From: [redacted]
To: FeedbackRTIandprivacy
Cc: [redacted]
Subject: {Spam?} WBBEC submission on the RTI Act and the IP Act
Date: Friday, 3 February 2017 12:29:36 PM

Dear Sir/Madam

The Wide Bay Burnett Environment Council Inc (WBBEC) wishes to make a submission on the RTI Act and the IP Act. WBBEC answers to the questions are outlined below:

Questions asked in the consultation paper:

1. 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?

<!--[if !supportLists]--><!--[endif]-->The 'push model', favouring proactive disclosure of information, is not currently being adequately implemented – more action must be taken across government to proactively provide the public with information to avoid the need for RTI applications. The preamble to the RTI Act specifically recognises that 'information in the government's possession or under the government's control is a public resource', the benefits to a free and democratic society of releasing information in ensuring accountable governance and better quality decision making and the government's commitment to proactively releasing information unless there is a good reason not to. These principles are part of the ***'push model'*** suggested by the Solomon Report, a Report undertaken by an independent panel, chaired by Dr David Solomon AM to review the previous *Freedom of Information Act 1992* (Qld) which the RTI Act replaced in response to the Solomon Report.

In our experience, inadequate action is being taken by most government departments to actively provide the public with the information needed to ensure transparency and accountability in governance. Much more frequently than not, the public must apply to access information they seek and actively and repeatedly pursue their request with the public office to which they applied and await lengthy delays while applications are being decided, often to the point of making the information redundant due to the delay. Also, decisions under RTI applications are often not in favour of disclosure, usually citing vague grounds of commercial-in-confidence, or broadly ongoing government deliberations.
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2. Is the privacy object of the IP Act being met? Is personal information in the public sector environment dealt with fairly? Are there ways that this object could be better met?

By and large yes, WBBEC has no further comments on this.

3. Should the way the RTI Act and Chapter 3 of the IP Act applies to 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?

WBBEC proposes no changes.

4. 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?

WBBEC proposes adopting the approach in section 6C of the Commonwealth FOI Act where if a freedom of information application is made to an agency for documents held by the contracted service provider, the service provider is required to provide the documents to the relevant government agency, which is responsible for processing the application. This allows access to documents without unduly burdening the contracted service provider.

5. Should GOCs in Queensland be subject to the Queensland's IP Act, or should they continue to be bound by the Commonwealth Privacy Act?

They should continue to be bound by the Commonwealth Privacy Act.

6. Does the IP Act deal adequately with obligations for contracted service providers? Should privacy obligations in the IP Act be extended to sub-contractors?

By and large, yes. Privacy obligations in the IP Act should also be extended to sub-contractors, as per the OIC guideline.

7. Has anything changed since 2013 to suggest there is no longer support for one single point of access under the RTI Act for both personal and non-personal information?

No, see comment below for question 8 regarding a central website.

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

<!--[if !supportLists]--><!--[endif]-->Yes, all essential documents, such as copies of environmental licences and monitoring data, need to be made available to the public by legislation on a public register to avoid the need for RTI applications.

The 'push model' should inherently mean documents relevant to the public interest should be provided proactively by the departments as part of their 'publication schemes'. However, this has not been adequately undertaken to date. Therefore, it is necessary to ensure that legislation requires that documents such as licences, permits, authorities and similar documents and any monitoring data generated by proponents when undertaking their activities, must be published by departments on their websites.

Many documents of this nature are required to be on registers and made available to the public, however these are not always in an easily accessible form and frequently the applicant is required to actively pursue a department to obtain the documents. Also, there are frequently gaps in registers where essential documents aren't listed, such as monitoring data undertaken by a proponent in compliance with their environmental authority, however which was not required to be provided to the Department except if the Department requests it. All monitoring data generated by a proponent to determine whether they are complying with their relevant permits must be accessible by the public as it is in the public interest to understand the impact proponents are having on the public's health and the environment.

This would be greatly assisted by a central website for which all permits, authorities etc for each company/ project are listed to assist the public in understanding and assisting in a watchdog role in the compliance with relevant permits, authorities etc.

9. 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?

To decrease the processing time of applications, a higher threshold should be applied to consultation with third parties and third parties should not have ability to pause the time for considering an application.

Currently under the RTI Act, third parties are consulted where any RTI application may 'reasonably to be expected to be of concern' to that party. This is a very low threshold that is frequently triggered, causing more delays to decision-making processes and an increased amount of challenges being brought by third parties to applications. Third party consultation also currently causes a pause in the time for processing an application. The only choices an RTI applicant has is to withdraw its application, receive a 'deemed refusal' of its application or otherwise await for the department to complete consultation to re-start the processing clock.

In our experience, third party consultation has caused lengthy and unnecessary delays without adequate explanation. Frequently a notification will be provided that the applicant must either allow an extension of time to consider an application (in some cases multiple extensions) or the application will be deemed refused; this is unfair and does not favour the public interest of disclosure. The threshold for consultation needs to be higher and strict time limits for consultation also need to apply.

10. 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?

No, see comments for question 9 above regarding thresholds.

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

The current levels of exemption are appropriate.

12. 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?

Yes, the test should be simplified, as it is quite a complex process. Removing duplicated factors and simplifying the test by condensing parts 3 and 4 into a single list of factors favouring non-disclosure for comparison against factors favouring disclosure are recommended.

13. 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.

(a) yes (b) yes and (c) yes, as described in the discussion paper.

14. Are there new public interest factors which should be added to schedule 4? If so, what are they? Are there any factors which are no longer relevant, and which should be removed?

<!--[if !supportLists]--><!--[endif]--**Too much weight is put in favour of non-disclosure, more weight should be provided to the public interest of disclosing information, as committed to in the Preamble to the Act ie:**

· <!--[endif]--**>Improve the balance of weight given in favour of disclosure in the public interest, to ensure this is given sufficient weight in decision making; and**
· <!--[endif]--**>Narrow the number of considerations for when non-disclosure should be favoured.**

When considering on balance whether to disclose documents requested through an RTI application, too often exemptions such as the commercial considerations of third parties, or deliberations of government, are given more weight than the recognised public interest in disclosing documents, for example: <!--[endif]-->for the protection of the environment; <!--[endif]-->to reveal environmental or health risks; <!--[endif]-->to contribute to promoting open discussion of public affairs and enhancing government accountability or <!--[endif]-->to ensure effective oversight of expenditure of public funds, for example for major projects.

In our experience, often decisions made under the RTI Act have not adequately identified, considered or weighted the factors favouring disclosure in the public interest. This is not assisted by the fact that there are far more 'factors favouring non-disclosure' required to be considered under the Act (see Schedule 4). The drafting of the Act must be amended to ensure that disclosure is favoured in the public interest, to support the principle of open access to information to support accountable, transparent governance. Also, exemptions and the factors favouring non-dislosure must be more clearly defined.

The ability to refuse documents due to potential implications for commercial interests and deliberative processes must be better defined and restrained to ensure they are not abused, for example commercial in confidence interests should be limited to 'trade secrets', particularly for major projects effecting the environment and the community.

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

15. 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?

In general, yes as this is in keeping with the spirit of the legislation.

16. Have the 2012 disclosure log changes resulted in departments publishing more useful information?

Not really, please see responses to questions 1 and 8 above.

17. Should the disclosure log requirements that apply to departments and Ministers be extended to agencies such as local councils and universities?

Yes.

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

Yes.

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

Yes

20. 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?

Yes, internal review should remain optional. However, OIC be able to require an agency to conduct an internal review after it receives an application for external review.

21. 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?

No, the current system of internal review, OIC review and then QCAT review should be maintained. However, QCAT shoud be able to conduct a full merits review in addition to appealing on questions of law.

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

WBBEC is unable to comment on this question as it has insufficient information and experience to be able to provide an informed response.

23. 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?

WBBEC is unable to comment on this question as it has insufficient information and experience to be able to provide an informed response.

24. What would be the advantages and disadvantages of aligning the IPPs and/or the NPPs with the APPs, or adopting the APPs in Queensland?

The APPs should be adopted in Queensland to lessen the compliance burden, reduce

complexity and provide greater efficiency and simpler communication.

25. Should the definition of 'personal information' in the IP Act be the same as the definition in the Commonwealth Act?

Yes, for consistency.

26. Does the IP Act inappropriately restrict the sharing of information? If so, in what ways? Do the exceptions need to be modified? Would adopting a 'use' model within government be beneficial? Are other exceptions required where information is disclosed?

WBBEC is unable to comment on this question as it has insufficient information and experience to be able to provide an informed response.

27. Does section 33 create concerns for agencies seeking to transfer personal information, particularly through their use of technology? Are the exceptions in section 33 adequate? Should section 33 refer to the disclosure, rather than the transfer, of information outside Australia?

WBBEC is unable to comment on this question as it has insufficient information and experience to be able to provide an informed response.

28. Should the IP Act provide more flexibility about the timeframe for complaints to the OIC to be lodged? How should this be approached?

WBBEC is unable to comment on this question as it has insufficient information and experience to be able to provide an informed response.

29. Should there be a time limit on when privacy complaints can be referred to QCAT?

WBBEC is unable to comment on this question as it has insufficient information and experience to be able to provide an informed response.

30. Are additional powers necessary for the Information Commissioner to investigate matters potentially subject to a compliance notice under the IP Act?

WBBEC is unable to comment on this question as it has insufficient information and experience to be able to provide an informed response.

31. Should the definition of 'generally available publication' be clarified? Is the Commonwealth provision a useful model?

Yes to both.

32. Should IPP 4 be amended to provide, in line with other IPPs, that an agency must take reasonable steps to ensure information is protected against loss and misuse?

Yes.

33. Should the words 'ask for' be replaced with 'collect' for the purposes of IPPs 2 and 3?

Yes.

34. Are there other ways in which the RTI Act or the IP Act should be amended?

No, not really. However, 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. WBBEC commends 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. WBBEC recommends 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 these Acts.

Yours sincerely

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