



DEPARTMENT OF MINES AND ENERGY

OUR REF.

YOUR REF.

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QUEENSLAND
GOVERNMENT

DEPARTMENT
OF MINES
AND ENERGY

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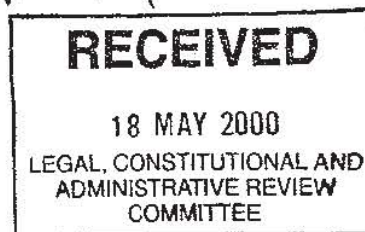
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Submission No 168

Spec 1.4

16 May 2000

The Research Director
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE Q 4000



Dear Sir

Please find enclosed the Department of Mines and Energy's response to the Legal, Constitutional and Administrative Review Committee's Discussion Paper No.1 entitled *Freedom of Information in Queensland*.

If you require clarification on any aspect of the response to the Discussion Paper, please contact the Department's FOI co-ordinator, Ms Patricia Ashe, Administrative Law Officer, Executive Support Unit (telephone 322 42686).

Yours faithfully

Dr TED CAMPBELL
Acting Director-General

DEPARTMENT OF MINES AND ENERGY'S RESPONSE TO:

**LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW
COMMITTEE**

FREEDOM OF INFORMATION IN QUEENSLAND

DISCUSSION PAPER NO. 1

Discussion point no. 2

The objects clauses of the FOI Act should be amended in so far as the word "information" should be replaced by "documents".

Discussion point no. 12

The title of the FOI Act should be changed to the *Access to Documents Act*.

Discussion point no. 15

The provisions of section 35 should be extended to cover all of the exemptions in the FOI Act.

Discussion point no. 33

The FOI Act should not be extended to confer a general right of access to "information". It is already well documented that administration of the FOI Act is extremely resource intensive. Extension of access rights under the Act would result in an even more onerous workload in the FOI domain. Access to information is already handled in the form of letters to Directors-General or Ministers.

Discussion point no. 42

The Department of Justice and Attorney-General could resume its previous role of functioning as a co-ordinating body for the FOI Act. The then Human Rights and Administrative Law Division in that Department provided training, public education programmes and a Government liaison role which was effective.

Discussion point no. 49

A uniform application fee of \$30 could be introduced. This may reduce the number of vexatious applicants.

Discussion point no. 50

A charge of \$30 per hour could be introduced for supervised inspections. The introduction of this fee may well assist in encouraging applicants to reduce the scope of their applications.

Discussion point no. 53

A bond should be introduced for those seeking internal and external review of all decisions.

Discussion point no. 54(a)

The fee for internal review should be \$60 and the fee for external review should be \$200

Discussion point no. 54(b)

The fee should apply to both internal and external review.

Discussion point no. 54(c)

The concept of waiver of charges is not supported, as this will only substantially increase the number of frivolous appeals. The waiver concept is seen as being resource intensive.

Discussion point no. 54(d)

In either instance, should a decision be other than upheld the bond could be refunded to the applicant.

Discussion point no. 54(e)

It would be appropriate for this to be judged on an individual basis, but generally a fee should still be levied, but it could be refunded if the matter is varied on external review.

Discussion point 55

The word “only“ should be removed. Again, this could assist with the management of vexatious applications.

Discussion point no. 55(c)

The Act is already sufficiently clear with regards to the onus of the agency to negotiate with the applicant.

Discussion point no. 57

The introduction of a provision to deal with frivolous and vexatious applications is supported. The wording of the relevant section in the OIA (NZ) would be appropriate.

Discussion point no. 58

The introduction of such an exemption is supported. The wording in the Irish FOI Act would be acceptable.

In all instances where an application is made by “an agent” (on behalf of another person or organisation), it should be mandatory for the agent to inform the agency of the name of the person or organisation on whose behalf the application is being made.

Discussion point no. 59

Please refer to the Department of Mines and Energy’s (DME’s) response to Discussion point no. 42

Discussion point no. 60

The time limits should remain the same. Regionalisation means that there is substantial difficulty in co-ordinating the location and collation of documents.

Discussion point no. 61

The time frame could be extended, dependent on the number of documents requiring consultation. On occasions, there is a substantial volume of documents and it is an imposition on individuals and companies to give them under 15 days to provide a considered response.

Discussion point no. 62

A provision could be included to provide for an extension of time. However, interim decisions are not supported, as these could be administratively difficult and could be confusing for the applicant.

Discussion point no. 63

DME strongly disagrees with the suggestion that the failure to decide an access application could be taken to be deemed access. That would be hugely problematic and could result in the rights of third parties being overridden.

Discussion point no. 65

DME believes that this is already the reality. Including the provision in legislation could result in an applicant having their expectations unreasonably raised, as in a majority of instances, an applicant would consider that their circumstances are compelling.

Discussion point no. 66

A time limit of 28 days could be introduced. This would provide for a more efficient administration of the FOI Act.

Discussion point no. 67

The time limit should be extended to 30 days, as the current 15 day limit does not adequately provide for third party consultation.

Discussion point no. 68

The time limit should be reduced to 28 days. This is a reasonable time frame.

Discussion point nos. 74 and 75

Please refer to DME's response to Discussion point no. 42