Deputy Chief Executive

GPO Box 1429
Brisbane Qld 4001

Flr 14 Railcentre 1
305 Edward Street
Brisbane Qld 4000

Telephone 07 3235 1375
Facsimile 07 3235 2922

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Submission No 109

QUEENSLAND RAIL

The Chair
Legislative Assembly of Queensland
Legal, Constitutional & Administrative
Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam

GOVERNMENT OWNED CORPORATIONS

Queensland Rail was corporatised on 1 July 1995 in accordance with the provisions of Section 6 of the Government Owned Corporations Act 1993 and the Government Owned Corporations (Queensland Rail) Regulation 1995.

Section 199 of the Transport Infrastructure Act 1994 provides that the Freedom of Information Act does not apply to a document received or brought into existence by a transport Government Owned Corporation (which term includes Queensland Rail) in carrying out its "excluded activities". This Section of the Act then defines "excluded activities" as "commercial activities". The Transport Infrastructure (Rail) Regulation 1996 provides that every activity of Queensland Rail, other than an activity conducted under its community service obligations, is a commercial activity for the purposes of Section 199 of the Transport Infrastructure Act.

There may be benefit to applicants to have a section inserted in the Freedom of Information Act stating that Government Owned Corporations are exempt from the provisions of the Act, other than in relation to activities conducted under community service obligations. This would eliminate the need for applicants to consider several pieces of legislation to ascertain whether their request will be exempt or not.

Section 20 (1) of the Act provides that Government Owned Corporations are to be commercially successful in the conduct of their activities. It is therefore imperative that the exemption for Government Owned Corporations remains:

a) to ensure that their commercial documentation is not available to competitors or potential competitors, thus limiting the organisation's ability to compete effectively in the market-place; and

b) to ensure that there is no disparity between government owned corporations and other organisations in relation to the competitive neutrality rules that apply.

.../2

Purpose of the Freedom of Information Act
The purpose of the Freedom of Information Act is:

> "to enable members of the community to obtain access to documents held by government and to enable members of the community to ensure that documents held by the government concerning their personal affairs are accurate, complete, up-to-date and not misleading ..."

Queensland Rail supports this aim. However, this is not the purpose for which the Act is being used. Following an application, Queensland Rail has never had a request to amend a document. Over 80% of the applications submitted to Queensland Rail are from solicitors who are seeking access to material prior to commencing proceedings against the organisation. Usually these solicitors are engaged by their client on a "no win-no pay" basis and therefore the applications are used for speculative purposes. This makes government agencies and government owned corporations more vulnerable to speculative actions than private companies which are not subject to the Freedom of Information Act. The Rules of the Courts provide the appropriate avenue for obtaining documentation relating to a matter through the process of discovery, once the plaintiff has commenced the proceedings.

It is suggested that a section be inserted into the Freedom of Information Act stating that material relating to a dispute (whether or not legal proceedings have been initiated) is exempt until the matter is resolved.

Resources
The Freedom of Information Act provides that no fee is payable on applications relating to an applicant's personal affairs. Because there is no fee payable:

- applicants and their solicitors make no effort to consider and be specific about the material they actually require, meaning that a lot of material is obtained and considered which is not, in fact, required for the applicant's purpose;

- applicants and their solicitors do not inspect the documents but simply ask that copies of all documents be supplied, resulting in direct costs to the agency in providing copies of materials that are not, in fact, necessary for their purpose; and

- the direct costs to the agency in terms of responding to the application, photocopying the material and registered postal charges are not recovered. This is not compatible with a mandate to act as a commercial organisation.

Recently, an applicant submitted three separate applications. Much of the resulting work could have been avoided if consideration had been given to the application at the beginning of the process and a meaningful application submitted in the first instance. In another recent case, an applicant has changed his application at least four or five times.

.../3

The minimum amount of time required to deal with a very simple application is approximately 3 hours. This includes the Coordinator's time and the relevant divisional officer or records management officers' time in locating the files or documentation. In complex cases, the time required can be extensive. The $30.00 fee is grossly inadequate to cover any of the costs (direct or indirect) incurred by the agency.

The 50c per page photocopying fee has been in place since 1994 and has not kept pace with inflation or the labour costs incurred to have the material copied. The Supreme Court scale of fees is:

- pages 1-20 $1.50
- 21-51 $1.20
- 51-100 $1.00
- thereafter .80c per page.

This is a more realistic charge.

Internal Review

The Act requires that an internal review decision be given within 14 days of the receipt of the request. The Act also requires that the decision-maker be:

- a person other than the person who dealt with the original application; and

- be a person who is not less senior to the original decision-maker.

The internal decision-maker is considering the material and the decision for the first time when the review request is made. When the matter is complex (as most requests for internal review are), a lot of time needs to go into considering the matter and the material and making a decision. Fourteen days is usually inadequate to give a meaningful, researched and considered decision.

I would be happy to meet with you and discuss any issues at your convenience.

Yours faithfully

Bob Scheuber
Deputy Chief Executive

8 October 1999