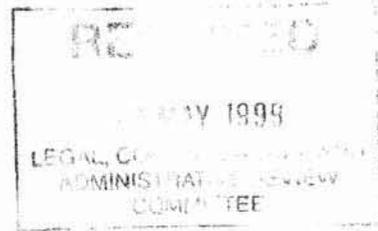


20-12-2007



Submission No 26

## NOMINAL DEFENDANT



10 May 1999

The Chair  
Legal, Constitutional & Administrative Review Committee  
Parliament House  
Cnr George & Alice Streets  
**BRISBANE QLD 4000**

Spec 1.2

Dear Sir/Madam

**Re: Review of the Freedom of Information Act 1992 (Qld)**

We acknowledge receipt of your letter dated 18 March 1999 and thank you for the opportunity to comment on the provisions of the Freedom of Information Act 1992 ("the FOI Act").

The records available to me indicate that the Nominal Defendant has received nine FOI applications since the commencement of the FOI Act. Only one of those applications did not relate to the applicant's personal affairs. Three of the nine applications were made by one person arising out of a failed claim.

Given this limited experience with the operation of the FOI Act, it is only proposed to make submissions in relation to two issues:

1. Whether the Nominal Defendant should be exempted from the provisions of the Act;
2. Whether an "agency" should have the power to reject an application on grounds that the application is vexatious, oppressive or duplicitous.

Both those issues will now be considered in turn.

### APPLICATION OF THE FOI ACT TO THE NOMINAL DEFENDANT

The Nominal Defendant is a body corporate established under the provisions of the Motor Accident Insurance Act 1994 ("MAIA") which came into effect on 1 October 1994. Under the provisions of the MAIA, the Nominal Defendant succeeds to the rights and liabilities of the Nominal Defendant (Queensland) which was established under the provisions of the Motor Vehicles Insurance Act 1936.

The vast majority of current claims fall under the provisions of the MAIA.

Under the provisions of the MAIA, the Nominal Defendant is taken to be a licensed insurer. In this capacity the Nominal Defendant is liable to pay compensation to an injured person where the injuries were caused by the negligence of another person in respect of either an uninsured motor vehicle or an unidentified motor vehicle.

The MAIA introduced a scheme for expediting the processing of CTP claims so that injured persons could receive compensation quicker and with less cost. One of the innovations of the MAIA was the introduction of notice requirements whereby all CTP insurers, including the Nominal Defendant, must give a notice within a prescribed time stating whether liability is admitted or denied and if admitted, whether admitted in full or in part. In order to comply with this statutory provision, the Nominal Defendant, in most claims, will carry out investigations concerning the circumstances of an accident, particularly where it is alleged that an unidentified motor vehicle is involved.

Of all of the CTP insurers, only the Nominal Defendant is subject to the provisions of the FOI Act. In our respectful submission this creates an iniquitous situation where the Nominal Defendant can be required to make disclosure of documents under the provisions of the FOI Act on the application of either another CTP insurer or the Claimant during the currency of a CTP claim. The following problems can arise from this situation:

1. Disclosure under the FOI Act becomes duplicitous as the Nominal Defendant, as an insurer, must comply with the provisions of Part 4 Division 4 of the MAIA which requires, inter alia, the provision of a copy of various documents by the insurer to the claimant relating to the circumstances of the accident, the claimant's medical condition, or the claimant's prospects of rehabilitation. Some of those documents, such as investigative reports and medical reports, must be disclosed by the insurer even though those documents may be protected by legal professional privilege. In that respect disclosure requirements under the MAIA are wider than under the FOI Act.
2. Not all documents in the Nominal Defendant's possession will be subject to disclosure to a claimant under the provisions of Part 4 Division 4 but may be disclosable under the provisions of the FOI Act. For example, the Nominal Defendant can withhold providing copies of documents to a claimant under the MAIA where the insurer has reasonable grounds to suspect a claimant of fraud. However, it would not appear that suspected fraud would be a basis for exempting documents from disclosure under the FOI Act. This potentially places the Nominal Defendant at a great disadvantage in administering a claim.

In addition, the Nominal Defendant claim files are, once court proceedings have commenced, subject to disclosure pursuant to the relevant rules of court.

Therefore, in our respectful submission, exempting the Nominal Defendant from the provisions of the FOI Act would not disadvantage claimants, but there would be potential significant disadvantage to the Nominal Defendant if the FOI Act continued to apply.

In this context it should also be borne in mind that the Motor Accident Insurance Commission must produce an annual report (see MAIA Section 19) containing information about the costs of administering the Nominal Defendant as well as the audited accounts of the Nominal Defendant Fund.

### VEXATIOUS, OPPRESSIVE OR DUPLICITOUS APPLICATIONS

There is no provision in the FOI Act which restrains an applicant from making multiple FOI applications against an agency on the same or similar grounds. In particular, if the applicant seeks documents concerning that person's own affairs then there is no application fee payable and the person may make multiple applications with impunity.

The Nominal Defendant has recently had the experience of having to process three FOI applications made by the same person which were all substantially the same.

It is our submission that a provision should be inserted in the FOI Act where an agency may decline to process an FOI application where the principal officer of the agency forms the view that the application is vexatious, oppressive or duplicitous. A related provision could be included to give the disappointed applicant the right to have that decision reviewed by the Information Commissioner.

Another way to demonstrate the bona fide's of applicants would be to review the fee structure for applications.

### CONCLUSION

We respectfully urge the Committee to carefully consider whether the FOI Act should continue to apply to the operations of the Nominal Defendant.

We would also commend to the Committee the insertion of a provision which would enable agencies to cull out vexatious, oppressive or duplicitous applications which are clearly not within the spirit of the legislation or in the public interest given the costs involved in administering and processing FOI applications.

We would be pleased to address any queries which you have in relation to the matters we have raised.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Lesley Anderson', written in a cursive style.

Lesley Anderson  
**Nominal Defendant**