era*, Discussion Paper 80 (DP 80) ALRC, March 2014, p28

<sup>4</sup> *Making Human Rights Real: A National Human Rights Action Plan for Australia*, Human Rights Law Resources Centre Ltd, February 2011, P15 viewed at [www.hlrc.org.au](http://www.hlrc.org.au)

<sup>5</sup> the Honourable Justice Margaret McMurdo, *A human rights Act for Queensland*, University of the Sunshine Coast Inaugural Law Oration, 23 September 2015, P3 viewed at <http://www.sclqld.org.au/judicial-papers/judicial-profiles/profiles/mamcmurdo/papers/1>

exceptionalism in this respect and laments about its relegation to a backwater, while the great broad river of international human rights jurisprudence sweeps by.<sup>6</sup>

A lack of a national framework for a bill of rights has led to two individual Australian states enacting their own human rights legislation. The Australian Capital Territory (ACT) passed its Human Rights Act in 2004 and Victoria legislated a Charter of Human rights in 2006. The rights enshrined in the *Human Rights Act 2004* (ACT) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter) are largely based on those rights contained in the ICCPR.

There is no general recognition of the right to privacy in Australian law, either at common law or in legislation. Privacy legislation that currently exists at a state and federal level, including the *Information Privacy Act 2009* (Qld), is predominantly related to personal information only.<sup>7</sup> Both the Victorian and ACT human rights legislation contain a right to reputation and privacy modelled on Article 17 of the ICCPR.

The serious implications posed to an individual's privacy by new technologies has raised concerns about the adequacy of existing legislative and common law privacy protections and remedies. As noted by the Australian Law Reform Commission (ALRC), 'the increasing pervasiveness of instantaneous communications technology, including the use of mobile phone technology, drones and surveillance and tracking devices has undoubtedly increased the risks of invasion of privacy.'<sup>8</sup>

The Standing Committee on Law and Justice of the NSW Parliament recently tabled its report recommending the introduction of a statutory cause of action for serious invasions of privacy.<sup>9</sup> This is consistent with the recommendation of the ALRC to enact a statutory cause of action following its inquiry into 'Serious Invasions of Privacy in the Digital Era'.<sup>10</sup>

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<sup>6</sup> *Human Rights Protection in Australia and the United Kingdom: Contrasts and Comparisons*, Constitutional and Administrative Law Bar Association, London, 5 July 2012 viewed at [www.hcourt.gov.au/assets/publications/speeches/.../frenchcj05july12.pdf](http://www.hcourt.gov.au/assets/publications/speeches/.../frenchcj05july12.pdf)

<sup>7</sup> Fact Sheet: Right to Privacy: Human Rights Law Centre viewed at <http://hrlc.org.au/materials-and-resources/#fact%20sheets%20rights>

<sup>8</sup> *Serious Invasions of Privacy in the Digital Era* (ALRC Report 123) Submission 4, p2 viewed at <https://www.alrc.gov.au/publications/serious-invasions-privacy-digital-era-alrc-report-123>

<sup>9</sup> *Remedies for the serious invasion of privacy in New South Wales* (Report no. 57, 2016) viewed at <http://www.parliament.nsw.gov.au/lawandjustice>

<sup>10</sup> *Serious Invasions of Privacy in the Digital Era* (ALRC 123 Summary) viewed at <https://www.alrc.gov.au/publications/serious-invasions-privacy-digital-era-alrc-123-summary>

The Office of the Information Commissioner (Queensland) (**OIC**) generally supports measures strengthening protections against abuses of privacy, particularly where inadequacies with the existing regulatory framework are identified. In principle, OIC supports the adoption of mechanisms to enhance human rights protection, including the privacy rights of individuals.

While OIC welcomes the inquiry by the Legal Affairs and Community Safety Committee (the Committee) into whether it is appropriate and desirable to legislate for a Human Rights Act (HR Act) in Queensland, it is OIC's view that national consistency and uniformity is important for the effective promotion and protection of human rights, including the privacy rights of individuals.

OIC acknowledges the difficulties of achieving consistency and uniformity in legislating human rights protections due, in part, to 'establishment of a federal system of government by the *Australian Constitution* in which legislative powers are distributed between the Commonwealth and the six states'.<sup>11</sup>

Enactment of human rights legislation in Queensland would be subject to the *Australian Constitution* and could be overridden by other statutes, which may limit the scope and effectiveness of human rights protection, including enhanced privacy protections for individuals.

However, as noted by the former Attorney-General of Western Australia, 'human rights law is more about attitudes and values than strict legal causes of action and remedies'.<sup>12</sup> While 'safeguarding human rights is important...of equal importance is the establishment of a culture of respect for human rights in the community, in the administration of government and in politics'.<sup>13</sup>

The former Victorian Attorney-General, Rob Hulls noted 'the real impact of Victoria's Charter had been to change the culture of government and public life so that human rights are at the core of government, not on the periphery'.<sup>14</sup> The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) in its 2014 review of the Charter, noted that the Charter had

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<sup>11</sup> *Achieving National Consistency*, Australian Law Reform Commission viewed at

<http://www.alrc.gov.au/publications/3.%20Achieving%20National%20Consistency/federal-system>

<sup>12</sup> The Hon McGinty, Jim *A Human Rights Act for Australia*, University of Notre Dame Australia Law Review, Volume 12 Issue Dec 2010 (Dec 2010) p13 viewed at <http://www.austlii.edu.au/cgi-bin/download.cgi/au/journals/UNDAULawRw/2010/2.txt>

<sup>13</sup> Above p 2

<sup>14</sup> Cited in a speech by the Honourable Justice Margaret McMurdo, *A human rights Act for Queensland*, University of the Sunshine Coast Inaugural Law Oration, 23 September 2015, P16 viewed at <http://www.sclqld.org.au/judicial-papers/judicial-profiles/profiles/mamcmurdo/papers/1>

driven important human rights initiatives to address systemic issues.<sup>15</sup> For example, Victoria Police had taken steps to address discriminatory policing and racial profiling. ‘This included the development of new human rights-based policies, standards and strategies, and specific community portfolios for priority communities, including Aboriginal and multicultural communities’. VEOHRC also noted that the Charter was a key driver in significant law reform efforts, including reforms to Victoria’s mental health laws.<sup>16</sup>

In Queensland, the RTI and IP Acts have had a significant impact on cultural change in relation to information rights and responsibilities for the public sector and the community. Information privacy is now protected under a legislative framework which plays a key role in safeguarding the rights of community members’ personal information and provides clear principles and rules to guide appropriate behaviour by public sector agencies.

Should the Committee consider it would be appropriate and desirable to legislate for a HR Act in Queensland, OIC provides the following comments for the Committee’s consideration:

*Effectiveness of current laws and mechanisms for protecting human rights in Queensland*

As noted previously, in the absence of a national bill of rights or a statutory Charter of Rights, human rights are protected in Queensland through a range of mechanisms including: express and implied rights in the Constitution, the common law and statutes such as Commonwealth and State anti-discrimination legislation. The *Anti-Discrimination Act 1991* (Qld) provides protection against unfair discrimination, sexual harassment and other objectionable conduct and provides a means to bring a complaint and have it resolved.<sup>17</sup> The protection available under anti-discrimination legislation in Queensland applies to prescribed areas only such as employment, goods and services etc. resulting in gaps in coverage. For example anti-discrimination legislation in Queensland does not cover physical appearance, criminal history, or ‘revenge pornography’. The gaps in the existing human rights framework in Queensland mean that not all human rights are protected.

Fundamental Legislative Principles (FLPs) provide limited human rights protection. Section 4(2) of the *Legislative Standards Act 1992* (Qld) requires that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament. Impacts on an

<sup>15</sup> Victorian Equal Opportunity and Human Rights Commission, 2014 Report on the Operation of the Charter of Human Rights and Responsibilities, 2015, p4

<sup>16</sup> Above p 4

<sup>17</sup> <https://www.adcq.qld.gov.au/resources/legal-information/legislation>

individual's privacy often arise in proposed legislation potentially breaching fundamental legislative principles. However, compliance with FLPs is not mandatory and it is for the Parliament to determine whether legislation has 'sufficient regard' to one or more of the FLPs and whether sufficient justification is given in the Bill's explanatory notes for any departure from them.<sup>18</sup>

In the absence of an Upper House in the Queensland Parliament, parliamentary committees perform an important review function. Each portfolio committee has responsibility for examining all Bills and subordinate legislation within its portfolio area, including the application of fundamental legislative principles to the legislation. OIC notes that the Committee of the Legislative Assembly, following its inquiry into the Queensland Parliament's committee system, did not make any recommendations to alter the structure and composition of the portfolio committee system at this point in time.<sup>19</sup>

### Queensland Privacy Law

The 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. The IP Act also allows an individual to make a complaint about an agency's breach of the privacy principles.

The IP Act regulates how 'government agencies' collect, store, use and disclose 'personal information' through obligations to comply with 'privacy principles' consisting of:

- Information Privacy Principles (IPP) – for all government agencies other than health agencies; or
- National Privacy Principles – for health agencies including Queensland Health
- provisions dealing with service providers contracted to government agencies; and
- provisions dealing with the transfer of personal information outside Australia.

Government agencies include Ministers, Queensland Government departments, local government, Hospital and Health Services, universities and other public authorities. The IP Act does not apply to Government Owned Corporations (GOCs), individuals, the private sector

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<sup>18</sup> <https://www.parliament.qld.gov.au/explore/education/factsheets/3>

<sup>19</sup> *Review of the Parliamentary Committee System*, Report No. 17, Committee of the Legislative Assembly, February 2016 p viii viewed at <https://www.parliament.qld.gov.au/work-of-committees/committees/CLA/inquiries/current-inquiries/01-ReviewCommittees>

or community organisations.<sup>20</sup> 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. Additionally, there is a measure of privacy protection in Queensland's criminal code<sup>21</sup>, through the common laws of nuisance and trespass and for recorded conversation.<sup>22</sup>

If an individual – who need not be a Queensland citizen - considers that a Queensland Government agency has failed to comply with its obligations under the privacy principles, they are able to make a formal complaint. While the IP Act provides the opportunity for the individual and the relevant government agency to settle the subject matter of the complaint between themselves, ultimately the privacy complaint can be referred to the Queensland Civil and Administrative Tribunal (**QCAT**) for its determination and orders. QCAT orders are remedial in nature; there is no capacity for it to order punitive measures.

There is the capacity for QCAT to award an individual up to a maximum of \$100,000 in compensatory damages which can include non-economic loss.

In summary, Queensland has a statutory cause of action for privacy breach in respect of Queensland State Government agencies only.

OIC recognises that the rapid growth in the technology and the ease with which 'personal information' can be obtained, used and disseminated has exposed individuals to new privacy risks or exacerbated existing risks to the point where the adequacy of protections requires consideration. While adoption of a HR Act in Queensland may provide an overarching framework for the promotion and protection of human rights, it is OIC's view that legislating human rights may not remedy identified gaps in the existing law regarding intrusions into personal privacy. For example, the scope and application of human rights legislation enacted in Victoria and the ACT has largely been restricted to public authorities and has not extended to individuals or the private sector.

OIC notes the current legislative review of the IP Act by the Queensland Government may provide a more contemporary legislative framework to manage emerging privacy risks and challenges posed by the rapid growth in technology. Accordingly, enactment of human rights legislation is viewed by OIC as one of a range of mechanisms that may strengthen human rights protections, including protection of personal privacy, in Queensland.

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<sup>20</sup> The IP Act also applies to contractually bound contracted service providers

<sup>21</sup> Section 227A *Criminal Code (Qld)* renders some observations or visual recording 'in circumstances where a reasonable adult would expect to be afforded privacy' a misdemeanour punishable by up to two years imprisonment.

<sup>22</sup> *Invasion of Privacy Act 1971 (Qld)*

*Implications of proposed legislation for existing statutory complaints processes*

A number of statutory bodies in Queensland have complaint handling and oversight functions. These bodies include the Queensland Ombudsman, Anti-Discrimination Commission Queensland, the Office of the Health Ombudsman, the Crime and Corruption Commission and Queensland Mental Health Review Tribunal. Each of these statutory bodies has expertise in complaint management relevant to their particular jurisdiction.

OIC's statutory functions are set out in the *Right to Information Act 2009* and the IP Act. OIC's privacy related functions include mediating privacy complaints and monitoring agency performance of, and compliance with the IP Act. Chapter 3 of the IP Act creates a right of access to, and amendment of, personal information if it is inaccurate, out of date, incomplete, or misleading. If a person is not satisfied with a decision about access or amendment of documents by an agency or Minister, they may apply for an external review of the decision by the OIC.

The adoption of a legislated HR Act in Queensland may have implications for existing statutory complaints processes, including OIC's privacy complaint mediation process, should consideration be given to the establishment of a specialist body to manage human rights complaints.

While the privacy complaints function represents a small proportion of the work undertaken by OIC,<sup>23</sup> devolving privacy complaints to a new or existing statutory complaints body may result in a disconnect between complaints and other inter-related privacy functions currently performed by OIC. There is synergy between all functions of the OIC, as the activities of one function support and complement the work of another. For example, 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. Through the performance of these functions OIC has built up considerable knowledge and expertise with regards to the privacy jurisdiction and continues to provide expert authoritative advice on privacy related matters in Queensland.

OIC has responsibility for:

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<sup>23</sup> In 2014-2015, OIC received 52 complaints made under the IP Act and 47 of these complaints were finalised



- the management and mediation of privacy complaints against Queensland government agencies
- responsibility for the accuracy of privacy audits
- education and training on privacy compliance
- submissions to enquiries and reviews on privacy-related matters
- presentations to government and the community
- functions under the IP Act related to compliance notices, waivers and modifications of privacy principles in the public interest.

OIC suggests that each public sector oversight body in Queensland retain the right to consider human rights issues that arise within their jurisdiction. For example, under this model, OIC would retain its privacy complaints function.

This approach is consistent with ACT and Victoria and aligns with the recommendations arising out of the review of the Victorian Charter of Human Rights.<sup>24</sup> The ACT Human Rights Commission can only investigate individual complaints about unlawful discrimination, health services, disability service, services for older people and services for children and young people. The Human Rights Commissioner does not investigate individual complaints about breaches of the Human Rights Act.

The VEOHRC is an independent statutory agency and has a range of advisory and educative functions under the Charter. 'The Commission can receive complaints under the *Equal Opportunity Act 2010* (VIC) and the *Racial and Religious Tolerance Act 2001* (Victoria) and offer dispute resolution but it cannot take human rights complaints under the Charter'.<sup>25</sup>

While the eight year review of the Victorian Charter recommended providing VEOHRC with the power to resolve charter disputes, the review recommended:

*All relevant public sector oversight bodies should have the ability to consider human rights issues that arise within their jurisdiction, for example, the Mental Health Complaints Commissioner should continue to be able to consider human rights issues that relate to public mental health service providers. Mechanisms should be established to enable referral and appropriate information sharing between complaint-*

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<sup>24</sup> *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* <http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/human+rights+legislation/2015+review+of+the+charter+of+human+rights+and+responsibilities+act+2006>

<sup>25</sup> Above p4

*handling and oversight bodies. The Charter should note these roles [Recommendation 25].<sup>26</sup>*

This recommendation was made in consideration of the broader issue of cooperation between oversight bodies when Charter issues are raised and did not recommend that all human rights related complaints should shift to VEOHRC. The review noted that allowing existing bodies with specialist roles to deal with human rights is consistent with the intent to ‘integrate the Charter into the everyday business of government in Victoria’.<sup>27</sup>

The review further recommended:

*The Victorian Ombudsman, the Independent Broad-based Anti-corruption Commission, and other relevant oversight bodies be given the power to request the Victorian Equal Opportunity and Human Rights Commission to help them when they exercise their statutory powers in relation to human rights issues [Recommendation 22].<sup>28</sup>*

*Objectives of the proposed legislation and rights to be protected*

Should the Committee recommend legislating for a HR Act in Queensland, OIC considers that the objectives of the proposed legislation should align with the stated objectives of human rights legislation enacted in Victoria and the ACT, that is, ‘to promote a culture where everyone’s human rights are protected and considered in government service delivery, policy and legislation’.<sup>29</sup> As noted previously, OIC considers achieving consistency and uniformity in human rights legislation is likely to be the most effective means of promoting and protecting human rights.

The Victorian Charter achieves the stated objectives of its legislation by requiring public authorities to act compatibly with the human rights set out in the Charter and to consider

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<sup>26</sup> Above at 110

<sup>27</sup> Above at 107

<sup>28</sup> Above at 96

<sup>29</sup> *From Commitment to Culture, The 2015 Review of the Victorian Charter of Human Rights and Responsibilities Act 2006, Summary Report, p3*

human rights when developing policies, making laws, delivering services and making decisions.

OIC further considers that a HR Act in Queensland, if enacted, may provide enhanced opportunities for generating greater awareness within the community about human rights, including the privacy rights of individuals, and assist with the development of a human rights culture. An informed and educated community is more likely to hold government accountable for its actions, increasing transparency. As noted in submissions to the NHRC about an Australian Human Rights Act, a legislated HR Act can 'encourage public debate and dialogue about human rights leading to improvements in government policy, legislation, government service delivery and judicial decisions'.<sup>30</sup>

Victoria, New Zealand, the United Kingdom, and the ACT have adopted a 'dialogue' model of human rights protection. A 'dialogue' model sets out a list of human rights and accords the three branches of government – the executive, the legislature and the judiciary – specific roles in relation to protection and promotion of those rights'.<sup>31</sup> 'A central aspect of the dialogue model is that courts do not have power to declare legislation invalid or inoperable. That power remains with the parliament which is answerable only to the people'.<sup>32</sup>

The ACT, Victorian and New Zealand human rights legislation protects rights based on those contained in the ICCPR. Both the ACT and Victorian legislation contain a right to privacy and reputation.<sup>33</sup> The New Zealand *Bill of Rights Act 1990* does not reflect all ICCPR rights. For example, the Bill of Rights does not contain a right to privacy. The rights of personal privacy are provided for by the *Privacy Act 1993* and the common law tort of privacy. There is no common law tort of privacy in Queensland.

The *UK Human Rights Act 2004* gives effect to the human rights set out in the European Convention on Human Rights including the right to respect for private and family life, home and correspondence (Article 8).<sup>34</sup>

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<sup>30</sup> *National Human Rights Consultation Report*, pxxiv viewed at [www.ag.gov.au/RightsandProtections/HumanRights/TreatyBodyReporting/Pages/HumanRightsconsultationreport.aspx](http://www.ag.gov.au/RightsandProtections/HumanRights/TreatyBodyReporting/Pages/HumanRightsconsultationreport.aspx)

<sup>31</sup> Above, p xxii

<sup>32</sup> Speech by the Honourable Justice Margaret McMurdo AC, *A Human Rights Act for Queensland, University of the Sunshine Coast, Inaugural Law Oration*, 23 September 2015, p8 viewed at <http://www.sclqld.org.au/judicial-papers/judicial-profiles/profiles/mamcmurdo/papers/1>

<sup>33</sup> Section 13, *Charter of Human Rights and Responsibilities Act 2006* (VIC) and section 12, *Human Rights Act 2004* (ACT)

<sup>34</sup> [www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

Not all human rights enshrined in the Victorian, ACT, New Zealand and UK legislation are absolute and these rights can be subject to reasonable limitations that can be justified.<sup>35</sup>

A National Human Rights Consultation (NHRC) was undertaken in 2008 on 'how best to recognise and protect the human rights and freedoms enjoyed by Australians'. OIC notes that the NHRC Report recommended that the right to privacy and freedom be included in any federal Human Rights Act (Recommendation 25).<sup>36</sup>

Should the Committee consider it is appropriate and desirable to legislate for a HR Act in Queensland, it is OIC's view that for the purposes of achieving consistency and uniformity across jurisdictions, a HR Act should be modelled on the Victorian and ACT legislation. Accordingly, the rights to be protected would be based on rights contained in the ICCPR, including protection of the right to reputation and privacy.

*Effectiveness of human rights legislation in other jurisdictions*

The Victorian Charter has been in operation for eight years. As noted previously, VEOHRC, in its 2014 report on the operation of the Charter, noted that 'the Charter is not only part of everyday business for many public authorities, but drives important human rights initiatives to address systemic issues'.<sup>37</sup>

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<sup>35</sup> For example, section 7(2) *Charter of Human Rights and Responsibilities Act 2006*

<sup>36</sup> *National Human Rights Consultation Report* pxxxvi

<sup>37</sup> Victorian Equal Opportunity and Human Rights Commission, *2014 Report on the Operation of the Charter of Human Rights and Responsibilities*, p 1 viewed at <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/charter-reports>

The challenges of embedding a human rights culture in Victoria were noted by the 2015 review of the Victorian Charter. Consultations undertaken during the review highlighted that while the Charter has raised awareness of human rights obligations, the Charter has suffered a ‘de-prioritisation’ within Government over the last few years.<sup>38</sup> ‘Without Ministers and senior officials publically committing to human rights, and making it clear their expectation that public servants do the same, a human rights culture can (and will) wither on the vine’.<sup>39</sup>

Issues arising out of the eight year review of the Victorian Charter which the Committee may wish to consider as part of its inquiry into the desirability of legislating human rights in Queensland include:

- the increasing number of important matters that are regulated through national schemes, such as the National Disability Insurance Scheme, and the limitations and uncertainty regarding the Charter’s application (state based legislation) and interactions with laws that establish national schemes. ‘Various legal mechanisms are used to establish national schemes. They include the enactment of mirror or model legislation, applied law schemes, and referral to the Commonwealth.’<sup>40</sup> Given the increasing use of national laws to regulate a range of matters, the issues raised in the application of state based human rights legislation in Victoria to national schemes are likely to be relevant in the Queensland context.
- Increased contracting out of government services to the private sector creating uncertainty about the application of the Charter (state based legislation) to contracted service providers. OIC notes that the IP Act provides that if the provision of services under a contract, or other arrangement or involves the exchange or handling of personal information in any way, the contracting agency is required to *take all reasonable steps* to ensure that the contracted service provider is required to comply with the privacy principles. Once bound, the contracted service provider is responsible for any breach of the privacy obligations under the IP Act and an individual is able to make a privacy complaint against the contracted service provider.<sup>41</sup>

OIC remains available to provide any assistance to the Committee with regards to its Inquiry and looks forward to the outcome of the Committee’s Inquiry in due course.

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<sup>38</sup> 2015 Review of the Charter of Human Rights and Responsibilities Act 2006 p 23

<sup>39</sup> Fletcher A *Second Time’s the Charm – 2015 Review of the Victorian Review of the Victorian Charter*, 5 October 2015, <http://castancentre.com/2015/10/05/second-times-the-charm-2015-review-of-the-victorian-charter/>

<sup>40</sup> 2015 Review of the Charter of Human Rights and Responsibilities Act 2006 p 23 at 204

<sup>41</sup> Section 36(3) and section 164 of the IP Act