

## STATEMENT OF REASONS

### SECTION 157 OF THE INFORMATION PRIVACY ACT 2009

#### Privacy waivers

The privacy principles in the *Information Privacy Act 2009* (Qld) (**IP Act**) set out the obligations and limits on government agencies' handling of personal information in the course of providing services to the Queensland community. The IP Act also incorporates a measure of flexibility to accommodate unusual or one-off circumstances in which there are competing public interests. Under section 157 of the IP Act the Information Commissioner or delegate can, by gazette notice, give an approval that waives or modifies an agency's obligation to comply with the privacy principles. The Commissioner can give an approval if she is satisfied that the public interest in the agency's compliance with the privacy principles is outweighed by the public interest in waiving or modifying the agency's compliance.

While an approval is in force, the affected agency does not contravene the privacy principles if it acts in accordance with the approval.

#### Previous waivers

On 12 August 2011 and 13 January 2012 respectively the Privacy Commissioner and Acting Privacy Commissioner granted limited waivers to the former Department of Environment and Resource Management (**DERM**)<sup>1</sup> and the former Department of Communities (**DOC**)<sup>2</sup> for the purpose of finalising unsettled lease applications under the *Aborigines and Torres Strait Islander (Land Holding) Act 1985* (Qld) (**Land Holding Act**).

These waivers were granted in recognition of the strong public interest in facilitating a flow of personal information necessary to grant leases to individuals, some of whom had their entitlement to lease approved over 20 years ago. In this way, the Queensland Government can realise Parliament's original intent in enacting the Land Holding Act.

#### Fresh applications as a result of machinery-of-government changes

Following the Queensland general state election on 24 March 2012 the Honourable Campbell Newman was sworn in as Premier on 26 March 2012 and a new Ministry was sworn in on 3 April 2012. Consequent machinery-of-government changes, in part effected through the *Administrative Arrangements Order (No 3) 2012*, have re-allocated responsibilities for the delivery of government services and outcomes. As part of these changes, the following agencies now perform the functions connected with the finalisation of lease applications under the Land Holding Act:

- Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (**DATSIMA**)
- Department of Natural Resources and Mines (**DNRM**); and
- Department of Housing and Public Works (**DHPW**).

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<sup>1</sup> Cited as *Waiver of privacy principle obligations in the public interest No. 1 (2011)*.

<sup>2</sup> Cited as *Waiver of privacy principle obligations in the public interest No. 2 (2012)*.

DNRM is the agency which has responsibility for finalising the lease applications; DATSIMA and HPW have information concerning the application and the applicants necessary for the finalisation.

The Office of the Information Commissioner received written applications under section 157 of the IP Act from DNRM<sup>3</sup>, DATSIMA,<sup>4</sup> and DHPW<sup>5</sup> declaring that the finalisation of lease applications will require the new agencies to use and/or disclose personal information in potential breach of their obligations under the privacy principles in the IP Act. Accordingly, each agency sought an approval that waives their obligations to comply with the Information Privacy Principles (IPPs) for this specific purpose. Waivers were sought in relation to:

- IPP 9 – Use of information only for a relevant purpose
- IPP 10 – Limits on the use of personal information; and
- IPP 11 – Limits on disclosure.

In summary, DATSIMA, DNRM and NHPW are seeking the same waivers as were previously granted to DERM and DOC and for the same reasons.

### **Weighing the public interest**

The commissioner may give an approval under section 157 of the IP Act only if he or she is satisfied that the public interest in the agency's compliance with the privacy principles is outweighed by the public interest in waiving or modifying such obligations. The term 'public interest' refers to considerations affecting the good order and functioning of the community and governmental affairs for the well-being of the public. When considering the public interest in relation to an Act, the Act's purpose and objects are relevant.<sup>6</sup>

#### *Public interest in compliance with privacy principles*

The primary objectives of the IP Act are to provide for the fair collection and handling of personal information in the Queensland public sector and to provide access and amendment rights for that personal information.<sup>7</sup> The privacy principles set out in the IP Act establish the framework for dealing with personal information so that the objectives of the Act can be met.

Generally speaking, compliance with the privacy principles serves the public interest because their application contributes to the fair collection and handling of personal information in the Queensland public sector.

#### *Public interest in non-compliance with privacy principles*

The Land Holding Act provided for the grant of leases in perpetuity and other title in land to members of communities of Aborigines or Torres Strait Islanders. A significant number of lease applications made under the Land Holding Act remain unsettled, some of which are more than 20 years old. Given the passage of time, it would be unrealistic to expect that the lease application data is up-to-date, complete

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<sup>3</sup> 10 May 2012.

<sup>4</sup> 26 April 2012.

<sup>5</sup> 28 May 2012.

<sup>6</sup> *O'Sullivan v Farrer* (1989) 168 CLR 210 per Mason CJ, Brennan, Dawson and Gaudron JJ at 217 citing *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492 per Dixon J at page 505.

<sup>7</sup> Section 3 of the IP Act.

or even correct. It is also possible that some of the original applicants are no longer living on the land or that they may be deceased.

To finalise outstanding lease applications, it will be necessary for DNRM to work cooperatively with DATSIMA and HPW. The privacy principles do not easily allow for cooperative arrangements in these circumstances.

The Acting Privacy Commissioner was satisfied that non-compliance with IPPs 9, 10 and 11 (only) will facilitate the desired corporative arrangement and, in doing so:

- enable the finalisation lease applications under the Land Holding Act in an efficient manner
- enable DNRM, cooperatively working with DATSIMA and DHPW to realise Parliament's intent in enacting the Land Holding Act and to fulfil its responsibilities as administrator of this legislation
- providing certainty to affected individuals in relation to their dealings with relevant Indigenous Council, the State and the business community
- maintain the integrity of government records, including the Automated Titling System for interests in land; and
- deliver on government services which are long overdue.

### **Decision**

The Acting Privacy Commissioner has the delegated authority under the IP Act to give approvals of waivers and modifiers.

The Acting Privacy Commissioner carefully weighed the important obligations set out for Queensland government agencies in the IP Act, against a strong public interest advanced in this case for non-compliance with IPP 9, IPP 10 and IPP 11.

The Acting Privacy Commissioner considered that it was in the public interest to facilitate the use and disclosure of information by the applicant agencies.

Accordingly, the Acting Privacy Commissioner decided to give DNRM, DATSIMA and DHPW (respectively) an approvals of waiver on the following terms:

- the waiver is for the obligations in Information Privacy Principles (IPP) 9, 10 and 11 only
- the waiver extends to all uses and disclosures connected with the finalisation of the lease applications
- the waiver remains in place until the finalisation of all Lease Applications.

The approvals were gazetted on 8 June 2012.