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Inquiry into Support Provided to Victims of Crime

The Queensland Office of the Information Commissioner (**OIC**) welcomes the opportunity to make a submission to the Legal Affairs and Safety Committee's (**the Committee**) inquiry into support provided to victims of crime in Queensland.

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 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 also reviews agency decisions about access and amendment to information.

Accordingly, OIC has two key roles:

- overseeing Queensland Government agency information privacy compliance (**Information Privacy**); and
- promoting access to government-held information, and externally reviewing agency and Ministerial decisions on information access applications (**Information Access**).

This submission touches on some key issues concerning each of the above roles, in the context of victims of crime.

Information privacy

The privacy of victims of crime is safeguarded both by the express protection conferred by Part 1, Division 1, section 2 of the *Charter of Victims' Rights* (**Charter**),¹ and the privacy principles in schedules 3 and 4 of the IP Act.²

¹ Set out in schedule 1AA of the *Victims of Crime Assistance Act 2009* (Qld) (**VOCA Act**).

² Schedule 3 of the IP Act contains the 'Information Privacy Principles' (**IPPs**), which apply to most Queensland Government agencies, other than health agencies: the latter are governed by the 'National Privacy Principles' (**NPPs**), contained in schedule 4 of the IP Act. There may, too, exist other secrecy or confidentiality provisions operating to protect the privacy of victims of crime – section 140 of the VOCA Act, by way of example.

OIC expects that agencies that handle the personal information of victims of crime would give effect to these statutory obligations, by way of very strong policies and procedures around the handling of that information, so as to protect a particularly vulnerable sector of the community from privacy breaches. OIC has, unfortunately, seen instances where the personal information of a victim of crime was mistakenly released to the offender, with significant negative impacts upon the victim. The breach of trust in those circumstances can be akin to being offended against a second time, forcing victims to deal with the stress of the breach and manage risks to their personal safety.

OIC does anticipate, however, that the implementation of a mandatory data breach notification (**MDBN**) scheme binding Queensland Government agencies³ will provide a measure of assistance to victims of crime whose personal information may be the subject of a data breach. A MDBN scheme should oblige agencies responsible for a breach to take prompt containment action and, importantly, to provide timely notification to individuals affected by that breach – arming individuals with information that may empower them to undertake appropriate mitigative steps. Timely notification can be particularly critical for victims of domestic violence offences whose personal information may have been the subject of a data breach, and who may need to take protective steps.

More broadly, OIC also notes that where, as is increasingly the case, data breaches are the result of criminal/cyber intrusion,⁴ a MDBN scheme should serve to ensure victims of such criminal breaches are given clear and expeditious notice and advice. On this point, OIC notes that the escalation in criminal cyber activity⁵ is presumably giving rise to a new class of victim - being victims of cybercrime, including data and identity theft. This may, in turn, increase demand for victim assistance resources and services, including training needs.

OIC notes that privacy protections prescribed in the IP Act apply equally to the personal information of those convicted of offences. Relevantly, IPP 11 and, in the case of health agencies, NPP 2, each operate to restrict the disclosure by agencies of personal information to other entities (including, potentially, victims of crime and other Queensland Government agencies).

These restrictions are, however, subject to important exceptions. The IP Act is intended to operate subject to the provisions of other Acts relating to the handling of personal information,⁶ and thus the limitations it prescribes are subordinate to laws which specifically permit or prohibit the use and dissemination of personal information. The various information sharing

³ In his June 2022 report *'Let the sunshine in: Review of culture and accountability in the Queensland public sector'*, Professor Peter Coaldrake recommended introduction of a MDBN scheme. The Queensland Government announced it would accept all of Professor Coaldrake's recommendations: <https://statements.qld.gov.au/statements/95531>.

⁴ The Office of the Australian Information Commissioner's most recent report on data breach notifications received by it under the Commonwealth *Privacy Act 1988* MDBN scheme states that for the period July to December 2022, malicious or criminal attack was the cause of 70% of breaches in that jurisdiction – an increase of 41% on the previous reporting period. 63% of those malicious or criminal attacks were cyber incidents: <https://www.oaic.gov.au/privacy/notifiable-data-breaches/notifiable-data-breaches-publications/notifiable-data-breaches-report-july-to-december-2022> (accessed 12 April 2023).

⁵ The Australian Government's Australian Cyber Security Centre (**ACSC**) received more than 76,000 cybercrime reports in 2021-22, an increase of nearly 13 per cent from the previous reporting year: *ACSC Annual Cyber Threat Report, July 2021-June 2022*, Executive Summary: <https://www.cyber.gov.au/acsc/view-all-content/reports-and-statistics/acsc-annual-cyber-threat-report-july-2021-june-2022> (accessed 12 April 2023).

⁶ Including the collection, storage, handling, accessing, amendment, management, transfer, use and disclosure of personal information – see section 7(2) of the IP Act.

provisions prescribed in the VOCA Act, for example,⁷ would therefore override restrictions on use and disclosure otherwise imposed by the IP Act.

Relevant IP Act restrictions are also subject to a range of express exceptions, including where an agency holding personal information is satisfied on reasonable grounds that disclosure is necessary:

- to lessen or prevent serious threats to individual life, health or safety, or public health and safety;⁸ or
- for certain law enforcement purposes.⁹

A further exception permits disclosure, where that disclosure is authorised or required by law (such as, for example, the VOCA Act).

Another key exception permitting the disclosure or sharing of information is where agencies notify those from whom they are collecting personal information, at the time of collection, that it is the agency's usual practice to disclose that information to a nominated third party entity.¹⁰

OIC expects that the above exceptions, when taken together with the express information sharing provisions prescribed in the VOCA Act and the Charter, operate to permit criminal justice agencies to disclose and share information to support victims of crime.

Nevertheless, should the Committee's enquiries reveal issues in this regard, OIC would be willing to provide further comment or information.

Information access

As noted above, OIC conducts external review of decisions by agencies and Ministers under the IP and RTI Acts, concerning access to information. In this role, OIC has fielded applications from both offenders and victims of crime, seeking access to government-held information.

In the case of applications by offenders, OIC has in past decisions placed significant weight on victim privacy, determining that the disclosure of victim personal information would, on balance, be contrary to the public interest.¹¹

As for applications that may be made by victims of crime, OIC recognises the public interest in ensuring that victims are, to quote the Committee's inquiry terms of reference, '*kept informed and included in an appropriate and timely way throughout*' the criminal justice process. In this regard, OIC has long considered that victims of crime are entitled to access information about law enforcement investigations and the outcomes of those investigations;¹² a position today echoed in various provisions of the Charter.¹³ OIC is, however, required to balance competing public interests, including privacy and confidentiality interests, such that the extent of detail that may be obtained by a victim under

⁷ For example, sections 66-69 of the VOCA Act.

⁸ IPP 11(1)(c); NPP 2(1)(d).

⁹ IPP 11(1)(e); NPP 2(1)(g).

¹⁰ IPP 11(1)(a). Health agencies governed by the NPPs are subject to a more constrained exception of this kind.

¹¹ See, for example, *OZH6SQ and Department of Health* (Unreported, Queensland Information Commissioner, 21 May 2012), accessible at <https://www.oic.qld.gov.au/decisions/0zh6sq-and-department-of-health-310805>

¹² See for example *McCann and Queensland Police Service* (1997) 4 QAR 30, [58]-[60]; *Godwin and Queensland Police Service* (1997) 4 QAR 70, [52]-[56] (**Godwin**).

¹³ Charter, Part 1, Division 2, sections 1-5; Part 2, section 1.

the right to access contained in the RTI and IP Acts may vary from case to case.¹⁴

As with information privacy issues, should it be the case that the Committee's enquiries disclose any issues concerning access to information by victims of crime under the RTI/IP schemes, OIC is willing to provide any further assistance that may be considered necessary.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rachael Rangihaeata'.

Rachael Rangihaeata
Information Commissioner

¹⁴ See former Information Commissioner Albietz's comments in *Godwin*, at [52].