



Department of  
**Environment and  
Heritage Protection**

Ref CTS 22251/13  
Your ref 2311614

15 November 2013

Mr John Sosso  
Director-General  
Department of Justice and Attorney-General  
GPO Box 149  
Brisbane QLD 4001

Dear Mr Sosso

Thank you for your letter dated 10 September 2013 concerning the review of the *Right to Information Act 2009* (the RTI Act) and the *Information Privacy Act 2009* (the IP Act). We welcome the opportunity to provide comment on the issues raised in the two discussion papers, released by the Attorney-General and Minister for Justice on 5 August 2013 as part of the review.

The Departments of Agriculture, Fisheries and Forestry; Energy and Water Supply; Environment and Heritage Protection; National Parks, Recreation, Sport and Racing; Natural Resources and Mines and Tourism, Major Events, Small Business and the Commonwealth Games wish jointly to raise issues relating to the administration of the RTI Act, the associated resource implications and the resultant impact on the government's open government initiative. Our agencies also jointly propose options for addressing those implications, taking account of the current fiscal environment.

**Disclosure Log: compromises the ability to process other applications (Impact of February 2013 legislative changes)**

The current operating arrangements for Disclosure Logs have substantial resource implications that, in practice, have compromised Departments' capacity to process RTI applications. In many – if not a majority – of cases, Disclosure Log decisions necessitate applying principles different to those present at the initial decision stage and, as a consequence, significant reprocessing of documents. This could be addressed either by increasing the resources available to administer the RTI Act or by abolishing the Disclosure Log requirement.

Alternatively, Departments could be given greater flexibility to manage Disclosure Log workloads. For example, prior to the 2013 legislative amendments, Departments could post statements in Disclosure Logs alerting the public to the fact an RTI decision had been

made. If this was reinstated, Departments would have the option of reprocessing documents upon request and only then placing them in the Disclosure Log. This would be particularly beneficial in the numerous cases in which RTI applicants seek documents on narrow topics less likely to attract wider interest and which may never require reprocessing.

Beyond that, the *Ministerial Guidelines on the Operation of Publication Schemes and Disclosure Logs* could include further direction on the expectations for maintaining Disclosure Logs (such as requiring those applications assessed as most likely to attract interest to be reprocessed without an expression of interest). Adopting that approach would allow for guidance to be developed in consultation with RTI practitioners that better balances government expectations with administrative limitations; guidance that could more readily be amended if experience shows a particular expectation to be administratively problematic.

### **Reduction in timeframes: exposing the Government to risks that sensitive information is wrongly released and unfairly affecting a community member and or damages a Minister or Departmental Brand**

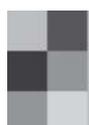
The reduced timeframe for processing information access applications from 45 calendar days (in the repealed *Freedom of Information Act 1992*) to 25 business days (in the RTI and IP Acts) has had widespread implications for RTI decision makers and departmental and Ministerial staff. This reduction does not take account of the delays consistently experienced at all stages of the process, including for document searches, while awaiting applicants' advice on issues that have no 'clock stopping' provision, delays in third party consultations and the necessity for internal consultation and briefing.

While all parties generally endeavour to address these issues, the current timeframe does not always make that possible. This difficulty is magnified because, while the entire timeframe is currently taken into account when considered if an application can be dealt with within the resources of the agency, much of that time is taken up with administrative tasks (such as document searches, internal consultation and briefing) that can severely limit actual decision-making time. This increases the risks associated with RTI applications, such as the potential for the inadvertent release of sensitive information while also having implications for resourcing the process, and adversely affecting normal staff workloads.

While all parties endeavour to address these issues at all decision making stages, the current timeframe provisions do not allow for enough flexibility. Accordingly, it is proposed that the processing period be increased to a minimum of 30 business days for both RTI and IP applications.

### **Impact of applications on agencies received from large clients with broad scopes and multiple applications (concurrently or consecutively)- free rider problem**

The departments do not consider the current method of applying fees and charges to be an adequate system in all circumstances. This is particularly the case where an applicant submits a broad request encompassing multiple unknown subject areas, rather than



seeking access to specific subject areas or documents. The broad nature of the application (or multiple applications) often requires significant resources to process, which the current fees and charges structure does not sufficiently address.

To improve the current regime, a tiered model may be an appropriate structure to adopt for fees and charges under the RTI Act. An example of a tiered approach could incorporate the current charging structure for individual applicants (e.g. members of the public, or next of kin for fatality incidents) or for RTI applications involving small amounts of documents; with more expensive charges applied to RTI applications submitted by companies, or for applications involving large amounts of documents.

Applicants who submit multiple applications should also be held liable for the increased charges due to the combined resources required to process these various requests. These amendments would assist in providing a more equitable distribution of the limited Government resources available to comply with the RTI legislation, whilst encouraging applicants to provide specific details relating to the scope of their request.

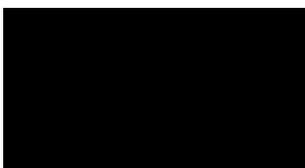
Also, the departments propose an amendment to refusal provision within section 41 of the RTI Act to include a time based threshold for consideration of RTI and IP applications received by the same applicant that have been completed within a recent timeframe (e.g. to include completed applications from the last 12 months).

### **Practitioner submission**

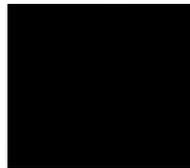
Please note that, as Governance and Strategy, Department of Environment and Heritage Protection, provides RTI and privacy services to the six agencies, a practitioner response addressing technical aspects of the RTI and IP Acts will be sent separately under the Head of Corporate Services signature for that agency.

Should your staff have any further enquiries, please contact [REDACTED],  
Manager RTI Services of the department on telephone [REDACTED] or email  
[REDACTED]

Yours sincerely



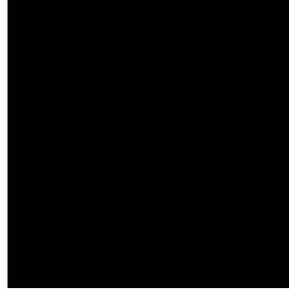
Jack Noye  
**Director-General**  
Department of Agriculture, Fisheries and Forestry



Richard Eden  
**Director-General**  
Department of Tourism, Major Events, Small Business and the Commonwealth Games



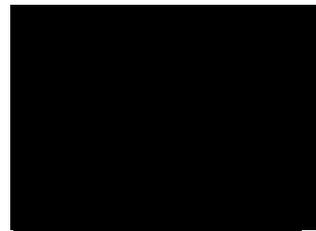
Dan Hunt  
**Director-General**  
Department of Energy and Water Supply



Brett Hayward  
**Director-General**  
Department of Natural Resources and Mines



Jonathan (Jon) PC Black  
**Director-General**  
Department of Environment and Heritage  
Protection



John Glaister  
**Director-General**  
Department of National Parks, Recreation,  
Sport and Racing

