QUEENSLAND GOVERNMENT

Minister for Employment, Training and Industrial Relations

Paul Braddy LL.B MLA

Submission No 162
See 1·4.

- 3 MAY 2000

Mr Gary Fenlon MLA
Chair
Legal, Constitutional and
Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear ~~Mr Fenlon~~ Gary

Thank you for your letter of 7 February 2000 forwarding the discussion paper on the review of the *Freedom of Information Act 1992*.

I am pleased to provide the attached comments from the Department of Employment, Training and Industrial Relations in respect to the issues raised. Could the Committee please note that the latest statistics published in respect of FOI applications do not accurately reflect the current position for this department since the change of government. The current workload is significantly higher than that reflected by the statistics.

Should you require any further information on this matter, please contact Mr Greg Cumberland, Principal Policy Officer (Administrative Law) on telephone number (07) 3225 2038.

Yours sincerely

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Department of Employment, Training and Industrial Relations

SUBMISSION

Legal, Constitutional and Administrative Review Committee

Freedom of Information in Queensland

Discussion Paper No. 1

1. ***While the committee welcomes further comment on FOI purposes and principles, their satisfaction and whether (and, if so, how) they require modification, the committee would particularly like to receive comments about the compatibility of FOI purposes and principles with our Westminster-style system of government.***

There is little doubt that the basic purposes and principles of the FOIQ are still as relevant now as when the legislation was introduced.

In saying this, there is little evidence that the FOIQ has contributed to an increase in public participation in the area of government policy making.

There is however no doubt that the FOIQ has contributed to:

- citizens having a better understanding of the decision making processes in matters which affect them;
- increased accountability of agencies; and
- improved decision making practices in agencies.

Significant resources have been expended by this department during the past twelve months in complying with applications which are of the nature of "fishing expeditions" for political purposes. A better balance needs to be struck in the legislation.

A large portion of the applications received for this agency is in respect to potential legal action. Access to documents in respect to claims for personal injuries arising from workplace incidents account for 303 of the 577 (52.5%) applications being examined during the current year. If other areas are taken into account, the percentage of applications for the purpose of potential litigation rises to approximately 60 per cent.

The department agrees with the Committee's view that these people should not be barred from using FOI. Some other form of legislation which provides necessary protections for the releasing agency and results in access only for the purposes of the potential litigation rather than release to the world as under FOI may be preferable.

2. ***Should the objects clauses of the FOIQ be revised as the IC(Q) suggests?***

While the department accepts in principle the amendment proposed by the Information Commissioner, it has great difficulty with the construction of the proposed clause. The proposed clause is very lengthy and difficult to follow. Clearer more concise statement of the objects would be preferable.

The department supports the statement of the objective that the legislation creates a general right of access to ***documents*** rather than "information" as currently stated.

3. ***In particular, should the FOIQ include:***

   (a) a provision stating that the Act is to be interpreted in a manner that furthers the Act's stated objects [like the FOIC, s 3(2)]?: and/or
   (b) a guiding principle or presumption of access?

The department does not consider this a necessity as case law by the Information Commissioner has clearly established this principle.

4. ***Should the relationship between the exemption provisions and the objects clauses of the FOIQ be made more clear? For example, should the FOIQ provide that the exemption provisions 'operate subject to' or 'are to be interpreted in furthermore of' the objects of the Act? Alternatively, should the objects clause avoid direct reference to the exemptions?***

The existing reasons for enactment (clause 5) seems to strike a proper balance in this respect.

5. ***Alternatively, if the FOIQ is to promote disclosure (in the interests of open government) should the reference to the exceptions and exemptions be removed from the objects clause?***

To remove a reference to the possibility of exemptions, could give potential applicants a false impression that all information held is accessible.

6. ***Should any additional matters be stipulated in the objects clauses, eg, a statement that Parliament's intention in providing a right of access to government-held information is to underpin Australia's constitutionally guaranteed representative democracy; an acknowledgment that information collected and created by government officials is a public resource?***

It does not appear necessary.

7. ***Is there a 'culture of secrecy' in Queensland? If so, how is this evident? What can be done to overcome any such culture?***

Far more information is now available than has been the case previously. All agencies have developed internet sites with detailed information about the agency and its related functions. Most agencies have developed administrative schemes where by personal information is made available on request. There is a far wider consultation process when legislative amendments are being considered than was ever the case.

The National Competition Policy has seen a greater focus on agencies making the public more aware of their functions and activities than before. Agency activities seem to attract greater publicity than ever before.

The only area where secrecy remains is in the Cabinet/Executive Council area where such secrecy is in line with the normal functions of collective responsibility of a Westminster government.

8. ***Should the entire approach to FOI in Queensland be 'reversed' so that the onus is on agencies to routinely make certain information public (with the public still having the right to apply for information not already so released)? If so:***

   (a) How should this be achieved, eg, by statutory or administrative instruction?
   (b) What sort of (additional) information should agencies be required to routinely publish?
   (c) What (other) considerations are relevant?

This department supports the idea of making more information routinely available rather than making the information available through the FOI process. In this respect the department has introduced administrative release schemes in respect of accident reports and marked examination papers for TAFE students. The department also extends the right of access to personal files to former employees.

The department does not support the approach that released non-personal information should be published in the statement of affairs. It fears that this could become a very expensive and time consuming alternative. Our experience has been that there has been very little demand for the current statement considering the expense involved in publishing this document.

An alternative would be to introduce a classification of documents namely "public documents" which could be captured by a similar provision to section 19 for policy documents thereby making them immediately available on request. The statement of affairs could be used to identify the public documents held by each agency.

9. ***Is the existence of the FOIQ adequately publicised? If not, how could it be better publicised? [For example, through public libraries, on-line, by assigning promotion of the FOIQ to somebody – see T/Ref C(i).]***

The only publicity FOI seems to get is negative. There still appears to be a need for a centralised area that has a responsibility for FOI issues. That unit should have an educative role including responsibility for educating the general public as to their rights. It could also field general FOI enquiries and assist the public by referring applicants to the appropriate agency.

10. In addition to any suggestions made in response to the above discussion points, are there any other ways in which the FOIQ, part 2 provisions concerning the publication of statements of affairs and other documents might be improved?

Due to the lack of demand for this publication, this department would not support an amendment that was likely to increase publication costs. Publication in the Annual Report will add greater cost to the production of the document but would result in widening its distribution.

The Act should be amended to allow for an exemption from the requirement to publish where agencies have the information available on their web site and can show that the information is reviewed at intervals of no less frequent than each 12 months.

11. Is there scope for performance agreements of senior public officers to impose a responsibility to ensure efficient and effective practices and performance in respect of access to government-held information including FOI requests?

While in principle this suggestion has merit, it would be very difficult to implement in practice. How could meaningful bench marks be established? It would be prejudicial to some agencies to judge performance against the amount of matter claimed exempt as that agency's functions may be such that they deal with sensitive matter. If an agency, has a high percentage of full access then it would suggest that that agency should have an administrative release policies in place rather than dealing with the requests under FOI.

Average turn around times does not take into account the number of requests received, the size or complexity of requests.

The level of requests received could be indication. This may be more an indication of the nature of the business conducted by the agency. Agencies such as ours where our documents are relied on in personal injuries claims would be disadvantaged.

12. Should the title of the FOIQ be changed to the Access to Information Act?

The title of the Act can be misleading. Access to Information in itself would also be misleading as it suggests an obligation to answer questions posed rather than to provide access to documents. As other jurisdictions also use the term Freedom of Information, unless the philosophy of the Act changes to a situation where it is noticeably different from other jurisdictions, it is probably best to remain consistent with the other jurisdictions so as not to confuse the public.

13. Should sufficient regard to 'the right to access government-held information' be included as an example of a 'fundamental legislative principle' in the Legislative Standards Act 1992 (Qld), s 4?

While in theory this suggestion has merit, it could be difficult to implement. However, existing legislation that places restrictions on the release information could be reviewed.

16. Should the different harm tests that are (or should be) contained in the FOIQ exemption provisions be rationalised and/or simplified? If so, what form(s) should they take?

No, the harm tests as they stand seem to strike the appropriate balance. It is recommended that they not be standardised because of the different nature of the exemption provision

17. Should the harm tests be made more stringent, eg, by requiring decision makes to show that disclosure would result in substantial harm?

Danger exists if too strict a harm test is placed on some of the exemptions especially with the onus of proof resting with the agency. It would not be too onerous on the decision maker to identify the perceived prejudice that could result from release of the documents. It would be easy to identify the prejudice after it happened but of course it would be too late then.

18. Should there be a general harm test imposed on all exemptions? If not, what exemptions are not suited to the application of such a test and why?

No, it was accepted that the public interest is inherent in the class exemptions such as legal professional privilege, parliamentary privilege, cabinet and executive council confidentiality. Release of these classes of documents would therefore generally result in harm to the public interest. These matters were examined in detail before the legislation was enacted and there has not been any change in these social values in this time.

20. Should the 'public interest' as it relates to exemptions be defined in the FOIQ? Alternatively, should the FOIQ deem any specified factors as relevant, or irrelevant (eg, embarrassment to government), for the purpose of determining what is required by the public interest?

It would be impractical to define "public interest". The concept of public interest is a changing concept as society's views and values change. A definition could result in an unintended narrowing of its meaning. The legislation could provide further guidance for decision makers of what should be taken into account when considering public interest. A definition would be too arbitrary.

22. Should the ability of ministers to sign conclusive certificates be revisited?

These provisions appear to have been misinterpreted. The Act does not confer the right to issue certificates on any Minister. The right is conferred on "the Minister" which, under the terms of

the Acts Interpretation Act 1954 (Cl 33 (2)(a)), refers only to the Minister administering the provision namely the Attorney – General. If the certificates are only issued by the Attorney-General as intended, the necessary level of protection should be in place.

30. ***Should the FOIQ be extended to cover contractors performing functions 'outsourced' by government? If so, why and how should this be effected?***

An extension of the FOIQ to contractors could prejudice the availability of contractors to agencies. It is also doubtful if the contractors would have the expertise to deal with applications under the Act.

It is suggested that a better way to ensure accountability would be to review the State Purchasing Guidelines to make the supply of sufficient documentation for accountability purposes a compulsory element of all contracts. This way sufficient documentation would still be held by the agency to satisfy the accountability aspect.

31. ***Do the current commercial exemptions in the FOIQ – principally, ss 45 and 46 – require amendment to ensure that an appropriate balance is struck between disclosure of information in the public interest and the protection of legitimate business interest? If so, what amendments need to be made?***

It is considered that the current provisions relating to business affairs if applied correctly strike an appropriate balance.

32. ***What more can or should be done to try to ensure that agencies do not inappropriately claim that documents fall within the ss 45 and 46 exemptions? (For example, should the IC(Q) or some other body issue guidelines or otherwise have a monitoring role in relation to agencies invoking the exemptions?)***

If it is considered that agencies are inappropriately using this exemption in respect to their own business affairs, then perhaps a separate business affairs exemption could be provided in respect to the agency's own business affairs with a more stringent test as to the expected harm to be caused before the exemption could be claimed.

It would be inappropriate for the Information Commissioner's office to have a monitoring role except when the matter was taken to them on external review. A monitoring role could cast some doubt in subsequent appeal matters, with questions such as the independence of the Information Commissioner where they had already formed an opinion on documents through the monitoring role that was subsequently questioned on appeal.

33. ***Should the FOIQ confer a general right of access to information instead of a right to documents? If so, what should 'information' encompass?***

It would not be reasonable or practical to grant access to information that has not been documented. Sufficiency of search appeals for non-documented information would be extremely difficult. How could an agency discharge its onus of proof that one of its employees did not know some requested information.

34. If the FOIQ is to continue to provide for access to documents, can the definition of document be improved? (For example, by clarifying that it includes data?)

It is considered that more specific provision needs to be made in respect to information held electronically such as on data bases. An agency's obligation to retrieve such data should be specified. Should an agency be required to provide information in a format requested which may require a programmer to write a program to extract the data? Would the agency be entitled to be reimbursed for the programming costs? Should such Information be restricted to that which can be retrieved through simple queries. Should it matter that the applicant is seeking such information for their own commercial gain eg to construct a list of prospective customers?

35. What more can be done by agencies to assist FOI applicants in accessing all relevant documents (ie, including electronic and other non-paper form documents)?

A problem to be considered with electronic records is whether the applicant would have access to a compatible program to access the information. It would seem unreasonable to require an agency to convert information to a format that it does not itself use.

Another concern with electronic records is the possibility of changing the record and then misrepresenting the changed copy as the correct version. These concerns are overcome in documentary form by releasing the document with a FOI release water mark.

The other problem in respect to electronic records which does not appear to have been considered is where an agency changes the program it uses for the recording of data. While a capacity is usually keep for a number of years to access this information, that capacity generally diminishes over a period of time.

37. Which documents should be considered in the possession of an agency for the purposes of the FOIQ? Need the Act's definitions of 'documents of an agency' and 'official documents of a Minister' be amended in this regard? Alternatively, how might the FOIQ charging regime account for agencies' identification and retrieval of documents potentially relevant to an FOI request that are 'documents of an agency' but not in the agency's physical possession?

This has not been a problem with this department. If documents are forwarded to others such as legal advisers usually a copy would be retained within the agency.

38. ***Should internal review necessarily be a prerequisite to external review? If not, should there be conditions attached as to when and how an applicant can proceed directly to external review? [For example: agreement of both the applicant and agency; by leave of the IC(Q)?]***

This department supports the current system of internal review as per its original submission.

39. ***Is there a case for any other model or a variation of the existing model of external review under the FOIQ?***

The department supports the current system of external review.

41. ***If, as T/Ref B(v) queries, the method of 'review and decision' by the IC(Q) is 'excessively legalistic and time-consuming', how in light of the above discussion can the IC(Q) adopt less legalistic and quicker processes? For example, is there more scope for the IC(Q) to use informal dispute resolution mechanisms?***

It has been the experience of this department that at times, the IC(Q) can overly complicate the review process. In one case an appeal was lodged against a decision to require the payment of the application fee. In accordance with earlier decisions, only one document needed to be found within the scope of the request that did not relate to the applicant's personal. A number of documents were clearly identified as not relating to the applicant's personal affairs. This could have been the end of the review, however the ICQ examined further documents as the applicant was arguing that the other documents did in fact relate to the applicant's personal affairs. Evidence was required in respect to these other documents including obtaining a statutory declaration from a former employee. This additional work could have been avoided.

While the guidance provided for FOI administrators in the ICQ decisions is appreciated, maybe for the sake of dispensing with the review the decision on the review could be refined to the issues. ICQ could publish separate information papers or practice notes on their interpretation of aspects of legislation for the guidance of FOI administrators.

It is understood that ICQ is currently undergoing an administrative review. This review will hopefully identify improvements in the process of ICQ that should help overcome this problem.

42. ***Given the importance of providing FOI administrators guidance on the proper interpretation and application of the FOIQ:***

    (a) ***Should the IC(Q) [or some other body responsible for overseeing the administration of the FOIQ: see T/Ref C(i)] be responsible for preparing***

guidelines to assist agencies and applicants to understand, interpret and administer the Act?

Such guidelines would be helpful to FOI administrators. They would promote consistency of decisions between agencies and should result in fewer applications for review.

(b) Should there be a statutory provision requiring the IC(Q) to publish <u>all</u> decisions in either full or summary form (as in Western Australia)?

A provision such as this is likely to add to the administrative burden of the ICQ. Sanitising of some decisions would be necessary because of the issues under review. If the FOI Administrators guidelines or practice notes were introduced, the issues covered by the decisions that were not published could be canvassed in that forum.

43. Should there be a statutory time limit imposed on the IC(Q) in which to deal with external review applications?

In the department's initial submission we did advocate a time limit for external review. On reflection this may cause administrative problems for agencies and the ICQ, and result in a poorer standard of decision and impede the mutual resolution of application for review. If improvements can be identified in the ICQ internal process as a result of their current review many of the concerns of the department may be resolved. A further alternative could be that after an application for review was not resolved with in a set time, say 6 months, that the ICQ be required to issue a statement of reasons for the delay and the expected time line for resolution.

44. If such a time limit is imposed, what should that time limit be and should it allow for extensions (and, if so, on what grounds)?

If a time line was imposed, there must be some flexibility to allow for an extension of time where warranted. Some applications can be extremely complex and require consultation with many parties. The views of all parties need to be taken into account and the competing rights weighed against each other. The preparation of the necessary evidence to support a claim for exemption can be time consuming and can involve working with legal representatives of third parties to provide the necessary information especially in the area of the business affairs of outside parties.

45. Should the IC(Q) have the power to: (a) enter premises and inspect documents; and/or (b) punish for contempt?

ICQ requires sufficient powers to fully undertake its role.

46. Should the IC(Q) be empowered to order disclosure of otherwise exempt matter in the public interest?

No, it is appropriate that the agency has discretion to disclose exempt matter but not for ICQ as the ICQ may not be aware of particular sensitivities of the agencies functions. As most of the exemption clauses are already subject to a public interest test, such a power would only relate to those exemptions not subject to the public interest test.

47. ***Should the scope of the IC(Q)'s decision-making powers in relation to conclusive certificates signed by a minister under ss 36, 37 or 42 be expanded? (In this regard, refer to discussion point 22 regarding the need for conclusive certificates.)***

No. As discussed above the conclusive certificates should only by issued by the Attorney-General. As Minister responsible for the Act, the Attorney-General should give sufficient scrutiny to the matter at hand to ensure its falls within the category claimed.

48. ***Should the non-personal information application fee be abolished, remain at $30 or be increased (to what level)?***

In the end this will be a policy decision as to the level an applicant should contribute towards the agencies cost. The discussion paper correctly sets out the arguments. We reiterate our original submission on fees and charges and the need for a better balance between the applicant's contribution and the cost of the agency meeting its obligations.

Where multiple requests are made on the same application, each separate topic should attract a separate application fee. Where the application is made for commercial purposes (to construct a list of potential clients) full cost recovery should be an option.

50. ***Should charges be introduced for:***

    (a) processing (for retrieval of documents, decision making and/or consultation); and/or

    Charges should be introduced for the retrieval of documents particularly in respect of voluminous applications. Charges for consultation is not recommended.

    (b) supervised access;

    and if so, at what levels and in what form? (For example, per hour spent, per page disclosed or dealt with, a sliding scale, with caps on fees?)

    Charges for supervised access is not supported.

52. ***Especially if there are to be any fee increases, should the FOIQ be amended to enable agencies and ministers to waive or reduce fees? On what grounds?***

52. ***Especially if there are to be any fee increases, should the FOIQ be amended to enable agencies and ministers to waive or reduce fees? On what grounds?***

As per original submission, the department supports the right to waiver fees on the following grounds:

- The applicant's financial position;
- Whether there may be a special public interest in the release of the documents (non-profit public interest groups);
- Compassionate grounds (loss of spouse or close family relations);
- Charges below a set amount say $10.00 (as it is not economical to collect the fee).

53. ***Are any of the arguments for the introduction of application fees for internal and/or external review valid? If so, which ones and why?***

As per our original submission, this department does not support the introduction of application fees for review.

55. ***In relation to s 28(2) concerning voluminous applications, should:***

    (a) the word 'only' be deleted from the last paragraph of s 28(2) to widen the factors that agencies may have regard to when deciding whether to refuse to deal with an application because it would substantially and unreasonably divert agency resources;
    (b) agencies be required to consult with the IC(Q) before refusing an application under the provisions; and/or
    (c) the provision be redrafted to emphasise the importance of agencies consulting with applicants about their applications?

It is essential that the word "only" be deleted for the reasons set out in our original submission. The department would like the Committee to note that in one case where the department consulted with an applicant in respect to a particularly onerous request, it took the applicant 8 months to redefine the request to terms that were more manageable.

56. ***Should s 28(3) of the FOIQ be repealed? If s 28(3) is to be retained, should it be amended to require the agency to: (a) identify the exemption provision(s) purported to be applicable; and (b) explain why all the sought documents are exempt thereunder?***

This department has not had cause to use this provision and it is likely that it could only be used in very rare occasions. It would not seem unreasonable to explain the reason why it was considered all such documents were exempt.

57. Should the FOIQ contain a general provision enabling an agency to refuse to deal with frivolous and vexatious applications? If so, how should this provision be drafted and what provisos should it contain?

This department has not experienced any difficulty with frivolous and vexations applications. The an introduction of an additional charge for applicants who had applied for the same information within 18 months of making the application could eliminate repeat applications.

59. In addition to having (relevant and not unduly onerous) data collection and reporting requirements, is there a need for an entity (other than the relevant minister) to be responsible for:

(a) ensuring the timely, accurate and consistent reporting of that data;
(b) undertaking a meaningful analysis of that data once collected; and
(c) ensuring that, as a result of that analysis, any appropriate remedial action is taken?

It could be questioned as to why data should be collected if that data was not being analysed, and no action was taken in relation to the analysis .

60. Should the basic 45 day time limit for processing access applications – in s 27(7)(b) of the FOIQ – be reduced to 30 days?

The arguments in favour of reducing the time limit for processing applications seems based on a flawed argument that the reasons that were delaying processing of applications was in respect to difficulties in accessing and retrieving documentation.

This department currently has 107 applications on hand of which 45 are overdue. The delays are mainly caused by the size, complexity and the third party consultation process required. The average amount of documents per application has trebled since the introduction of the legislation.

It should also be remembered that straight forward requests are no longer dealt with under FOI but through administrative release schemes. There would need to be a substantial injection of resources to the FOI Unit if this department was to meet a 30 day turn around time.

61. Should the 15 day extension for third party consultation when required under s 51 – in s 27(4)(b) of the FOIQ – be extended to 30 days?

This would definitely be necessary if the processing time was reduced. As it is many consulted third parties seek extensions of time so their legal advisers can be consulted.

62. ***Should provision be made for agencies (or ministers) and applicants to agree to extend response times rather than incur an automatic deemed refusal? Should any such amendment be subject to the requirement that a partial or interim decision be made within the prescribed time limits on as many documents as possible?***

In effect this is what is currently applying. In most cases where an application extends beyond the time line the applicant is consulted and agree to an extension of time. In some cases the applicant requests an interim decision in respect of some of the documents, in other cases they prefer to wait and have all documents considered at the same time.

This system appears to be working fairly well and there does not appear to be any need to formalise it in the legislation.

63. ***Should an agency's (or minister's) failure to decide an access application and notify the applicant within the relevant time period be taken to be deemed access instead of deemed refusal?***

This would be unfair on third parties involved. It seems impractical also if there are problems in searching for and identifying the documents.

It is often the case that the report being requested by the applicant has not yet been written. While the department could simply refuse access on the basis that it does not exist, most applicants are happier to hold their application in abeyance until the report is completed. A deeming provision as above would place this system in some jeopardy.

64. ***Should s 27 be redrafted to provide that an agency or minister must decide an application and notify the applicant 'as soon as is reasonably practicable' but, in any case, no later than the relevant time limit?***

This would not be practical. How would the agency be penalised if it failed to meet the requirement? If it was deemed that full access was to be granted, third parties could be prejudiced.

65. ***Should there be provision for the processing of applications to be expedited in circumstances where a compelling need exists? If so, in what circumstances? (For example, imminent threat to public safety, public health or the environment.)***

In practical terms, the department tries to achieve this now. Where applicants can show a pressing need to obtain the documents, their application will be given preference.

It would be difficult to define the circumstances of when applications should be expedited. Would a definition then encourage agencies not to expedite requests that although the applicant has a pressing need, that the need did not meet the definition?

66. ***Should a statutory time limit be applied for applicants viewing or seeking copies of documents to which access has been granted (say, 60 days)?***

It can be inconvenient for agencies where an applicant chooses not to avail themselves of access within a reasonable time especially if the applicant wishes to view original documents which are in respect to an ongoing matter. It is the practice of this agency to copy the documents subject to any request on to FOI Release paper. These copies are then held on the FOI file. Delays in obtaining the access are therefore not a problem. Whilst it may lead to some wastage as far as copies go, it is far more efficient to copy the documents when considering the request.

It is not considered necessary to include such a provision.

67. ***Should the 14 day limit for dealing with internal review applications for access and amendment decisions – as set out in ss 52(6) and 60(6) – be extended? If so, what should the period be?***

The department supports an extension to the 14 day time limit for the reasons set out in its initial submission.

69. ***Is there a need to implement further measures to ensure that, where appropriate, public servants can claim exemptions in respect of their names and other identifying material? For example:***

    (a) Should the IC(Q) (or some other body) issue guidelines setting out general principles regarding the release of public servants' personal information and the circumstances in which exemption from disclosure may be justified?
    (b) Alternatively, should the FOIQ specify categories of personal affairs information of public servants that is not exempt under s 44?

The department considers that there is a need to implement further measures to protect the anonymity of public servants in certain circumstances, especially in respect to policy advice. The department does not consider it appropriate to protect the identity of officers making administrative decisions.

Amendments as wide as those implemented in Victoria would not be appropriate.

72. ***What particular deficiencies in the FOIQ might the proposal in T/Ref B(ix) seek to overcome? Does the proposal adequately overcome these deficiencies? Are there any alternative ways by which these deficiencies might be addressed?***

This proposal is not supported. There would be nothing to stop the agency releasing the information to the solicitor on their undertaking to meet certain conditions outside the provisions of the FOIQ.

73. ***Should the personal affairs exemption (s 44) be amended to provide that, in weighing the public interest in disclosure, an agency may have regard to any special relationship between the applicant and a third party? If so, on what basis should such a provision operate?***

Under the current legislation, the special relationship between the applicant can be taken into account, for example there is a definite public interest in parent of a young child gaining access to information about that child so that they can properly undertake their role as a parent. It could also be argued that there is a public interest in a close family member obtaining access to information concerning the death of the family member in an accident. The Information has recognised in some decisions (See *Re: Pemberton and the University of Queensland* 2 QAR 293) that the identity of the applicant can be a factor in deciding the access to be granted.

To attempt to define such relationships in the legislation could unintentionally narrow the current application of the public interest test.

74. ***Should a person/entity be (statutorily) responsible for generally:***

    (a) monitoring compliance with, and the administration of, the FOIQ; and
    (b) providing advice about, and ensuring a high level of agency and community awareness of, the FOIQ?

There does appear to be a need for a body to be responsible for the general administration of the FOIQ. The department currently receives many requests for general information on FOI issues.

The department does not support that body having a role of monitoring compliance as the Act especially a power to audit. A power to audit the processing of individual applications would raise privacy concerns for applicants. The appeal provisions of the Act should be sufficient to ensure compliance.

The department supports the other roles proposed by the discussion paper.

75. ***If so, who should perform this role:***

    (a) the IC(Q);
    (b) a unit within the Department of Justice and Attorney-General;
    (c) a new independent (statutory) entity; or
    (d) some other existing person/entity?
    Why?

It does not seem feasible to establish a new entity to perform this role, as the size of the unit required would not make warrant the infrastructure to operate in its on right.

The preferred option would be to create a distinct unit in the ICQ to handle this role. This could also lead to some savings in the area of the issue of formal decisions. The decisions in future could be confined to the issues in dispute. The wider issues now covered in decision for the guidance of FOI decision makers could be issued as practice notes from this unit. This option would have the independence necessary for such a role.