**Review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009*, Discussion Paper August 2013**

Queensland Rail's submission

| Reference Number | QUESTION | COMMENT |
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| 1.1 | Is the Act's primary object still relevant? If not, why not? | Yes. |
| 1.2 | Is the 'push model' appropriate and effective? If not, why not? | Yes it is appropriate. It could be made more effective by requiring agencies to emphasise and focus on their publication and administrative schemes, as this is where the "push" can be effectively applied. |
| 2.1 | Should the right of access for both personal and non-personal information be changed to the RTI Act as a single entry point? | Yes. This allows the agency to focus on the relevant privacy provisions that apply in order to protect the privacy of individual's, rather than having conflict about which Act to use. The 2 entry points also create confusion for applicants. |
| 3.1 | Should the processing period be suspended while the agency is consulting with the applicant about whether the application can be dealt with under the IP Act? | Yes. As above, the entry point should be RTI only and the processing period should be suspended. |
| 3.2 | Should the requirement for an agency to again consider whether the application can be made under the IP Act be retained? | No. As above, the entry point should be RTI only. |
| 3.3 | Should the timeframe for section 54(5)(b) be 10 business days instead of calendar days, to be consistent with the timeframes in the rest of the Act? | As above, the entry point should be RTI. Therefore enforcing the 10 business days that the RTI provides for. |
| 4.1 | Should the Act specify that agencies may refuse access on the basis that a document is not a document of an agency or a document of a Minister? | Yes. |
| 4.2 | Should a decision that a document is not a 'document of the agency' or a 'document of a Minister' be a reviewable decision? | Yes, however, like most of the RTI Act – it is very subjective. |
| 4.3 | Should the timeframe for making a decision that a document or entity is outside the scope of the Act be extended? | Yes. |
| 4.4 | Should the way the RTI Act and Chapter 3 of the IP Act applies to GOCs be changed? If so, in what way? | No. |
| 4.5 | Should corporations established by the Queensland Government under the *Corporations Act2001* be subject to the RTI Act and Chapter 3 of the IP Act? | A consistent approach across agencies and entities of the Government would be more transparent. |
| 4.6 | Should the RTI Act and Chapter 3 of the IP Act apply to the documents of contracted service providers where they are performing functions on behalf of government? | Yes. A consistent approach across agencies and entities of the Government would be more transparent. |
| 5.1 | Should agencies with websites be required to publish publication schemes on their website? | All agencies need to publish publication schemes on their public forums – forums will vary between agencies. |

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| 5.2 | Would agencies benefit from further guidance on publication schemes? | Yes – agencies would benefit from more emphasis on publication and administrative schemes. More emphasis could be placed on publication schemes or, alternatively, a centralised State Government site/forum i.e "Open Government Data". This could be made compulsory, particularly in relation to categories of information, for example, project updates etc. This could aid in transparency. |
| 5.3 | Are there additional new ways that Government can make information available? | As above. |
| 6.1 | Should the access application form be retained? Should it remain compulsory? If not, should the applicant have to specify their application is being made under legislation? | I think the form should be compulsory – as it would actually save time where in the case of another format, time would be needed to be clarified etc.<br>The form should again be amended to:<br>- Subject matter; a brief description of what you are seeking<br>- Type of documents; this should be removed, as this is a guess as to what type of documents may be existing, which are in fact not, and to try and explain that to the applicant is difficult and time consuming. The form needs to be simplified. |
| 6.2 | Should the amendment form be retained? Should it remain compulsory? | This form is not used often, however, it may be useful to some. |
| 6.3 | Should the list of qualified witnesses who may certify copies of identity documents be expanded? If so, who should be able to certify documents for the RTI and IP Acts? | No. The current list is consistent with the usual requirements to certify identification. |
| 6.4 | Should agents be required to provide evidence of identity? | Yes, it's important to verify who the information is going as the protection of individuals privacy remains paramount. |
| 6.5 | Should agencies be able to refund application fees for additional reasons? If so, what are appropriate criteria for refund of the fee? | A 'refuse to deal' decision should be an additional reason to refund the fee. |
| 6.6 | Are the Acts adequate for agencies to deal with applications on behalf of children? | Not applicable for this agency. |
| 6.7 | Should a further specified period begin as soon as the agency or Minister asks for it, or should it begin after the end of the processing period? | At the end of the processing period, as this would allow the agency further time to process the application. |
| 6.8 | Should an agency be able to continue to process an application outside the processing period and further specified period until they hear that an application for review has been made? | In some circumstances, this may be necessary. |
| 6.9 | Is the current system of charges estimate notices beneficial for applicants? Should removing the charges estimate notice system be considered? | Yes it should be re-considered. In the role of Queensland Rail's RTI officer, the time spent to work out the potential charges outweighs the benefit of the charge. |
| 6.10 | Should applicants be limited to receiving two charges estimate notices? | See comments above. The CEN system is not effective. |

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| 6.11 | Should applicants be able to challenge the amount of the charge and the way it was calculated? How should applicant's review rights in this area be dealt with? | If the charges estimates remain, the fees should either be increased to accurately reflect the resources spent on progressing the applications or be removed and accounted for in some other form. |
| 6.12 | Should the requirement to provide a schedule of documents be maintained? | No. It confuses the applicant unnecessarily. Within the prescribed notice, there is a requirement to outline what documents are or are not disclosed. This description within the notice is enough to make an applicant aware. If the applicant has questions regarding any of the documents mentioned in the notice – they can simply enquire with the RTI officer. |
| 6.13 | Should the threshold for third party consultations be reconsidered? | Third parties should extend to any person, organisation, business group or otherwise that may be impacted by the release of documentation. The broader the threshold, the more information you can gather to make the best decision. |
| 6.14 | Should the Acts set out the process for determining whether the identity of applicants and third parties should be disclosed? | This may be useful to protect witnesses. |
| 6.15 | If documents are held by two agencies, should the Act provide for the agency whose functions relate more closely to the documents to process the application? | Yes. There is a risk of lost time and resources with duplication of effort on the agencies. It is not unusual for an applicant to apply to numerous agencies with the same request for documentation. Each of those agencies will process the application which results in duplication. |
| 6.16 | How could prescribed written notices under the RTI Act and IP Act be made easier to read and understood by applicants? | Practical plain English drafting would assist in simplifying the notices. There is too much information given in the notices that it creates confusion, which inadvertently leads to either internal or external appeal. It is unnecessary to overload the applicant with all the RTI terminology. The more simplified and straightforward the notice is, the better use of the agency's time and easier for the applicant to understand. |
| 6.17 | How much detail should agencies and Ministers be required to provide to applicants to show that information the existence of which is not being confirmed is prescribed information? | As much as that decision-maker feels is necessary and appropriate to satisfy the tests for this provision. |
| 6.18 | Should applicants be able to apply for review where a notation has been made to the information but they disagree with what the notation says? | No, as the agency has not refused the amendment, the rights of review would only give rise to what words were used in the notation, rather than a particular course of action taken. |
| 7.1 | Do the categories of excluded documents and entities satisfactorily reflect the types of documents and entities which should not be subject to the RTI Act? | As far as it relates to rail – yes. |
| 7.2 | Are the exempt information categories satisfactory and appropriate? | Deliberative process information is broadly defined, however, |

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| | | many of the deliberations undertaken can usually be just as confidential as a final document. The definition here should be narrowed. |
| 7.3 | Does the public interest balancing test work well? Should the factors in Schedule 4 Parts 3 and 4 be combined into a single list of public interest factors favouring non-disclosure? | Yes. Part 4 is more detailed than Part 3, which assists in giving the factors greater context. To assist the applicant's understanding – both Parts should be reviewed to be consolidate relevant factors. |
| 7.4 | Should existing public interest factors be revised considering<br>• some public interest factors require a high threshold or several consequences to be met in order to apply<br>• whether a new public interest factor favouring disclosure regarding consumer protection and/or informed consumers should be added<br>• whether any additional factors should be included? | For some factors, the threshold is high and specific, which in some cases is not useful when there is a need to protect the information.<br>Suggest additional factors are included or the current factors are reviewed to ensure the factors are useful and relevant for a transparent Government body that can operate confidentially when they need to. Further consideration should be given to broadening the factors against disclosure for sensitive government documents and/or decisions. |
| 7.5 | Does there need to be additional protection for information in communications between Ministers and Departments? | In some cases yes. |
| 7.6 | Should incoming government briefs continue to be exempt from the RTI Act? | Yes. The level of confidentiality is appropriate to allow the Department be full and frank with incoming Ministers. |
| 7.7 | Are the current provisions in the RTI Act sufficient to deal with access applications for information created by Commissions of Inquiry after the commission ends? | Yes. |
| 7.8 | Is it appropriate or necessary to continue the exclusion of Commission documents from the RTI Act beyond the term of the Inquiry? | Yes. As potentially the investigation may be mindful of being full and frank knowing that it could eventually enter the public domain via RTI. |
| 7.9 | Are provisions in the RTI Act sufficient to deal with access applications for information relating to mining safety in Queensland? | I have not had to apply the Act in this scenario. |
| 7.10 | Are the current provisions in the RTI Act sufficient to deal with access applications for information about successful applicants for public service positions? | A more relevant question is; does the Government view public service positions to be of high "public interest"? If so – based on the object of the Act, the current provisions suffice.<br>If it is not viewed this way then specified provisions would assist in protecting this sought of information. In some cases, the privacy of the individual may likely outweigh some public interest factors. |
| 8.1 | Should fees and charges for access applications be more closely aligned with fees, for example, for access to court documents? | Yes. In our experience the RTI Act can be used as a form of 'legal discovery' process, where this is the case, it may be |

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| | | appropriate for the costs to reflect that. |
| 8.2 | Should fees and charges be imposed equally on all applicants? Or should some applicants pay higher charges? | If the charges are appropriate – then they should be equally applied. |
| 8.3 | Should the processing period be suspended when a non-profit organisation applicant is waiting for a financial hardship status decision from the Information Commissioner? | No – as the processing will remain to occur regardless of financial hardship or payment received. |
| 8.4 | Should the RTI Act allow for fee waiver for applicants who apply for information about people treated in multiple HHSs? | |
| 8.5 | If so what should be the limits of this waiver? | |
| 9.1 | Should internal review remain optional? Is the current system working well? | It is resource-exhaustive. Currently, agencies are looking for ways to be more cost effective and efficient, the extensive use of resources to satisfy review rights is not the best way to uphold the spirit of the Act or the resources of the agency. |
| 9.2 | If not, should mandatory internal review be reinstated, or should other options such as a power for the Information Commissioner to remit matters to agencies for internal review be considered? | No – the use of the Information Commissioner may be more appropriate. |
| 9.3 | Should applicants be entitled to both internal and external review where they believe there are further documents which the agency has not located? | Further searches should always be directed by the Information Commissioner – that level of authority is required to have the agency attend to the task properly. |
| 9.4 | Should there be some flexibility in the RTI and IP Acts to extend the time in which agencies must make internal review decisions? If so, how would this best be achieved? | If Internal reviews remain – more time is required to process these properly. If the review takes less time, they do not have to wait to the end of the processing period to communicate the decision to the applicant. |
| 9.5 | Should the RTI Act specifically authorise the release of documents by an agency as a result of an informal resolution settlement? If so, how should this be approached? | No. They should be treated case by case, depending on the circumstances. |
| 9.6 | Should applicants have a right to appeal directly to QCAT? If so, should the Commonwealth model be adopted? | No – the information Commissioner's work is done well and effective. |
| 10.1 | Are current provisions sufficient to deal with the excessive use of OIC resources by repeat applicants? | No. The OIC's first assessment of an application may need to be narrowed instead of just taking all of them on. |
| 10.2 | Are current provisions sufficient for agencies? | There could definitely be use in further provisions allowing an agency to deal with repeat applicants, who may not be applying in the spirit of the Act |
| 10.3 | Should the Acts provide additional powers for the OIC to obtain documents in performance of its performance monitoring, auditing and reporting functions? | The power the OIC have is appropriate. |
| 10.4 | Should legislative time frames for external review be reconsidered? Is it | No. The current arrangement is suffice. |

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| | appropriate to impose timeframes in relation to a quasi-judicial function? | |
| 10.5 | If so, what should the timeframes be? | |
| 11.1 | What information should agencies provide for inclusion in the Annual Report? | Statistical information should be limited to:<br>- Number of applications<br>- Total of docs reviewed<br>- Total docs disclosed<br><br>An agency should report on the “types” of applications received. By this I mean, to report on the way the Act is being used – this is relevant to report on and to inform the Government how the Act is being used. In our experience the Act can be used as a legal discovery process, however, this hasn’t been able to be reported. |
| 12.1 | Are there any other relevant issues concerning the operation of the RTI Act or Chapter 3 of the IP Act that need to be changed? | The use of the Act by applicants is clouding the spirit and object of the Act. There should be more of a focus on proactive disclosure of Government held information, concerning things such as, expenditure, strategies, projects etc. Right to information should be used as a last resort only as in some occasions. |