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Submission on review of the *Right to Information Act 2009* (Qld)

SUMMARY ONLY

(Note: This is to be read together with EDO Qld's full submission, to be provided)

1. Unfortunately, the objects of the RTI Act are not being adequately met: the flow and administrative release of information is, in particular respects, poor, with access applications being the norm rather than necessary as the last resort.

2. The push model and publication schemes, particularly with respect to public lists and registers, need drastic improvement. This is particularly the case regarding application and environmental assessment information on projects and developments requiring state approvals. Finding relevant documents online, and/or public register search requests with agencies, are often difficult and slow. In those circumstances, RTI Act access applications are often required.

3. It is important that Government Owned Corporations, particularly entities like port authorities that deal with projects and developments of significant public interest, and Queensland Treasury Corporation for financial assessment of such projects, are subject to the RTI Act.

4. Schedules of documents are a useful tool for narrowing the scope of access applications, but should be improved with further descriptions. To reduce administrative burden on agencies, and to reduce processing times for access applications, consultation with third parties must only be on the basis of a reasonable expectation 'of substantial concern'. Retaining third party review rights provides an appropriate safeguard to potential missed consultation.

5. The Cabinet exemption is too broad, inconsistent with other Australian jurisdictions, and must be amended. In particular:
    a. there should be an express exclusion that information submitted to Cabinet is not necessarily exempt (but still can be);

b. the prejudice to confidentiality of Cabinet considerations or operations should be removed;

c. the exclusion regarding official disclosure should be expanded to include where 'the existence of' a deliberation is official disclosed;

d. the 'budgetary processes' exemption is too broad, is prima facie unrelated to Cabinet, and/or otherwise duplicitous where the Cabinet Budget Review Committee is involved.

The breach of confidence exemption should be removed, as it requires an agency to essentially make what would normally be a judicial decision about whether an action of breach of confidence would be founded. Instead, relevant information should be dealt with as a factor under the public interest balancing test (which currently overlaps with a Schedule 4 factors – e.g. part 4 items 1 and 8).

6. The public interest balancing test must be simplified by either combining Schedule 4 parts 3 and 4 factors, or by ensuring that overlap/duplication between, and within, the part 3 and 4 factors is removed. The factual circumstances of a particular case should determine the weight of any factor against disclosure, including those currently in part 4. If part 3 and 4 factors are merged but address similar issues, then circumstances where harm is likely to be caused, and therefore be given greater weight, could be moved to the OIC's guidelines. If part 4 factors are to be retained, then to further the objects of the RTI Act in the balancing process, important and increased emphasis should be applied on giving access and on the part 3 factors favouring disclosure. The language used in all factors should also be reviewed: consistent with the RTI Act's objects, non-disclosure factors should be narrowly worded and have higher thresholds, while factors favouring disclosure should be broadly worded and lower thresholds. In particular, the specific factor relating to contribution to environmental protection should be clarified to state that any contribution can be indirect.

7. The current review provisions are appropriate, including optional internal review. While there is a clear benefit to a right to apply to QCAT for merits review, QCAT could be given particular powers – for example, the power to remit a matter to an agency, or the OIC, to first narrow the merits issues in dispute.

8. The key requirement for disclosure logs is for timely updates. The requirement for 'as soon as practicable' should be qualified with a specific timeframe, such as 'but no later than 10 business days'.

9. There should be provision for applicants to apply for waiver or reduction of charges on the basis of access being in the general public interest or in the interest of a substantial section of the public, and not just for financial hardship. This would be consistent with the federal FOI Act.

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17 February 2017

RTI and Privacy Review
Department of Justice and Attorney General
Sent via email only: FeedbackRTIandprivacy@justice.qld.gov.au

Dear Sir/Madam

Submission on review of the *Right to Information Act 2009* (Qld)

Thank you for the opportunity and additional time to make a submission on the review of the *Right to Information Act 2009* (Qld) (**RTI Act**) and *Information Privacy Act 2009* (Qld) (**IP Act**). Environmental Defenders Office Qld (**EDO Qld**) primarily assists clients seeking to access information other than personal information; this submission therefore focuses on access to information under the RTI Act and does specifically address the parts of the *2016 Consultation Paper on the Review of the Right to Information Act 2009 and Information Privacy Act 2009* (**the Consultation Paper**) which discuss the IP Act.

Our submissions are provided here in summary and in detail in the **Appendix** to this letter.

About EDO Qld

EDO Qld is a non-profit, non-government community legal centre with expertise in environmental and planning law. We assist Queenslanders to understand and enforce their legal rights to protect the environment. EDO Qld has over 20 years' experience working with all sectors of the community to provide advocacy in litigation, community legal education and law reform submissions on public interest environment and planning law matters.

We only assist clients where their concerns address a matter of interest to the broader public that is relevant to environmental protection or community health and wellbeing. Access to information is an essential part of this work, so the community can understand what impacts are proposed or are occurring from developments that affect the environment or community.

As part of our work, EDO Qld therefore has a strong focus on supporting improvements in transparency, accountability in governance and community rights to access information. EDO Qld has extensive experience with the RTI Act framework through representing and advising

clients on access and review applications. We also have similar experience with the federal *Freedom of Information Act 1982* (Cth) (**FOI Act**).

In the experience of EDO Qld, the current administration of the RTI Act is failing to meet the purpose and Preamble principles to the RTI Act. The 'push model', requiring the proactive release of as much information as possible by government, is not being put into effect adequately; the processing of RTI applications is frequently significantly delayed and applications are frequently denied without adequate reason and/or contrary to the public interest supported in the RTI Act.

The public has a right to know about proposals that may harm our environment and community health, and a right to participate in decisions that affect the environment and community. This benefit and importance of supporting this right is recognised in the Preamble to the RTI Act, and in the list of factors favouring disclosure in the public interest.[1]

Limiting access to information about development projects, particularly where the project is supported with public funds, invites suspicion and reduces public confidence in the assessment and decision making process. This also impacts on the ability of the community to participate in democratic processes in an informed manner.

Reform of the RTI Act and how it is delivered in practice is required to ensure that the principals of the Preamble of the RTI Act are met, and that the public has full and timely access to information concerning decision making and government processes that affect the community and the environment.

Summary of submissions

The objects of the Acts

1. **The objects of the RTI Act are not being adequately met**: the flow and administrative release of information is, in particular respects, poor, with access applications being the norm rather than necessary as the last resort.
2. **The push model and publication schemes, particularly with respect to public lists and registers, need drastic improvement.** This is particularly the case regarding application and environmental assessment information on projects and developments requiring state approvals. Finding relevant documents online, and/or public register search requests with agencies, are often difficult and slow. In those circumstances, RTI Act access applications are often required.

[1] See *Right to Information Act 2009* (Qld), Schedule 4, Part 2, sections 13 and 14.

The ambit of the Acts

3. **It is important that Government Owned Corporations, particularly entities like port authorities that deal with projects and developments of significant public interest, and Queensland Treasury Corporation for financial assessment of such projects, are subject to the RTI Act**.

Access to information

4. **Schedules of documents are a useful tool for narrowing the scope of access applications, but should be improved with more detailed descriptions.**

5. **To reduce administrative burden on agencies, and to reduce processing times for applications, a higher threshold should apply to consultation with third parties. More resources should be provided to support RTI Act implementation, including proactive dissemination of information**

Exempt information

6. **The Cabinet exemption is too broad, inconsistent with other Australian jurisdictions, and must be amended. In particular:**

   (a) RTI Act Schedule 3, section 2 should be amended to reflect:
   - the 'dominant purpose test' from the FOI Act, and
   - that exemptions surrounding the provision of information relating to a Cabinet process do not necessarily apply just because information or documents are submitted (or proposed to be submitted) to Cabinet.

   (b) the prejudice to confidentiality of Cabinet considerations or operations should be removed;

   (c) the exclusion regarding official disclosure should be expanded to include where 'the existence of' a deliberation is official disclosed; and

   (d) the 'budgetary processes' exemption is too broad, is prima facie unrelated to Cabinet, and/or otherwise duplicitous where the Cabinet Budget Review Committee is involved.

7. **The breach of confidence exemption should be removed, as it requires an agency to essentially make what would normally be a judicial decision about whether an action of breach of confidence would be founded.** Instead, relevant information should be dealt with as a factor under the public interest balancing test (which currently overlaps with Schedule 4 factors – e.g. part 4 section 1 and 8).

8. **The public interest balancing test must be simplified to ensure the overall bias of the RTI Act towards disclosure is effectively implemented by decision makers.** The language used in all factors should also be reviewed: consistent with the RTI Act's objects, non-disclosure factors should be narrowly worded and have higher thresholds, while factors favouring disclosure should be broadly worded and subject to lower thresholds.

9. **Timeliness is key issue needing to be resolved for disclosure logs.** The requirement for 'as soon as practicable' should be qualified with a specific timeframe, such as 'but no later than 10 business days'.

10. **Publication schemes provide very useful information, but they need vast improvement in particular respects to make them more efficient, and to meet the requirements of the push model**

Reviewing decisions

11. **The current review provisions are appropriate, including optional internal review.**

The role of the OIC

12. **While there is a clear benefit to a right to apply to QCAT for merits review, QCAT could be given particular powers –** for example, the power to remit a matter to an agency, or the OIC, to first narrow the merits issues in dispute.

Other issues about the RTI Act

13. **There should be provision for applicants to apply for waiver or reduction of charges on the basis of access being in the general public interest or in the interest of a substantial section of the public, and not just for financial hardship.** This would be consistent with the federal FOI Act.

14. **An option to split a decision between information requiring third party consultation and that which can be provided without consultation should be introduced,** to enable faster response to part of an application to minimise the delay caused by third party consultation.

15. **More resources should be provided to the OIC to undertake external review in a timely manner,** to avoid impacts to timeliness of receipt of an external review decision affecting the achievement of transparency and accountability in access to information.

Given the importance of access to information to ensuring open, accountable governance, free of corruption, more consultation should be undertaken as part of this review

We commend the Government for undertaking this statutory review. It is unfortunate that it has been undertaken over a period including the festive season, when many people are on leave and unable to provide the review the attention it deserves. It is also unfortunate that there were not more proactive attempts to inform the public the review was being undertaken, including contacting all those who have previously made applications under the RTI and IP Acts.

We recommend that public hearings be undertaken as part of the review.

Meaningful consultation requires diverse forums for the public to convey to the government their experience with the legislation under consideration, including opportunities for further discussion to support written submissions as this will garner far more insight to inform improvements to the Acts.

Please do not hesitate to contact us if you have any questions, would like to discuss this submission or we can provide any further detail.

Yours faithfully
Environmental Defenders Office (Qld) Inc

Revel Pointon
Solicitor
Environmental Defenders Office (Qld) Inc

APPENDIX - DETAILED SUBMISSIONS TO CONSULTATION PAPER

The objects of the Acts

Q1. Are the objects of the RTI Act being met? Is the push model working? Are there ways in which the objects could be better met?

Summary response and recommendations:

- The objects of the RTI Act are not being adequately met: the flow and administrative release of information is, in particular respects, poor, with access applications being the norm rather than necessary as the last resort.
- The push model and publication schemes, particularly with respect to public lists and registers, need drastic improvement. This is particularly the case regarding application and environmental assessment information on projects and developments requiring state approvals. Finding relevant documents online, and/or public register search requests with agencies, are often difficult and slow. In those circumstances, RTI Act access applications are often required.

As outlined in the Consultation Paper, the primary object of the RTI Act is to give a right of access to information in the government's control, unless on balance, it is contrary to the public interest to give the access. Agencies are required to interpret and apply the RTI Act in a way that furthers this object. The RTI Act is also required to be administered with a pro-disclosure bias (supporting the 'push model') and agencies or Ministers are empowered to give access to a document even if the RTI Act provides that access to the document may be refused.

<u>Pro-disclosure bias in RTI Act objects is not being adequately met</u>

In our experience and that of our clients, the primary object of the RTI Act is not adequately being met. This is primarily because agencies are not appropriately identifying and giving weight to the pro-disclosure bias in a way that accurately applies their decision-making obligations under the RTI Act.

Many access decisions we have received do not appear to identify or adequately consider the pro-disclosure requirements as the foremost starting position. For example, often we do not see section 49(1) referenced in reasons for an agency decision, however instead, section 49(3) is commonly used as the starting point. It is often only through making submissions on review that the reviewer has, in our experience, recognised and actively applied the pro-disclosure bias the provided by the RTI Act. The pro-disclosure bias and the primary object of the RTI Act must be better integrated into the decision-making process for providing access to information.

The push model needs significant improvement, particularly with respect to information on environmental assessments and approvals of projects

The 'push model', which requires that agencies comply with the policy that *'[g]overnment information will be released administratively as a matter of course, unless there is a good reason not to, with applications under this Act being necessary only as a last resort'* was implemented due to the 2008 'Solomon Report'[2] findings that the government needed to be more pro-active in providing community access to information.

This push model is not being adequately implemented with respect to environmental assessment and decision-making processes for developments and major projects. In our experience, clients are either required to go through a lengthy process of trying to get material through a public register, for which often it is necessary to follow up applications multiple times, or go through a protracted RTI Act application process to which many clients are finally denied access to a significant amount of documents they are seeking in the public interest of environmental protection and community health. There is a lack of transparency, and accessing information is often so difficult that many of our clients must resort to making an RTI Act access application as the only option. Further commentary specific to the inadequacy of the implementation of the push model and the Department of Environment and Heritage Protection's (**EHP**) publication scheme is provided in response to question 19 below.

The ambit of the Acts

RTI Act – Government-Owned Corporations

Q3. Should the way the RTI Act applies to Government Owned Corporations (GOCs), statutory bodies with commercial interests and similar entities be changed? If so, in what way? Is there justification for treating some GOCs differently to others?

Summary response and recommendations:

- It is important that Government Owned Corporations, particularly entities like port authorities that deal with projects and developments of significant public interest, and Queensland Treasury Corporation for financial assessment of such projects, are subject to the RTI Act.

The RTI Act should continue to apply in full with respect to certain GOCs. Infrastructure-related GOCs often have significant roles with respect to decision making for major projects which impact the environment and community. For example, many of clients have applied for

[2] Independent Review Panel, *The Right to Information: Reviewing Queensland's Freedom of Information Act*, June 2008, http://www.rti.qld.gov.au/__data/assets/pdf_file/0019/107632/solomon-report.pdf.

information from port authorities in recent years to better understand potential impacts of proposed ports to the Great Barrier Reef, local communities, and also ramsar wetlands.

Similarly, the RTI Act should apply in full to Queensland Treasury Corporation (**QTC**), which is often involved in the financing and viability assessment of major projects to inform decisions on expenditure of significant public funds. QTC is responsible for the management of public funds held by government for the public good. Therefore, it is appropriate that full disclosure of the deliberations and operations of QTC is provided to the public in the interests of accountability and transparency.

We note the RTI Act is already excluded from applying to QTC's borrowing, liability and asset management related functions; this exclusion should not be expanded. To the extent that QTC is also involved in advice to government on major projects of widespread interest, the RTI Act should also apply to it so that accountability and transparent decision making is furthered.

RTI Act – contracted services providers

Q4. 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?

We support the approach in section 6C of the Commonwealth FOI Act as a sensible comprise, where a relevant agency coordinates documents and makes the decision, while still serving the objects of the RTI Act with respect to accessing information about public services.

Access to information

Schedule of relevant documents

Q8. Noting the 2013 response, should the requirement to provide a schedule of documents be maintained?

Summary response and recommendation:

- Schedules of documents are a useful tool for narrowing the scope of access applications, but should be improved with more detailed descriptions.

The requirement to provide a schedule of documents should remain. The concept is sound given that it can help to narrow the scope of requests that initially return numerous documents.

The Consultation Paper notes that the reason for requiring agencies to provide a written schedule of documents is so that applicants can advise which documents they wish to seek access to. This

legislative requirement in question is limited to providing the applicant with a 'schedule of relevant documents' that sets out and gives a brief description of the classes of documents relevant to the application in the possession, or under the control, of the agency or Minister, and the number of documents in each class.

While many of the document schedules provided to our clients may meet these legislative requirements, they are often inadequate for the purpose of usefully allowing our clients to narrow the scope of a request. There is also a great deal of inconsistency in the level of detail and format of the 'schedules of relevant documents' provided by agencies.

For example, one of our clients received a document schedule that divided the documents into two categories – correspondence and reports – and provided the total number of documents in each category; no further description of the categories was provided. Another client received a document schedule that divided documents into four categories – reports, correspondence, other documents, GIS files – but a short description of each of these categories was provided, in addition to the number of documents in each category.

We acknowledge that providing a meaningful amount of detail in a schedule can be time consuming for agencies, but it also provides transparency and certainty to the community about the information held by agencies. It also means fewer resources are needed to be expended by the agencies and applicants in negotiating which documents are required to be released, and also in paying for release of documents that might not be necessary.

In our experience, a meaningful schedule also provides a solid foundation for further direct consultation with agencies about reducing the scope of an access application. 'Schedules of relevant documents' and direct consultation with agencies need not be mutually exclusive.

The Consultation Paper provides an anecdotal statement that the scope of access applications is not reduced by the schedule but rather through direct consultation with applicants. This reflects the weakness of the effectiveness of the legislative requirement to provide a 'schedule of relevant documents', since the schedule itself hasn't been sufficient to narrow the scope of assessment. This demonstrates the need to strengthen the law to ensure that the schedules provided are meaningful and provided with a consistent level of detail to facilitate a smooth and transparent process for accessing documents.

EDO Qld supports maintaining the requirement to provide a 'schedule of relevant documents', but recommends that the RTI Act be amended to require agencies to provide applicants with a list of the classes of documents, and a description of the documents contained in each class, in addition to the number of documents. The description may be brief, but must be sufficient to enable an understanding of what is contained in each class. A more effective 'push' of

information (see publication scheme comments to question 19 below) may in fact reduce the number of access applications, allowing liberated resources to be used on matters such as an improved document schedule.

Consulting with others about applications

Q9. Should the threshold for third party consultations be changed so that consultation is required where disclosure of documents would be 'of substantial concern' to a party?

Summary response and recommendations:

- To reduce administrative burden on agencies, and to reduce processing times for applications, a higher threshold should apply to consultation with third parties.
- More resources should be provided to support RTI Act implementation, including proactive dissemination of information

Third party consultation should be subject to a higher threshold to limit unnecessary delays to applications

EDO Qld strongly supports changing the threshold for third party consultation to circumstances where disclosure of documents would be under a stronger test than is currently applied, such as that the application may reasonably be 'of substantial concern' to a party, or stronger.

Many of our clients have experienced the impacts of the administrative burden which the current lower threshold for third party consultation creates by requiring third party consultation in all circumstances where disclosure of the information could 'reasonably be expected to be of concern' to a third party. This lower threshold has led to our clients experiencing consistent delays in accessing information due to a lengthy and drawn out third party consultation process.

In public interest environmental cases, the number of third parties requiring consultation is often higher than other for other types of access applications due to the complexity of environmental regulation and the number of regulatory agencies involved. Applications to access information about large-scale developments and projects may require approvals from multiple agencies at the Queensland and Federal Government level, and proponents often use a range of consultant experts and specialists when preparing plans and undertaking studies for approval processes. In our experience, more often than not, not only is the project proponent consulted, but all of the related agencies, experts and specialists.

In one application to a port authority which we assisted with, consultation with 37 third parties occurred. Unsurprisingly, the authority sought three extensions under RTI Act section 35, which ultimately added approximately 10 weeks to the statutory processing time. The authority also claimed that RTI Act section 18(2)(d) allowed a further 10 business days per consultation, which is inconsistent with the OIC's guidelines which states the applicable period as being "for all required consultation". Creating a higher threshold for third party consultation would ease much of this administrative burden and create efficiencies in the decision-making processes for providing access to information.

On the other hand, an access application we lodged for a client at the end of April 2016 was just decided in mid-January 2017, with only a single third party having been consulted on about the 640 pages within scope. While our client sought one extension to consider scope revision, it in turn granted the agency four extensions to process the application. The agency eventually granted access to all information sought, excluding personal details. It appears there was no complexity in the decision (no other exemptions or a complicated range of public interest test factors). Rather, the agency simply thanked our client for granting the extensions, apologised for the delay and attributed it to "the current workload of th[e] unit".

It is pertinent to note that the Queensland Government's response to the review of the now repealed *Freedom of Information Act 1992* (Qld) stated that in some cases "access delayed is accessed denied".[3]

More resources should be provided to support RTI Act implementation, including proactive dissemination of information

While we have no doubt that the low threshold for third party consultation can, and does, significantly contribute to longer processing times, the provision of sufficient resourcing to meet legislative requirements, including the implementation of the 'push model', is clearly a requirement. There are a myriad of document handling services which could assist agencies in proactively providing more information to the public to avoid the need for RTI applications. If the government were to increase investment in proactively providing information to the public, the resources needed to be expended on RTI application by agencies and the community would be greatly diminished.

[3] Queensland Government, *The right to information: A response to the review of Queensland's Freedom of Information Act,* August 2008, 8,

Q10. Although not raised in 2013, is the current right of review for a party who should have been but was not consulted about an application of any value?

Summary response and recommendations*:*

- We consider that the current right of review remains of value. Particularly, were the threshold for third party review made higher, the right of review provides an appropriate safety net for potentially affected third parties.

While it is true that a missed consultation may be of little practical use after information is disclosed, this right may still be useful if it exercised prior to action being taken on information or disclosure through the disclosure log. Also, where a right is exercised the result of the review may inform the approach taken by the agencies for future further applications.

Exempt information

Q11. Are the exempt information categories satisfactory and appropriate? Are further categories of exemption needed? Should there be fewer exemptions?

Summary response and recommendations:

- The Cabinet exemption is too broad, inconsistent with other Australian jurisdictions, and must be amended. In particular:

(a) RTI Act Schedule 3, section 2 should be amended to reflect:

- the 'dominant purpose test' from the FOI Act, and
- that exemptions surrounding the provision of information relating to a Cabinet process do not necessarily apply just because information or documents are submitted (or proposed to be submitted) to Cabinet.

(b) the prejudice to confidentiality of Cabinet considerations or operations should be removed;

(c) the exclusion regarding official disclosure should be expanded to include where 'the existence of' a deliberation is official disclosed; and

(d) the 'budgetary processes' exemption is too broad, is prima facie unrelated to Cabinet, and/or otherwise duplicitous where the Cabinet Budget Review Committee is involved.

- The breach of confidence exemption should be removed, as it requires an agency to essentially make what would normally be a judicial decision about whether an action of breach of confidence would be founded. Instead, relevant information should be dealt with as a factor under the public interest balancing test (which currently overlaps with Schedule 4 factors – e.g. part 4 section 1 and 8).

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https://www.cabinet.qld.gov.au/documents/2008/Aug/Response%20to%20review%20of%20FOI/attachments/The%20right%20to%20information%20-%20Qld%20Govt%20response.pdf.

Cabinet

The Cabinet exemption is too broad and requires refinement

RTI Act section 47(3)(a) provides that access to a document may be refused to the extent the document comprises exempt information, which are listed in Schedule 3. The exemptions provided with respect to information relating to Cabinet in Schedule 3, section 1 and 2 must be amended to address the following four issues.

All information submitted to Cabinet should not automatically attract exempt status; there must be limitations on the exemption that are at least consistent with other Australian jurisdictions

At present the RTI Act provides a very broad exemption from disclosure of documents relating to Cabinet. Both the FOI Act, and a number of other Australian jurisdictions, provide for limitations to the exemptions surrounding Cabinet documents, for example that exemptions surrounding the provision of information relating to a Cabinet process do not necessarily apply just because information or documents are submitted (or proposed to be submitted) to Cabinet, or attached to Cabinet documents.[4]

Contrastingly, the RTI Act provides a broad exclusion over Cabinet information, including where information 'has been brought into existence for the consideration of Cabinet', and only provides for any limitation on this where the information is 'a report of factual or statistical information' attached to a document. This is an unnecessarily and inappropriately broad exemption.

With the broadly-framed exemption as is, there is the potential for a claim of Cabinet privilege to be misused, where all documents that an agency may not want to release could simply be incorporated into Cabinet submission attachments or similar. This is a real problem that Queensland has experienced before. Former Chair of the Commission of Inquiry into Official Corruption in Queensland, Tony Fitzgerald, has found that in the 1990's the government secrecy that became prolific was assisted through 'sham claims that voluminous documents were 'Cabinet-in-confidence'.[5]

Such an additional limitation on access is not provided for in the FOI Act, and we are not aware of any other Australian jurisdiction that includes that limitation. These other jurisdictions all apply limitations on exemptions which centre on the possibility of 'revealing' of Cabinet considerations.

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[4] *Freedom of Information Act 1982* (Cth), s36(4); *Government Information (Public Access) Act 2009* (NSW), schedule 1, s2(3) and (4),

[5] Fitzgerald, T, 'What went wrong with Queensland', *Courier Mail*, 29 July 2009, p. 4.

The Information Commissioner has recently extensively relied on the exemption in section 2(1)(b) where disclosure "would otherwise prejudice the confidentiality of Cabinet considerations or operations" in response to a request from a client seeking information on the large scale Adani Carmichael coal mine proposal. This proposal is one of the largest coal mines, or even projects generally, that have ever been proposed in Australia, and poses significant environmental and community impacts, and is therefore most definitely in the public interest. However, under the exemption above our client was largely refused access to the documents requested from a number of agencies. This demonstrates that there is a flaw in the operation of the RTI Act and the liberal way the exemption around Cabinet documents can be relied on in Queensland.

The Federal FOI Act was amended in 2010 to introduce a 'dominant purpose test' to limit the misuse of the Cabinet exemption. This test provides that the exemption only applies where the document was brought into existence for the 'dominant purpose' of consideration by Cabinet.[6]

RTI Act Schedule 3, section 2 should be amended to reflect:

(a) the 'dominant purpose test' from the FOI Act, and

(b) that exemptions surrounding the provision of information relating to a Cabinet process do not necessarily apply just because information or documents are submitted (or proposed to be submitted) to Cabinet.

Official disclosure exclusion should be expanded to include FOI Act's disclosure of 'existence of' a deliberation

The exclusion to the Cabinet exemption in section 2(2)(b), "information officially published by decision of Cabinet", should be amended to reflect Commonwealth FOI Act section 34(4) which provides that Cabinet information is not exempt at the federal level if "*the existence* of the deliberation or decision has been officially disclosed" (our emphasis). Such an amendment would better serve the accountability and transparency objects of the RTI Act, while also emphasising the importance of confidentiality of those matters for which existence has not been officially disclosed.

Budgetary process exemption should be removed or limited, and moved to another section

Currently, Schedule 3, section 2(1)(c) states that information is exempt "if it has been brought into existence in the course of the State's budgetary processes." The application of this exemption has recently proved problematic in the context of an external review where EDO Qld represented a client (**NQCC decision**). In the NQCC decision, the Assistant Information Commissioner noted that there is no definition of 'budgetary processes' in the RTI Act. She also

[6] *Freedom of Information Amendment (Reform) Act 2010* (Cth), schedule 3.

noted that "this exempt information provision has not been considered in a published decision of the Information Commissioner and there was no equivalent provision in the repealed FOI Act."

Firstly, we note that there is no equivalent provision in the Commonwealth FOI Act. The RTI explanatory notes do not explain the exemption, or provide justification for its inclusion. If information was relevant to Cabinet considerations or operations, the RTI Act defines 'Cabinet' to include a Cabinet committee or subcommittee.
The Cabinet Budget Review Committee (**CBRC**) is the obvious committee that would consider the State's budgetary issues, and any related information would therefore be appropriately exempt under either sctions 2(1)(a) or (b). The reliance on this exemption in the NQCC decision was in turn limited to being dependent on involvement of the CBRC with Queensland Treasury.

It is therefore nonsensical for the budgetary process exemption to be reliant on CBRC dealings where that information would already, in of itself, be subject to the general Cabinet exemptions. As such, the exemption should be removed, or otherwise appropriately limited in light of the below, to ensure the RTI Act's objects are better achieved with respect to appropriate oversight and transparency for expenditure of public funds.

Moreover, it is not apparent why the exemption, which does not refer to Cabinet at all, is listed under the Cabinet information item. The exemption is clearly broader than being directly or indirectly relevant to Cabinet considerations or operations alone. Instead, it could be read to capture information of any state agency or entity to which the RTI Act applies, insofar as that information is somehow linked to the State's budgetary processes. This is particularly the case for information held by Queensland Treasury, given its key responsibility in preparing the state budget. If interpreted in that way, the exemption is unjustifiably broad and requires limitation in scope, noting that the budget is provided to demonstrate the government's use of tax money, which is clearly in the public interest.

If it is not to be removed altogether, the exemption would be more appropriately combined or included with similar factors against disclosure in the public interest balancing test, rather than an outright exemption as provided in the RTI Act currently.

<u>Breach of confidence</u>

A major impediment to accessing information about major developments and projects under the RTI Act is the ability of proponents to argue during third party consultation that the exemption in Schedule 3, section 8 of the RTI Act applies – being that the disclosure of the information in question would found an action for breach of confidence.
In our experience, the relevant test the Information Commissioner has applied for determining whether the information is exempt under section 8 has been applied by reference to a

hypothetical legal action in which there is a clearly identifiable plaintiff, possessed of appropriate standing to bring a suit to enforce an obligation of confidence. To establish a hypothetical legal action, and therefore that the exemption applies, the following five criteria must be met:

1. It must be possible to specifically identify the information in issue, in order to establish that it is secret, rather than generally available information;

2. The information in issue must possess the "necessary quality of confidence"; i.e. the information must not be trivial or useless information, and it must possess a degree of secrecy sufficient for it to be the subject of an obligation of conscience, arising from the circumstances in or through which the information was communicated or obtained;

3. The information in issue must have been communicated in such circumstances as to fix the recipient with an equitable obligation of conscience not to use the confidential information in a way that is not authorised by the confider of it;

4. It must be established that disclosure to the applicant for access under the RTI Act would constitute a misuse, or unauthorised use, of the confidential information in issue; and

5. It must be established that detriment is likely to be occasioned to the original confider of the confidential information in issue if that information were to be disclosed.[7]

A number of issues arise where proponents of major developments or projects argue that reports, plans or strategies prepared during the environmental assessment and approvals process are exempt on the basis that disclosure would found an action for breach of confidence:

- The OIC Guidelines make it clear that when determining whether the information possesses the necessary quality of confidence, agencies should look to the content and substance of the information and consider whether parts of the documents are already common knowledge or generally known, for example because the information has been mentioned in a media statement or in other publicly available information. However, in our experience this exercise is rarely undertaken. For example, one of EDO Qld's clients was refused access to a strategy in its entirety despite several appendices to the strategy being publicly available, and therefore lacking the necessary quality of confidence.

- Many of the reports, plans and strategies prepared by a proponent during the environmental assessment and approvals process required to be provided to an agency under legislation or in accordance with a condition of approval. Supporting accountable decision making requires the provision of community access to supporting information which helps the community understand existing or proposed impacts of a project.

[7] The law around these steps is well set out in the annotations to Schedule 3, section 8, available here: https://www.oic.qld.gov.au/annotated-legislation/rti/schedule-3/8-information-disclosure-of-which-would-found-action-for-breach-of-confidence/section-81/breach-of-confidence.

- In our experience, many of the arguments raised by proponents, and put forward by agencies, regarding the detriment a proponent would suffer if the information was released are speculative in nature and relate only to the private commercial interests of proponents. In circumstances where the RTI Act has a clear pro-disclosure bias, it is difficult to reconcile these arguments with the public interest in disclosing information about proposals that will harm the environment and which will enhance the ability of the public to participate in decisions that affect them.

As a result, our recommendation is that the breach of confidence exemption should be removed. It requires an agency to essentially make what would normally be a judicial decision about whether an action of breach of confidence would be founded.

Instead, the private versus public interest aspects of any relevant information should be dealt with as a factor under the public interest balancing test (which currently overlaps with a Schedule 4 factors – e.g. part 4 sections 1 and 8). Any truly confidential information could simply weigh strongly as a factor against disclosure.

Public interest balancing test

Q12. Given the 2013 responses, should the public interest balancing test be simplified and if so, how? Should duplicated factors be removed or is there another way of simplifying the test?

Summary results and recommendations:

- The public interest balancing test must be simplified to ensure the overall bias of the RTI Act towards disclosure is effectively implemented by decision makers.
- The ability to refuse documents due to potential implications to commercial interests and 'deliberative processes' must be better defined and restrained to ensure they are not abused.Specific amendments are needed to limit factors favouring non-disclosure on the basis of commercial interests to 'trade secrets', particularly for major projects affecting the environment and community

The public interest balancing test must be simplified to ensure the overall bias of the RTI Act towards disclosure is effectively implemented by decision makers.

The public interest balancing test must be simplified by either combining Schedule 4 parts 3 and 4 factors, or by ensuring that overlap/duplication between, and within, the part 3 and 4 factors is removed.

If part 3 and 4 factors are merged but address similar issues, then circumstances where harm is likely to be caused, and therefore be given greater weight, could be moved to the OIC's Guidelines. However, if part 4 factors are to be retained, then to further the objects of the RTI Act in the balancing process, important and increased emphasis should be applied on giving access and on the part 3 factors favouring disclosure.

The language used in all factors should also be reviewed: consistent with the RTI Act's objects, non-disclosure factors should be narrowly worded and have higher thresholds, while factors favouring disclosure should be broadly worded and lower thresholds.

The factual circumstances of a particular case should simply determine the weight of any factor against disclosure, including those currently in part 4.

The ability to refuse documents due to potential implications to commercial interests and deliberative processes must be better defined and restrained to ensure they are not abused.

Currently there is insufficient guidance provided as to when possible harm may be claimed to warrant favouring non-disclosure of documents.

Trade secrets

Specific amendments are needed to limit factors favouring non-disclosure on the basis of commercial interests to 'trade secrets', particularly for major projects affecting the environment and community.

In our experience, many of the arguments raised by third parties, and put forward by agencies, regarding the detriment that might be suffered if information was released are speculative in nature and relate mainly to the private commercial interests of proponents or also broadly-considered 'deliberative processes'.

To support the pro-disclosure bias intended to be promoted by the RTI Act, more detailed guidance must be provided to specify when possible harm favouring non-disclosure may be relied upon to justify non-disclosure, particularly in regard to commercial interests. We recommend that exemptions to disclosure relating to commercial interests should be limited to trade secrets as far as intellectual property rights or similar are applicable.

Deliberative processes

'Deliberative processes' must be better defined and narrowed in scope. This exemption is often relied on for the purpose of ensuring public servants are not hampered from being honest in the decision-making processes of governance. If the government encouraged a true culture of open, accountable, transparent governance in the public interest, honest internal debate would be

recognised as a legitimate and healthy part of decision-making processes and should be celebrated, rather than feared at the risk of stepping out of whatever political opinion may be being dictated at the time.

Decision-makers must remember that the government is acting on behalf of the public, and in the interest of the public, with public tax money; any commercial activities and deliberations of the government are inherently in the public interest and should be open to the public.

Q13. Should the public interest factors be reviewed so that (a) the language used in the thresholds is more consistent; (b) the thresholds are not set too high and (c) there are no two part thresholds? If so, please provide details.

Summary response and recommendations:

- The language used in all factors should also be reviewed to ensure they are consistent with the RTI Act's objects.
- Non-disclosure factors should be narrowly worded and have higher thresholds, while factors favouring disclosure should be broadly worded and subject to lower thresholds.
- Broaden the factor favouring disclosure for protection of the environment to include 'indirect or direct' contributions

Thresholds favouring non-disclosure must be narrowed to support achieving bias towards disclosure

The language used in all factors should also be reviewed. To be consistent with the RTI Act's objects and section 47(2), non-disclosure factors should be narrowly worded and have higher thresholds, while factors favouring disclosure should be broadly worded and have lower thresholds.

For example, the threshold at section 12: 'Disclosure of the information could reasonably be expected to prejudice the economy of the State' is very broad and in our experience is used to limit information on large proposed projects which are by their nature of most public interest due to their potential impacts. Limitations and explanation should be provided for this threshold to ensure that it is not relied on without sufficient reason.

We consider that two part thresholds are acceptable for factors against disclosure, as these factors should have higher thresholds than those favouring disclosure which support the object of the Act.

More guidance should be provided to assist in balancing conflicting factors, and ensuring bias towards disclosure achieved

It would be useful to provide more guidance as to how conflicting factors should be balanced in general. For example:

- Part 2, section 4, factor favouring disclosure: *Disclosure of the information could reasonably be expected to ensure effective oversight of expenditure of public funds*.
- Schedule 3, section 2(1)(c) exempt information for Cabinet: *It has been brought into existence in the course of the State's budgetary processes.*

The operation of the exemption of information that may have been involved in a Cabinet decision and concerns the State's 'budgetary processes' makes this exemption exceptionally broad. This broad exemption would most likely override any weight given to the public interest factor favouring disclosure to ensure effective oversight of public fund expenditure. Clarification should be given to what 'budgetary processes' include, and limitations should be provided to the exemptions under Schedule 3 section 2, as described above.

Broaden factor favouring disclosure for protection of the environment to include 'indirect or direct' contribution

The specific factor relating to the contribution to environmental protection in schedule 4, part 2, section 13 should be clarified to state that this contribution can be indirect or direct. One of our clients received a decision denying access to documents sought with respect to the funding arrangements by the Queensland Government of a significant development that proposed to have impacts to both the environment and community at a broad scale. The Assistant Information Commissioner decided that the application would not be allowed since the information did not contain any details about environmental impacts.

We consider the decision of the Assistant Information Commissioner placed the threshold too high, in light of the wording that the disclosure 'could reasonably be expected to' contribute to the protection of the environment. This is supported by the following two decisions.

In *North Goonyella Coal Mines Pty Ltd*,[8] the OIC considered the meaning of the phrase 'could reasonably be expected to' in the context of schedule 3, section 10(1)(e) of the RTI Act. The OIC found that the phrase 'could reasonably be expected to' requires the relevant expectation to be reasonably based: that it is neither irrational, absurd or ridiculous, nor a merely a possibility. It is not necessary to be satisfied upon a balance of probabilities that disclosing the information will produce the anticipated result. Whether the expected consequence is reasonable requires an objective examination of the relevant evidence. Importantly, the expectation must arise as a result of disclosure, rather than in other circumstances.

[8] *North Goonyella Coal Mines Pty Ltd and Millard v Department of Natural Resources and Mines* OICmr [2012]

In the decision of *Moore*,[9] the OIC found that the disclosure of dingo baiting agreements 'could reasonably be expected to' contribute to the protection of the environment by not only disclosing the identity of bait users and the location of bait use, but by encouraging future compliance with the baiting regulatory regime. Similarly, in *Daglish*[10] the OIC found that the disclosure of environmental management information which revealed whether or not, and the extent to which, a company was complying with its existing environmental management obligations could reasonably be expected to contribute to the protection of the environment.

The clarification that the contribution to environmental protection for the purpose of schedule 4, part 2, section 13 can be either 'direct or indirect' would assist in clarifying that the application of this factor should be broad.

Disclosure logs

Q15. Are there benefits in departmental disclosure logs having information about who has applied for information, and whether they have applied on behalf of another entity?

No, we do not see it relevant or beneficial to include applicant identity information in departmental disclosure logs. The disclosure is undertaken in the interest of transparency and accountability of governance and therefore it should not matter who made the inquiry.

Further, providing the applicant's details to the agency or third party consulted may bias the response provided to the request, which is not in the interests of meeting the Preamble or object of the Act.

Q18. Is the requirement for information to be published on a disclosure log 'as soon as practicable' after it is accessed a reasonable one?

Summary response and recommendations:

- Timeliness is key issue needing to be resolved for disclosure logs. The requirement for 'as soon as practicable' should be qualified with a specific timeframe, such as 'but no later than 10 business days'

Timeliness is often a key consideration in ensuring adequate transparency and accountability in governance through the provision of information. Frequently information requested by an applicant is of greater interest to the community than simply the applicant, and therefore the disclosure log is an important part of assisting with community access to information.

[9] *Moore v Rockhampton Regional Council* (18 April 2012).
[10] *Daglish v Redland City Council* QICmr [2013].

To ensure the objects of transparency and accountability are met through timely provision of information to the public, the requirement for 'as soon as practicable' should be qualified with a specific timeframe, such as 'but no later than 10 business days'.

Publication schemes

Q19. Do agency publication schemes still provide useful information? Or are there better ways for agencies to make information available?

Summary response and recommendation:

- Publication schemes provide very useful information, but they need vast improvement in particular respects to make them more efficient, and to meet the requirements of the push model

Publication schemes do provide useful information, but they need vast improvement in particular respects.

For example, EHP's publication scheme states that it "…describes and categorises information that is routinely available through our website", including 'lists and registers'. We note the Ministerial Guidelines for Operation of Publication Schemes and Disclosure Logs, made under section 21(3) under the RTI Act, and with which agencies must comply, state:

> "…..an agency is to include in its publication scheme under the class 'Lists and registers' a list of which registers it holds and how the public can access the information in them. A link should also be provided to the register where possible."

However, EHP's website for the public registers it is required to maintain under the *Environment Protection Act 1994* (**EP Act**) and *Nature Conservation Act 1992* (**NCA**) does not comply with this requirement. The only registers it lists for the EP Act, and that comply with the Ministerial guidelines, are the 'Environmental Impact Statements (EIS) Register' and 'Environmental Management and Contaminated Land registers'. These are <u>just three of the approximately 40 matters or registers</u> EHP is legally required to keep, state information about how to access them, and provide links where possible. The remaining 37 are not stated on the 'lists and registers' website page at all. Similarly, the website only lists two of the nine matters it is required to keep on a register under the NCA, and does not provide any links.

It is not an overstatement to therefore say that, at least for EHP's publication scheme for the registers of information required under the EP Act and NCA, the push model needs drastic improvement. This is despite EHP having made (at our and other public requests) some minor incremental steps over the past few years to make more public register information available

online – although, it is not necessarily easily found on its 'lists and registers' webpage.

We note that during the writing of the submission the EHP have taken steps to ensure that all environmental authorities are also provided online, and soon environmental protection orders will also be provided. This assists the government in meeting their duty to proactively provide information to the public, however the next needed step is to put online all public register documents, such as plans required to be submitted under the conditions of Environmental Authorities, plans of operations for mines, monitoring data, application documents and enforcement documents. Having these documents online will also save the Department and the community time and resources.

We note the Consultation Paper refers to franchise-based websites as one of the government initiatives aimed at pushing government information out, including the 'Environment, land and water' website at www.qld.gov.au/environment. Both through a maze of links provided there, and at other locations on EHP's website, information relating to a very limited number of the other 37 items can eventually be found online. However, any information is difficult to find through an often convoluted, theme-based network of webpages. Almost always, making a key word query with an internet search engine is far more efficient at finding information than through EHP's publication scheme. This is not a good reflection on the efficiency of readily pushing information out through an easy, intuitive and usable publication scheme.

One category of information, in particular, is commonly sought by our clients. Section 540(1)(aa) EP Act requires "*application documents for an application for an environmental authority, including information requests and responses to information requests*" to be kept for public inspection. While we acknowledge that there is generally no specific requirement for EHP to make register information available online, responses to administrative requests for access to register information are sometimes so slow, difficult or not forthcoming that our clients resort to making an RTI Act access application.

To better illustrate our point, we refer to a specific case study of a contemporary major project, the Adani Carmichael Coal Mine proposal.

Case example:

The proposed Adani Carmichael Coal Mine in central Queensland is a controversial project of widespread public interest. If developed, it would be one the largest coal mines in the world. There are concerns from both the local and global community not only about local impacts to threatened species and water resources, but also exacerbation of climate change and impacts to the Great Barrier Reef World Heritage Area.

However, much of the relevant application and decision making information that is

required to be kept on a public register is not readily available, and in some cases must be sought under RTI Act access application.
For example, the environmental authority for the Carmichael Coal Mine is listed on the 'Petroleum and gas, and mining environmental authorities register' on the Queensland Government's website. This register and its location is not referred to on EHP's website. On selecing the environmental authority, a page lists some sparse details about the authority, but the document itself is not available to access online.

Adani is also required to obtain additional environmental authorities for other 'environmentally relevant activities' related to its proposal. However, these 'prescribed ERA' environmental authorities are not mentioned on the EHP 'lists and registers' webpage or otherwise available online.

Subsequent requests to administratively access those and other public register documents have involved substantial email and phone correspondence, and in some cases delays of more than a month to obtain access. There has also been disagreement about interpretation of what documents EHP must be keep on the public register, where RTI applications have had to be made.

We note the Ministerial Guidelines state:

> *"Publication schemes should be regularly reviewed to ensure information on the publication scheme is current and up to date.*
>
> *Each agency should implement procedures to ensure that new information covered by the publication scheme is available and that any outdated information is replaced or archived."*

In this specific regard, the RTI Act objects could be met better through a comprehensive audit, and action taken in response, to ensure that agencies comply with the RTI Act with respect to publication scheme requirements – particularly for the public registers EHP is required to keep.

Further, relevant agencies could make application documents, supporting material, notices and decisions available by being comprehensively 'pushed' online. At a local level, any council across Queensland with a website is legally required to do this for property development applications and related material. Given the problems with the existing push models, State departments should also provide immediate and effective online access to application material for State approvals, which can often have more significant impacts and widespread public interest than more localised town planning developments. This is regardless of whether or not the specific governing legislation requires such documents to be made available for public

inspection. In doing this, there would be greater consistency with the RTI Act's preamble in that "Government information will be released administratively as a matter of course".

Reviewing decisions

Q20. Should internal review remain optional? Should the OIC be able to require an agency to conduct an internal review after it receives an application for external review?

Summary response and recommendation:

- The current review provisions are appropriate, including optional internal review.

Internal review should remain optional. We note the Consultation Paper states that many applicants who apply for internal review do not go on to seek external review, which suggests that they may be satisfied with the internal review decision. However, a number of our clients believe that internal review is not of great value, given that in their experience original decisions are regularly confirmed on almost identical bases. Internal review can also add time delays to applications that require timeliness in response to make them useful. For this reason, it is important that applicants have an option to go straight to a (what appears to be more thorough and independent) external review and not face further delay to potential access.

Right of direct appeal to QCAT

Q21. Should applicants have a right to appeal directly to QCAT? If so, should this be restricted to an appeal on a question of law, or should it extend to a full merits review?

Yes, while the right to appeal directly to QCAT on a question of law must be retained, there would be benefit in giving QCAT a merits review function. While external review by OIC is more independent than agency internal review, it cannot replace a tribunal which is separate from the executive.

On the current wording of RTI Act factors for and against disclosure, and with a distinct lack of QCAT decisions about interpretation of those factors, it is very difficult to identify a potential error in the public interest balancing exercise required by section 49(3) of the RTI Act. This is because to establish such an error of law, the high standard of the Wednesbury unreasonable test must be satisfied.[11]

While the Consultation Paper suggests that giving QCAT merits review power might open the

[11] *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223.

floodgates, QCAT could be given particular powers to remit a matter to an agency, or the OIC, to first narrow the merits issues in dispute.

The role of the OIC

Q22. Should the OIC have additional powers to obtain documents for the purposes of its performance monitoring, auditing and reporting functions?

Summary response and recommendation:

- While there is a clear benefit to a right to apply to QCAT for merits review, QCAT could be given particular powers – for example, the power to remit a matter to an agency, or the OIC, to first narrow the merits issues in dispute.

It may assist in getting agencies to comply with the RTI Act if the OIC were granted additional powers to obtain documents in reviewing the compliance with the Act. This would have public benefits including appropriate, but overdue, access to information through publication schemes.

Annual Reporting Requirements

Q23. Is the information provided in the Right to Information and Privacy Annual Report useful? Should some of the requirements be removed? Should other information be included? What information is it important to have available?

While the Consultation Paper notes the reporting requirements may be useful to the Information Commissioner and other agencies, other information that may be of more interest to the community includes:

(a) compliance status with respect to publication schemes, particularly lists and registers;

(b) statistics about the processing times of access applications (for considered decisions, what was the average, and longest?); and

(c) number of waivers of charges granted, and what types of waiver.

Other issues about the RTI Act

Q34. Are there other ways in which the RTI Act should be amended?

Summary response and recommendation:

- There should be provision for applicants to apply for waiver or reduction of charges on the basis of access being in the general public interest or in the interest of a substantial section of the public, and not just for financial hardship. This would be consistent with the federal FOI Act.

- An option to split a decision between information requiring third party consultation and that which can be provided without consultation should be introduced, to enable faster response to part of an application to minimise the delay caused by third party consultation.
- More resources should be provided to the OIC to undertake external review in a timely manner, to avoid impacts to timeliness of receipt of an external review decision affecting the achievement of transparency and accountability in access to information.

We consider the RTI Act could be amended in the following ways.

(a) The introduction of a public interest matter fee waiver or reduction, such as provided for in the FOI Act (Cth).[12] This would prevent financial status being a factor that limits the ability to obtain access to information. Many of our clients request documents on behalf of non-profit community groups acting in the public interest. These clients can often be deterred or unable to obtain documents under RTI as they do not have sufficient funds to pay for the significant charges that can be applied to receive documents.

Many of our clients have had to pay for receipt of a large number of unnecessary documents in order to obtain relevant information, such as specific monitoring data, that can be buried amidst voluminous reports and unable to be separated. This demonstrates a problem with the method that data is received and processed by EHP, and also supports the case for the need for fee waivers where, as provided for in FOI Act s 29(5):

- the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and
- the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.

[12] *Freedom of Information Act 1982* (Cth), section 29 (5).

(b) To improve access times, applications which involve both documents subject to consultation, and those that are not subject to consultation could be provided with a split decision and deferred access to documents subject to consultation. This would prevent the need for lengthy time delays caused by the processing of an application that is only held up by one section of the application. In conjunction, or in the alternative, tighter provisions could be applied regarding any ability for third party requests for extensions to consultation, as discussed above.

(c) Consideration should be given to how to ensure the processes for external review are able to support the need for timeliness in RTI responses, to ensure proper transparency and accountability in governance is not hindered through lengthy delays in decisions. One of our clients recently waited over 12 months for a decision on external review to be made by the OIC. One solution would be to better resource the OIC such that it is able to provide timely decisions on review applications.