Preliminary work for Scenic Rim Regional Council's Submission on the Review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009*.

Scenic Rim Regional Council is subject to the operation of the *Right to Information Act 2009* (RTI Act) and *Information Privacy Act 2009* (IP Act) as an agency under section 14 of the RTI Act.

Council's Right to Information Section (RTI Section) receives a moderate number of Right to Information (RTI) requests which are processed in accordance with the Act in line with the RTI Act. Council receives relatively few Information Privacy (IP) requests under the IP Act.

Please find below submissions prepared by Council's RTI Section for your consideration and approved by Mr Nick O'Connor, Manager Strategy and Governance, Scenic Rim Regional Council. Note these submissions do not represent Council policy as they have not been considered and approved and considered by a Council Meeting.

Part 1 – Object of the Act – 'Push Model' strategies

1.1 Is the Act's primary object still relevant? If not, why not?

The Act's primary objective is still relevant, with the Act effectively ensuring that the rights of Queensland residents to access government information are properly balanced with the public interest in terms of allowing the effective functioning of government and understanding that some documentation may need to remain confidential for the exemptions listed in the Act or in the public interest.

1.2 Is the 'push model' appropriate and effective? If not, why not?

The push model is still relevant, however effectiveness of Push Model mostly dependent on publication scheme and mechanisms in place at agencies.

Part 2 – Interaction between the RTI and IP Acts

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?

Currently, the process for converting an IP application to and RTI and transferring them between Acts is unnecessarily complicated and effectively results in inefficient duplication of processes. General confusion exists with members of the public understanding whether their application is RTI or IP and consolidating the process would provide a clear indicator that the processes are linked to the lay person.

Council's RTI section has identified a lack of clarity about the scope of personal information and where the line is drawn between personal and non-personal

information in tangible lay terms for the majority of applicants as the major factor in misconceived applications. Council's RTI Section believes further consideration should be given to consolidating the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

Part 3 – Applications not limited to personal information

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?

Council's RTI Section considers it imperative that time periods can be suspended in such cases due to the short nature and to account for time lost when dealing with a difficult applicant. Currently, unreasonable applicants involved in ongoing disputes with Council and do not understand the way RTI applications are dealt with under the Act (i.e. that they sit quite separately from any other matters before Council officers) can abuse the processes by deliberately drawing out consultation to force a deemed decision. This reduces the effectiveness of the RTI Act.

3.2 Should the requirement for an agency to again consider whether the application can be made under the IP Act be retained?

It seems at cross purposes to require an agency to again consider whether the application is one which can be made under the IP Act once notifying that the application should have been made under the RTI Act. RTI and IP officers are usually extensively trained in a specialised area, it seems to be an unnecessary diversion of resources to ask them to make a second determination where a first has been made.

For example, SRRC received a very broad IP application. When the applicant was asked to clarify the subject matter of their application to allow Council to consider whether it had been properly made under the IP Act, the information provided confirmed that it was appropriate to direct the applicant to make the application under the RTI Act by paying the fee.

Fortunately on the occasion described above, the applicant agreed and converted the application to an RTI application, however it seems like an unnecessary step for the same officer to again determine that the application is not for personal information if the applicant refuses to agree to make the application under the RTI Act. While there could be the option of requiring a more senior officer to review the decision to direct that an application be made under the RTI Act strays into the realm of providing an internal review process to IP applications and decisions that the subject matter of an application is not personal in nature.

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?

Whether or not the Acts are consolidated, due to the co-dependant nature of the processes, there should be complete consistency between the two documents in terms of processing timeframe formats.

Part 4 – Scope of the Acts

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?

Council's RTI Section believes that an explicit power to refuse access to a document on the basis that the document is not the document of an agency would expedite dealing with incorrectly made applications. Red tape will be effectively cut by removing requirements that agencies undertake search functions, issue decisions etc for documents which do not exist at the insistence of an applicant.

In cases such as these, agencies should also have the discretionary power to immediately refund any Application fees that have been paid in line with an agency's policies and procedures, for example in cases where the application is completely misconceived or the documents available under another Act, with the consent of the applicant.

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?

In the interests of procedural fairness and natural justice, a decision that a document is not a document of any agency should be externally and internally reviewable. This will ensure that the provision is not misused or misapplied, intentionally or unintentionally, and will provide transparency to the process particularly in the case of applicants who already feel marginalised, disenfranchised or otherwise unfairly treated by the agency they are applying to.

4.3 Should the timeframe for making a decision that a document or entity is outside the scope of the Act be extended?

Council's RTI Section is of the opinion that this timeframe should be extended to the 25 day timeframe provided for the decision making processes to align with the decision making process for RTI applications.

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 Submission.

4.5 Should corporations established by the Queensland Government under the *Corporations Act 2001* be subject to the RTI Act and Chapter 3 of the IP Act?

No Submission.

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?

Council's RTI Section does not believe that the existing access provisions should be extended to include documents not in Council's control but rather in the possession of contracted service providers who are private commercial enterprises performing functions on behalf of government.

Local government in particular often enters into contractual arrangements with commercial entities following appropriate tender processes for the provision of goods and services. For example, Council often enters into contracts for the provision of road maintenance. While Council considers any documentation provided to Council by the contractor which is not subject to the existing Commercial in Confidence exemptions to be subject to RTI, it would be a significant imposition on contractors to be subject to RTI as a private enterprise for any and all additional documentation.

Further, as private enterprises, there would be significant inconvenience to undertaking RTI training to familiarise officers with their obligations under RTI with respect to contracts for commercial purposes, as well as record keeping requirements which may be more onerous for these bodies.

Questions arise about how long records would then need to be retained by these third parties, as well as obligations to continue to store records should a company be wound up.

It is likely that the application of the RTI Act to private businesses who are contracting to provide services on behalf of government would result in a less competitive tender process as companies may decide that the new requirements are too onerous, or additional costs beyond cost recovery may be built into tender offers meaning government bodies do not receive the same level of value for money in the range of tenders received.

Finally, the application of RTI principles to private enterprise would serve only to significantly increase red tape for businesses already subject to careful regulation and additional pressures of the modern marketplace in a post Global Financial Crisis world. The application of the RTI Act to private businesses would be overstepping the core purposes of the RTI Act which is to make government accountable by then applying it to the private sphere.

In summary, extending the application of the RTI Act to private entities is likely to cause significant difficulties in implementation, quality assurance, may cause an inflation in costs to governments, will increase red tape, and will overstep the Act's purpose for governmental transparency and accountability by moving into the private sphere.

Part 5 – Publication Schemes

5.1 Should agencies with websites be required to publish publication schemes on their website?

Agencies with websites should not be required to publish publications schemes on their websites as the majority of the information if often already provided on other pages of the website. Therefore, requiring a separate publication scheme causes duplication and administrative inefficiency, requiring the updating of the same information across more than one page of the website when changes occur.

5.2 Would agencies benefit from further guidance on publication schemes?

If agencies are required to continue to publish a publication scheme on their websites, there should be further guidance provided. The process of drafting and compiling a publication scheme is complex and in agencies such as regional Councils, requires coordination of many different sections across the agency and also requires collating legislative requirements across a plethora of different Acts and policies.

5.3 Are there additional new ways that Government can make information available?

No Submission.

Part 6 – Applying for access or amendment under the Acts

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?

Council's RTI Section believes an application form should be retained, however agencies should be given the option to use a standard form or to adopt their own. This would allow the most relevant information to be requested from an applicant for the types of application typically received by an agency.

The use of a formal application form otherwise allows agencies to clearly establish whether a person is making a Right to Information Application or is just making an Administrative Access request, and provides guidance as to the required content for a lay applicant making an application.

6.2 Should the amendment form be retained? Should it remain compulsory?

Council receives few applications for amendments of personal information and therefore Council's RTI Section does not wish to make a submission regarding this proposal.

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?

The current list appears appropriate and is consistent with lists qualified witnesses for otherwise certifying documents. Council does not believe that the list of qualified witnesses should be expanded.

6.4 Should agents be required to provide evidence of identity?

To retain consistency with requiring applicants to establish their identity appropriately, agents should also be required to provide evidence of their identity.

6.5 Should agencies be able to refund application fees for additional reasons? If so, what are appropriate criteria for refund of the fee?

We propose that agencies should be able to refund Application fees in line with any appropriate policies an agency wishes to adopt. This will allow agencies freedom in determining appropriate reasons for the refund of fees for their particular agency-based circumstances.

6.6 Are the Acts adequate for agencies to deal with applications on behalf of children?

No Submission.

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?

Considering the current uncertainty regarding a further specified period under section 18 of the RTI Act and 55 of the IP Act, it seems that clarification should be provided regarding the intent of these sections.

Should an agency require additional time to deal with an RTI or IP application, it would seem most beneficial to clarify the legislation to ensure that the agency has an extension of time which is presumed to have been granted by an applicant if the applicant does not respond by the end of the processing period or a period of 10 business days, whichever is longer, and that the processing period is extended until the point whereby the applicant provides notice of a refusal of extension to the agency. Structuring the section in this way will prevent misuse of the provision by ensuring that a deemed decision is not forced and similarly that agencies do not use this section to manufacture an extension of time when the applicant is unwilling to grant one.

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?

Allowing agencies to continue to process an application after the processing period has ended and past any further specified period seems to be contrary to the purpose of a 'deemed decision' eventuating where an applicant has chosen not to provide a further specified period to the agency. Should an agency wish, for administrative

efficiency purposes, to continue to process the application where a deemed decision has been made in anticipation of either an internal or external review application, this would be a matter for the agency to determine as an internal policy.

6.9 Is the current system of charges estimate notices beneficial for applicants? Should removing the charges estimate notice system be considered?

The charges estimate notice (CEN) system is beneficial to applicants. This allows applicants to determine effectively whether they wish to proceed with an application and also allows an agency to provide a realistic representation of the costs they have incurred processing the application in terms of the costs set in the RTI fees. It is imperative that applicants agree to pay costs with full awareness in advance of what those costs will be.

6.10 Should applicants be limited to receiving two charges estimate notices?

Applicants should be limited to receiving two CENs. It is an inefficient use of resources to continue to modify the scope of an application to allow applicants multiple opportunities to modify the scope of their application. If more than two CENs are required, it may be better to abandon the current application and then lodge a new application with a narrowed scope. Similarly, it may be feasible to refuse the application on the grounds that it is too broad. Discretion for agencies to make a non-reviewable decision to refund an application fee may help facilitate this process in that applicants may be more amenable to making a new, more focused application.

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?

Allowing applicants to challenge the amount of a charge and how it is calculated will lead to further time disruptions to the RTI Process, cause extreme hardship to decision makers, and vastly increase the workload of the OIC.

As applicants are entitled to a refund if they are overcharged, it is not unreasonable that there is no avenue for review of a decision of charges. Often applicants are unaware of the time that goes into gathering and reviewing documents, then engaging in the decision making process for RTI applications and making this decision reviewable will lead to extreme complications to the process. Further, it is debatable how there can be effective oversight of the search, decision making process, consultation with relevant expert areas, etc.

Therefore, there should remain no avenue for an applicant to challenge the CEN amount, how the amount was calculated or to seek a review of a charges decision.

6.12 Should the requirement to provide a schedule of documents be maintained?

Currently, the requirement to produce a schedule of documents is challenging to comply with in respect to ensuring that information on exempt documents which may cause further difficulties. In this sense, the schedule is often constructed in terms so broad as to be essentially meaningless.

The requirement to produce a schedule does not further the objects of the Act in any real sense. The documents are discussed in full when the decision is issued, and subsequently Council's RTI Section can see no issues with transparency of the process should this requirement be removed.

6.13 Should the threshold for third party consultations be reconsidered?

Third party consultation is a difficult process to undertake. Not only are third parties often taken aback and unhappy with the thought that information they have provided in confidence may be disclosed to an applicant, but often they are resistant and resentful at being drawn in to the RTI process.

In the experience of Council's RTI Section, even where care and tact is taken when contacting applicants, they are confused and unsure of the processes associated and often as lay people are not clear on the application of the Act.

The threshold for consultation should be much higher. In cases where an agency is able to redact a document in such a way as to prevent the identity of a third party from being discernible (i.e. personal information of a third party, identifying information regarding a complainant), consultation should not be necessary.

6.14 Should the Acts set out the process for determining whether the identity of applicants and third parties should be disclosed?

A set process for determining whether the identity of applicants and third parties should be disclosed as part of the process should be embedded in both Acts. This will better enable the management of the process, provide clarity and more certainty to applicants as to why their identity may be disclosed and also provide assurances to third parties. Further, it will simplify the process and remove perceptions that agencies are attempting to cause difficulties for applicants or third parties when undertaking consultation under the RTI or IP Acts.

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?

The inclusion of such a section in the Act would remove red tape and administrative inefficiencies. However, while the dominant relative agency is determined, there should be a mechanism for the processing period to be suspended to prevent potentially significant reductions the processing period to assist the agency which is determined to be responsible for the decision.

6.16 How could prescribed written notices under the RTI Act and IP Act be made easier to read and understood by applicants?

There is no conceivable way to make decision notices easier for a lay applicant to understand. Unfortunately, when a decision is made within any legislative framework unless the applicant has experience reading and understanding legislation they are likely to have difficulty understanding the application of the Act to the decision making process. Therefore, there is no tangible way to make written notices easier to read and be understood by applicants. It is however noted that cultivating a positive relationship with applicants throughout the process and taking time to answer any questions they may have regarding the process and the application of the Act often aids in demystifying the process and may result in a more positive perception by the applicant of the agency, and therefore the decision.

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?

Requiring any amount of detail about information in these circumstances would mean that it would be very difficult for agencies to avoid disclosing information which is prescribed, and also risks confirming the existence of the information. These matters should be appropriately dealt with on external review.

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 Submission.

Part 7 – Refusing access to documents

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?

No Submission.

7.2 Are the exempt information categories satisfactory and appropriate?

No Submission.

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?

The current formulation of the public interest test is effective and the process for balancing factors is considered sufficient. It is considered that combining the lists contained in Schedule 4 Parts 3 and 4 would only cause confusion among applicants, and it remains far simpler to address all factors favouring disclosure, then favouring non-disclosure rather than intermix factors and potentially make decisions unnecessarily complex.

7.4 Should existing public interest factors be revised considering:

- some public interest factors require a high threshold or several consequences to be met in order to apply

The current factors appear to be sufficient. The existence of a high threshold or several requirements needing to be met has, in our experience, adequately reflected the relative public interests applicable in various sections.

- whether a new public interest factor favouring disclosure regarding consumer protection and/or informed consumers should be added

Council's RTI Section does not consider that a need for this public interest has been identified in any RTI applications considered by decision makers recently.

- whether any additional factors should be included?

Council's RTI Section has not identified a need for the inclusion of additional public interest factors for consideration, as stated in the discussion paper the current list of public interest factors are not considered to be exhaustive.

7.5 Does there need to be additional protection for information in communications between Ministers and Departments?

No submission.

7.6 Should incoming government briefs continue to be exempt from the RTI Act?

No submission.

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?

No submission.

7.8 Is it appropriate or necessary to continue the exclusion of Commission documents from the RTI Act beyond the term of the Inquiry?

No submission.

7.9 Are provisions in the RTI Act sufficient to deal with access applications for information relating to mining safety in Queensland?

No submission.

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?

No submission.

Part 8 – Fees and Charges

8.1 Should fees and charges for access applications be more closely aligned with fees, for example, for access to court documents?

Fees and charges for access applications should be more closely aligned with court document access fees, or appropriately scaled up to more closely reflect the actual costs of the RTI process.

To consider one aspect of decision processes, the fees and charges, for example for a decision maker to process documents is $25.00 per hour. This does not reflect the actual costs of paying often very highly qualified officers in specialised areas to consider documents. In recent application made to Council, due to the complex nature of some matters, it is not unusual for a Team Leader to assist in gathering documents and providing contextual information to the RTI Decision Maker in the decision making process. It is also debatable as to whether the current charge reflects the costs associated with paying a decision maker of the relevant level of skill and expertise who is responsible for drafting and finalising a decision.

Further, the $25.00 per hour fee does not reflect base running costs such as providing access to computers, specialised software programs, such as Adobe Pro with redax, etc. Additionally, there are real costs associated with providing applicants with documents on CD which are currently not provided for in the Act.

While applicants often struggle to understand the costs of processing and access for their RTI applications, which they often believe to be very high, there is a low comprehension of the degree of work, time, skill and base costs associated with processing an application, which is rarely reflected in any meaningful way in any costs recovered from applicants.

Council's RTI Section acknowledges that there is a fine balance between ensuring RTI is accessible to the public while also reflecting value for money to that same public. The resources expended in processing and providing access to RTI applications should certainly reflect more closely the actual costs of providing the service to ensure the effective use of agency and government resources, representing value for money to the wider public and community.

8.2 Should fees and charges be imposed equally on all applicants? Or should some applicants pay higher charges?

No submission

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?

The processing period should be suspended while a non-profit organisation applicant is waiting for a financial hardship status decision from the Information Commissioner. This will ensure that an agency is not expending valuable resources attempting to fulfil a potentially voluminous application where an applicant may refuse to accept a CEN and subsequently have their application for a financial hardship status refused.

8.4 Should the RTI Act allow for fee waiver for applicants who apply for information about people treated in multiple HHSs?

No Submission.

8.5 If so what should be the limits of this waiver?

No Submission.

Part 9 – Reviews and appeals

9.1 Should internal review remain optional? Is the current system working well?

The current system does not adequately provide for the most effective outcome to be had for both the agency and the applicant and Council's RTI Section believes that internal reviews should not be optional. In some cases, when an original decision was drafted, a matter is ongoing and therefore documents are not able to be released at first instance and then are able to be released following the initial decision. Further, agencies are asked to provide detailed documentation to the OIC, including more detailed submissions, should the matter progress directly to external review. In cases such as these, agencies may benefit from a further opportunity to consider documents and their context and make a fresh decision where an internal review officer may determine that further documents can be released or provide further details to a dissatisfied applicant regarding why their application was decided in the way it was decided originally should the internal review officer come to the same decision as the original decision maker.

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?

Providing the power to the OIC to remit a decision for internal review would still consume some of the OIC's valuable resources by first requiring oversight and consideration of the decision.

Council’s RTI Section submits that all decisions should be required to undertake internal review before an external review is sought, except where an agency chooses to refer an internal review request directly to external review. Thus, if the agency is

satisfied fully with the original decision and does not feel that there are any changes to circumstances which would either affect the outcome of the internal review or that there is additional information to be added by the agency, the agency should refer the matter directly to the OIC for an external review.

However, if the agency's internal review officer feels that there may be further factors for consideration, further documents which have not been captured, or that the Act can be applied in a different way to get a different outcome, then the internal review officer can conduct an internal review of the decision. This would lead to further scrutiny of the documents and the application of the RTI Act.

Should the applicant then still be dissatisfied with the decision, they should then able to apply to the OIC for a review of the internal review decision.

Council's RTI Section notes that often in applications referred directly to external review Council is required to provide extensive further submissions to the OIC. In the interests of expediting this process, requiring an internal review except in cases where an agency does not feel they have anything further to contribute in terms of decision making, may make this process more efficient and faster.

This should expedite the process for the OIC by providing a further, more refined application of the RTI Act, and may also relieve some of the caseload of the OIC as applicants may be more satisfied with the outcome of the decision, or at least have a better understanding of the application of the Act and it's limitations.

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?

The level of trust an individual has in an agency is often particularly low when they believe the agency is failing to disclose relevant information through document searches to them. In these cases, it seems that an entitlement to both internal and external reviews is an effective way to ensure that applicants feel that there is effective oversight of their application and that searches have been adequately conducted, particularly when there is already a fairly poor relationship between the applicant and an agency. Therefore, both review rights should remain.

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?

Further time to make an internal review decision would be appreciated by Council's RTI Section. RTI decisions are often complex and dependant on a number of factors. While a fresh decision maker does not require time to conduct document searches, searches typically only take 5-7 business days, with characterising the matter in issue, considering documents, seeking advice from the relevant internal branches of Council and the decision making process taking up the majority of the processing time for a decision.

Thus, as the bulk of the RTI Processing period is taken considering documents and an internal review decision is required to be a decision made afresh, 10 business days cannot be considered to be afforded the relevant and necessary amount of time for a new decision to be made. Additional factors for consideration include that internal review decision makers are often senior agency officers who are responsible for ongoing and time sensitive non-RTI tasks.

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?

It appears the current mechanisms for informal resolution are sufficient. Currently, where applicants are happy to withdraw their applications and instead be given administrative access to documents, this procedure is followed. Where someone expresses a wish to lodge an RTI application, options for administrative release are first explored and often an RTI application is not made.

9.6 Should applicants have a right to appeal directly to QCAT? If so, should the Commonwealth model be adopted?

Currently, Council's RTI Section considers that the inclusion of a right to appeal directly to QCAT would compound the issues identified with the ability of applicants to progress a matter directly to external review. In some cases, Council has found that between a decision being made and a matter progressing directly to external review, there have been significant developments regarding an investigation or a decision, and documents whose release has previously determined to be against the public interest can then be released to an applicant. If changes were being considered, the Commonwealth model would be appropriate and aligns with Council's RTI Section's proposal for the amendment of the review process (i.e. that the Internal Review decision maker has the ability to refer a matter directly to the OIC for external review, but otherwise the decision must be subject to an internal review).

Part 10 – Office of the Information Commissioner

10.1 Are current provisions sufficient to deal with the excessive use of OIC resources by repeat applicants?

The OIC is best placed to respond to this proposition. Council's RTI Section does however note the current processing time for external reviews can in some cases be quite significant and may be indicative of stretched resources due to repeat applicants.

10.2 Are current provisions sufficient for agencies?

The currently established threshold for repeat and arguably vexatious applicants is quite high. Considering the resources available to an agency in terms of decision maker duties and conducting document searches, the provisions could use a

carefully balanced strengthening which also contains appropriate review rights. For example all members of Council's decision making team have extensive and considerable non-RTI work duties and the receipt of an RTI application represents a significant diversion of Council resources, in addition to the diversion of other Council officers who are required to assist in document searches and in providing assistance in explaining often complex and specialised documents to decision makers to facilitate the decision making process.

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 current provisions appear to be sufficient in providing access to documents to the OIC.

10.4 Should legislative time frames for external review be reconsidered? Is it appropriate to impose timeframes in relation to a quasi-judicial function?

There should be a reconsideration of the decision making timeframes provided to the OIC. Council's RTI Section notes that issuing decisions regarding requests for access to documents initially received by Agencies and conducting internal reviews could also be considered to be quasi-judicial due to the nature and type of tests and factors applied to the decision making process for agency decision makers. If there are frames applicable to original decisions, internal reviews, there should indeed be time frames imposed on the OIC as an external decision making body.

10.5 If so, what should the timeframes be?

Timeframes should be similar to those required by Agencies. It seems inequitable that government agencies should be required to issue decisions within 25 business days or a longer time agreed to by the applicant. However, it should be noted that as an agency would also be a party, they should additionally have some input and consultation required regarding time frames.

Part 11 – Annual Reporting Requirements

11.1 What information should agencies provide for inclusion in the Annual Report?

The current information required for the Annual Report appears appropriate at this time. However, it may be worthwhile including details on how much time not charged for in the CEN was spent on the application once it is finalised.

Part 12 – Other issues?

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?

Publication of Informally Resolved External Review Decisions

Council's RTI Section has recently had two external reviews which were settled by agreement once the applicants and Council were provided with the preliminary views of the OIC. Council notes that there may be a significant volume of review applications which are informally settled once the preliminary views of the OIC are provided to each party, which means that there is a large volume of what could loosely be termed a 'decision' made by the OIC where there is no record available to practitioners for their consideration of how the decision may inform their future decisions. Therefore, we suggest that there should be an amendment to the RTI Act to sanction some form of publication of these types of informal settlements to provide practitioners with further guidance in the decision making process.

Review and Amendment of Exemptions to Paying Processing and Access Charges

Council's RTI Section has also recently noted that repeat applicants are in some cases abusing the exemptions for concessions to paying processing and access charges. It has been noted that persons are lodging numerous RTI applications on behalf of a non-disclosed entity and utilising the financial hardship exemptions in section 66(2)(a). In such cases, while the applications represent a significant diversion of resources for a smaller agency, they would not meet the significant volume of applications required to establish that an applicant is vexatious under the current tests.

The procedure for an agency to deal with an application where they believe that the application is being made for some other person seeking to avoid the payment of a charge (section 66(2)(iii)) and the burden of proof required for the agency to meet is unclear. Further, once information is released it is essentially released to the wider public, and an agency would have difficult then applying this provision as an applicant may release information to whomever they choose. As processing charges and often access charges must be waived under such circumstances, applicants are able to request as broad a range of documents as required, as the cost of processing the application are not a deterrent.

Council's RTI Section believes this issue could be addressed to some extent by providing that an applicant who holds a pension card is only subject to one (1) financial hardship waiver over a period of twelve (12) months. As a part of an effective RTI Process, the agency in question should be contacting an applicant to ensure that the scope of the application best reflects the documents the applicant is actually seeking. As there is no decision per se for an agency to make, this decision would not be reviewable and therefore will reduce potential impacts on the OICs functions which may occur with the insertion of any discretionary powers to otherwise accept or refuse an application.

Alternatively, a discretion not to grant a waiver may be included as a reviewable decision in the section, however the difficulties with assessing potential impacts on an agency for processing a non-paying application, as well as considerations towards ensuring some parity between actual costs of processing an application and the costs charged to an applicant with respect to the actual costs being borne by the wider

public, makes this a far less effective and attractive alternative. There is likely that this power would result in a significant impact on the functions of the OIC as they reviewed decisions not to grant an exemption.