

# AUSTRALIA'S RIGHT TO KNOW

**Dr David Solomon AO**

Freedom of Information Independent Review Panel  
GPO Box 5236  
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Dear Dr Solomon

## **Review of the *Freedom of Information Act 1992 (Qld)***

Australia's Right to Know (RTK) welcomes the opportunity to make submissions to the review of Freedom of Information law in Queensland (**Review**).

### **1. Preamble**

- 1.1 RTK endorses strongly the Queensland Government's commitment to the review of Freedom of Information (**FOI**) law in Queensland. RTK supports the measures the Queensland Government is taking pursuant to its recognition that access to government information is an essential right of every person and fundamental to openness, transparency and accountability in government.
- 1.2 RTK has had the benefit of preparing these submissions with reference to the Discussion Paper prepared by the Independent Review Panel. The Discussion Paper is clearly the product of extensive research and presents a wide range of views on the implementation of FOI laws in many jurisdictions and innovative approaches to FOI law reform. RTK supports the various initiatives identified in the Discussion Paper to make FOI legislation more effective in providing access to government information quickly and cheaply.
- 1.3 RTK shares the view of the Government, as expressed in the Discussion Paper, that a complete and wide-ranging review of the current *Freedom of Information Act 1992 (Qld)* (**QLD FOI Act**) is in order. The FOI reform process in Queensland offers a unique opportunity to lead other Australian Governments to a new and higher benchmark for access to government information.

### **2. Australia's Right to Know**

- 2.1 RTK is a coalition of Australia's largest media organisations. RTK was formed in response to the large number of threats to freedom of speech and access to information in Australia. The independent organisation, Reporters without Borders, recently ranked Australia only 35th in relation to press freedom around the world. Effective Freedom of Information legislation is an essential component of an open democratic society with a transparent accountable system of government. It enhances the ability of ordinary citizens to scrutinise government activity and express more informed views and choices about the issues and policies which affect them.
- 2.2 The media in particular plays a crucial role in accessing, analysing and disseminating information about issues and events which affect our community. Media organisations and journalists have a particular concern in the proper and efficient administration of Freedom of Information law. A



key issue is the observance of the spirit of the law by government agencies by making government information freely accessible to the public to the greatest extent possible, subject to limited and essential exceptions.

- 2.3 RTK notes that government information is owned by the public and its timely and efficient release will ensure open and accountable government and enhance representative democracy.

### **3. Executive Summary of Submission**

In RTK's submission:

- 3.1 FOI laws work poorly because a culture of secrecy continues to pervade many areas of Government, to the significant detriment of good government. This culture needs to be addressed through a combination of legislative change, agency management and political leadership.
- 3.2 Like other FOI legislation, the QLD FOI Act is overly complex. It has 18 exemptions which contain overlapping and unnecessary exemptions, particularly in relation to internal Government documents. A single test – protecting only essential public interests - could be applied to all of those documents, thereby greatly simplifying the operation of the Queensland Act.
- 3.3 The specific exemption for documents prepared for submission to Cabinet in section 36 of the QLD FOI Act does not require the decisionmaker to consider the public interest in disclosure. The public has a particular interest in accessing information about government decisionmaking at the highest level. The Review should give particular weight to RTK's general submission in paragraph 3.2 as it relates to Cabinet documents.
- 3.4 The power to issue Ministerial certificates under sections 36, 37, 42 and 42A of the QLD FOI Act removes documents from any effective review process. Certificates should be abolished, so that documents cannot be shrouded in secrecy without any account of the public interest in disclosure.
- 3.5 Furthermore, the public interest test which is applied to internal Government documents should not permit weight to be given to generalised claims of a public interest against disclosure. A "direct and tangible harm" approach should be adopted and confined to essential public interests. Generalised contentions about "candour", seniority of office and similar arguments should be excluded by statute.
- 3.6 The public's right of access to Government information can be strengthened by use of information technology. Government agencies in Queensland should endeavour to manage and store all documents electronically and create a centralised and freely accessible online database to allow the public to identify relevant information about documents and submit requests for documents online.
- 3.7 The position of Government-Owned Corporations and entities which contract with Government should be clarified so that the QLD FOI Act fully captures the wide range of entities which may perform public functions or operate with the benefit of public funds.
- 3.8 Both the FOI legislation and associated procedures should be streamlined to address a wide range of administrative issues associated with accessing government documents, including with respect to:
- (a) processing and reviewing applications; and

- (b) fees and charges.

Each of these points is developed below.

#### 4. A Culture of Secrecy

- 4.1 In 2007 RTK commissioned an independent audit into freedom of speech in Australia. The audit was chaired by Ms Irene Moss AO. As part of its review, the audit considered the extent to which State and Federal laws limit public access to information held by Government bodies. The audit found in relation to FOI laws that:
- *"A continuing culture of secrecy is evident in some areas of government."*  
The experience of the members of RTK is that this culture continues to pervade many layers and areas of government, including in Queensland. FOI decisionmakers are resistant to making information publicly available, because of an emphasis on the short-term political consequences of doing so, rather than the long-term policy objective of open accountable government. Rudimentary and flawed notions that release of information could be harmful, because the information will not be understood, or will be misinterpreted, or taken out of context, remain pervasive.
  - *"Political intervention, or the significance that may be attached to political considerations in the course of decision-making, gives rise to a perception that in some cases these factors outweigh the public interest in disclosure."*  
The comments made above apply to this finding.
  - *"The laws in most instances do not require a pro-disclosure bias in making decisions on access. Often technical legal considerations override the objectives and the spirit and intention of legislation."*
- 4.2 In RTK's submission legislative amendment is required to strengthen the public interest in disclosure and the underlying policy benefits of a pro-disclosure approach to the administration of FOI laws. While Section 4 provides that the object of the Act is to extend as far as possible the right of the community to access information held by the Queensland Government, this object is not reflected in the drafting of many exemptions or the approach to administration of the Act.
- 4.3 The history of the QLD FOI Act, introduced following recommendations of the Fitzgerald Report, shows the progressive tightening of disclosure, higher costs and an increase in exempt organisations. Amendments to the QLD FOI Act in 1994 and 1997 reduced the scope of FOI in relation to government-owned corporations, with agencies allowed to recover some costs for FOI administration following the 2001 amendment to the QLD FOI Act. Other amendments to the QLD FOI Act in 2004 and 2005, once again, further reduced the scope of the FOI Act.
- 4.4 Every amendment has fostered a culture within the Queensland Government which is antithetical to the objects of FOI. There can be little surprise that agencies adopted an anti-disclosure ethos.
- 4.5 RTK believes that since the introduction of FOI legislation in Queensland, the scope and efficiency of the QLD FOI Act have been progressively reduced, almost inevitably to protect the Government's political interests and conceal public service failings and incompetence. This has occurred despite the overwhelming evidence proffered in the Discussion Paper on the importance of FOI to open and transparent government and the importance of the rights of citizens of access to information.
- 4.6 Secretive government not only permits poor policy to flourish and flawed allocation of taxpayer resources but logically, given the findings of Commissioner Davies, can be

directly responsible for major, and in some cases life-threatening, failures by Government. The progressive diminution of the scope of Queensland's FOI laws has underpinned an entrenched resistance to FOI in the Queensland bureaucracy. Given the flawed QLD FOI Act and attendant bureaucratic culture of secrecy, wide-ranging reform of the legislation is warranted. The objects of the FOI Act should acknowledge "openness" specifically as an aim of the Act and as a contribution towards more accountable government. A formula similar to that adopted in section 4(c) of the New Zealand *Official Information Act* might prove a useful guide for this reform.

## 5. Unnecessary complexity

- 5.1 RTK is extremely concerned that freedom of information legislation in Australia is unduly complex. This legislation poses a significant barrier to members of the public who wish to access information about the Government decisions and processes which affect them. This in turn reduces the accountability, transparency and efficiency of Government.
- 5.2 The 18 exemption provisions in Division 2 of the QLD FOI Act frequently cover overlapping subject matter. 11 of the exemptions relate to internal government documents (sections 36 to 42A, 47 and 49). The exemptions relating to law enforcement and security may attract special consideration, but the other exemptions could be covered by a single exemption for internal government documents. This would greatly simplify the operation of the Act. This single exemption would be subject to a simplified public interest test, as outlined below.
- 5.3 The broader point is that Cabinet, Executive Council and other documents should not be subject to an automatic exemption. Accountability and transparency are even more important for higher levels of government, where decisions have wide social and economic ramifications. At the same time, the Act's complexity both for administrators and access-seekers would be greatly reduced. In summary, there is a compelling case for review of the exemption provisions of the QLD FOI Act in order to:
- (a) clarify the public interest test which Government agencies and Ministers are to apply in determining whether a document is exempt under the Act (as discussed below); and
  - (b) consolidate provisions which can be invoked in the same or similar circumstances and thereby reduce the potential for overlap among different exemptions.

## 6. Exemption of matter prepared for Cabinet

- 6.1 Following the enactment of the QLD FOI Act on 5 August 1992, the 1993 and 1995 amendments dramatically increased the scope of the Cabinet exemption in section 36. As noted in the Discussion Paper, the extension of the Cabinet exemption led to a:

*"...tendency of administrators to ignore or suppress criticism. Recognition of these and other problems in the public hospital system was made very much more difficult by a culture of concealment of practices or conduct which, if brought to light, might be embarrassing to Queensland Health or the Government".<sup>1</sup>*

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<sup>1</sup> Davies AO, Hon. G., Queensland Public Hospitals Commission of Inquiry Report, November 2005, p. 345.

In particular, Commissioner Davies found that the conduct by successive governments of taking documents to Cabinet to avoid their release under FOI was:

*"...inexcusable and an abuse of the Freedom of Information Act. It involved a blatant exercise of secreting information from public gaze for no reason other than that the disclosure of the information might be embarrassing to Government."*<sup>2</sup>

RTK submits that in determining whether section 36 applies to exempt matter prepared for Cabinet, the decisionmaker must give weight to the public interest in disclosure. As submitted below, the specific exemption for Cabinet documents should be replaced with a single, broad exemption for internal government documents, which is subject to an overriding public interest test.

## 7. Review of exemptions permitting the issue of Ministerial certificates

- 7.1 In RTK's submission, the exemption provisions<sup>3</sup> which empower Queensland Ministers to sign certificates to specify that certain matter is exempt from disclosure under sections 36, 37, 42 and 42A, are contrary to the objects and spirit of the QLD FOI Act. While RTK notes that section 84 of the QLD FOI Act allows review of the issue of certificates by the Queensland Information Commissioner, it is subject to an overriding power of the Minister to confirm the certificate. Furthermore, the review by the Information Commissioner is a very limited one - to determine whether there were no reasonable grounds for the issue of the certificate. This is an extremely narrow test, which only requires a ground that is not unreasonable or fanciful and does not involve consideration of competing public interests in favour of disclosure.
- 7.2 In RTK's view, it is inappropriate that Government Ministers should have the power to determine that certain categories of documents are exempt from public scrutiny. It is contrary to the object of fostering public participation in and scrutiny of Government to allow individual Ministers to withhold information relating to their functions and responsibilities. RTK submits that the Ministerial certificate regime should be abolished. This will increase government accountability and do much to address the concern that FOI processes are always vulnerable to political intervention.

## 8. Clarifying the public interest test

- 8.1 At both the Federal and State level, there have been considerable debate and a multiplicity of approaches to the application of public interest tests under FOI legislation. In older cases such as *Re Howard and the Treasurer (Cth)* (1985) 3 AAR 169 (**Re Howard**), review bodies tended to take the approach that the more senior the decision-makers involved, and the more important the decision-making process, the more likely that disclosure of the document would be contrary to the public interest. The Tribunal in *Re Howard* also found that disclosure which would inhibit the candour and frankness of future pre-decisional communications would be contrary to the public interest.
- 8.2 The more recent cases, exemplified by *Re Eccleston and Department of Family Services, Aboriginal and Islander Affairs* [1993] 1 QAR 60 (**Re Eccleston**), tend to reject the traditional, formulaic approach to public interest considerations in *Re Howard*. The Appeal Panel in *Re Eccleston* considered the question to be whether any "tangible harm" would result from the release of the documents (at [68]). The

<sup>2</sup> Davies AO, Hon. G., Queensland Public Hospitals Commission of Inquiry Report, November 2005, p. 345.

<sup>3</sup> *Freedom of Information Act 1992* (Qld) ss 36, 37, 42 and 42A.

New South Wales Court of Appeal cited these comments with approval in *Workcover Authority (NSW) v Law Society of New South Wales* (2006) 65 NSWLR 502, emphasising that the FOI legislation established a "general policy of disclosure", in recognition of the public interest in accessing official information to facilitate discussion, review and criticism of Government action. In RTK's view, these later decisions recognise the express object of the QLD FOI Act that the public right of access to documents should be subject only to essential public interests and the interest in protecting the private or business affairs of members of the community.<sup>4</sup> Arguments relevant to the importance of access being subject to essential public interests can also be found in *McKinnon v Department of Prime Minister and Cabinet* [2007] AATA 1969.

- 8.3 The Queensland Office of the Information Commissioner does not usually accept high office or the possibility of inhibiting candour and frankness as factors in favour of non-disclosure.<sup>5</sup> RTK agrees with this approach. In RTK's submission, this approach should be given statutory recognition. It is to be expected that Government officials will give candid and impartial advice, whether or not they believe that the advice will be accessible to the public. Most Government officials would be well aware that in performing public functions, their activities will be subject to a higher level of public scrutiny. The comments in the Discussion Paper by Marie Shroff, New Zealand's Privacy Commissioner, who served for 16 years as Cabinet Secretary, warrant reiteration. Ms Shroff notes:

*"Even at the hardest end of FOI – access to Cabinet documents – the benefits are clear. If I, as a civil servant, write a Cabinet paper which I expect to be sought for public release I am going to be extraordinarily careful to get my facts right, to avoid trespassing into politics, to give comprehensive reasons for and against a proposal, and to think very carefully about my recommendations. My advice will therefore be balanced, accurate and comprehensive. Sometimes I will put in more detail than might formerly have been the case: I might quote from sources rather than summarising them, especially when unpalatable advice might be needed; and I might clearly identify legal advice and separate it from policy advice to allow for possible legal protection under legal professional privilege. I will record carefully the reasons for my particular recommendations – although this will largely be to ensure that my reputation as a professional and neutral public servant will be enhanced if the advice is released. I will avoid the temptation to make cute remarks. I will often have robust face-to-face discussions with my Minister on the way towards a final piece of advice or a Cabinet paper."*<sup>6</sup>

- 8.4 The point made by Ms Shroff directly contradicts abiding arguments against document disclosure that if documents produced by public servants are held to the light of public scrutiny, then public servants will be less candid than otherwise, despite a duty to provide candid advice to Government. This thesis is flawed. Lawyers, journalists, teachers and many other occupations and professions are all rightly judged on performance. The public has a right to judge the quality of advice given to politicians and whether politicians have acted responsibly in relation to that advice – this is an essential public interest.

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<sup>4</sup> *Freedom of Information Act 1992* (Qld) s 4(3).

<sup>5</sup> Office of the Information Commissioner Queensland (2006) "FOI Concepts: Public Interest Balancing Tests" <[http://www.oic.qld.gov.au/indexed/pdf/FOI\\_Concepts\\_-\\_Public\\_interest\\_balancing\\_tests\\_-\\_Ver\\_1.0\\_-\\_05-10-06.pdf](http://www.oic.qld.gov.au/indexed/pdf/FOI_Concepts_-_Public_interest_balancing_tests_-_Ver_1.0_-_05-10-06.pdf)> (27 February 2008).

<sup>6</sup> Marie Shroff "The *Official Information Act* and Privacy: New Zealand's story" Presentation to the FOI Live 2005 Conference, London 15 June 2005, 9 – 10.

- 8.5 Division 2 of the QLD FOI Act takes an inconsistent approach to balancing competing public interests. Many of the exemptions impose a requirement that the decisionmaker exempt matter falling within the terms of the exemption unless disclosure would, on balance, be in the public interest.<sup>7</sup> In RTK's view, this wording is inconsistent with the presumption that the release of documents of a Government agency or Minister will be in the public interest, which underpins the right of access to documents in section 21 of the QLD FOI Act and the objects expressed in section 4. It is also in stark contrast with the public interest test in section 41(1)(b), which provides for the exemption of certain matter to do with the deliberative processes of an agency if its disclosure would, on balance, be contrary to the public interest.
- 8.6 In this context, RTK submits that the factors identified in the more recent cases on the meaning of "public interest" be taken into account with a view to codifying what "the public interest" means under the QLD FOI Act. RTK supports the adoption of a uniform public interest test for all categories of exempt matter, which permits the exemption of documents if disclosure could reasonably be expected to cause direct and tangible harm to an essential public interest.
- 8.7 RTK further submits that the public interest should be clarified to exclude expressly generalised notions of public interest, such as the interest in the candour of communications and other factors identified in *Re Howard*. On the current drafting of section 41, for instance, there would be scope to expand subsections (2) or (3) to provide that matter will not be exempt merely because senior decisionmakers were involved in the creation or communication of the document in question. These amendments would encourage the decisionmaker to focus on the subject matter of the documents rather than factors which merely privilege the communications of high-level decisionmakers.
- 8.8 Additionally, RTK notes that several exemption provisions in the QLD FOI Act are not subject to an express public interest test.<sup>8</sup> RTK recognises that the subject matter of certain documents will, of its nature, suggest that disclosure would likely be contrary to the public interest – such as matters of state security or advice subject to legal professional privilege. However the very broad exemptions for documents submitted to or prepared for Cabinet and the Executive Council should require the decisionmaker to give weight to the public interest in giving access to these categories of documents. RTK submits that Cabinet and Executive Council documents should not be given a "halo" of secrecy, but instead be included in a single exemption for internal government documents, which includes a public interest test.

## 9. Opportunities presented by new technology

- 9.1 In RTK's submission, the statutory right of access to government information would be strengthened by adopting new modes of providing access to information. Government information is stored in an increasingly wide range of formats and the ability to digitise information should make the process of accessing documents under FOI legislation quicker and more cost-effective. As a starting point, Government agencies in Queensland should introduce options for electronic lodgement of FOI applications, electronic payment of fees and electronic access to documents which are released.

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<sup>7</sup> *Freedom of Information Act 1992* (Qld) ss 38, 39, 40, 42AA, 44, 45, 46, 47, 48 and 49.

<sup>8</sup> *Freedom of Information Act 1992* (Qld) ss 36, 37, 42, 42A, 43, 47A and 50.

- 9.2 Additionally, RTK submits that advances in information and communications technology present opportunities for better storage, search and retrieval of government information. RTK notes that it is technically feasible to make information in Government databases accessible over the Internet. RTK submits that Queensland Government departments should make metadata in relation to documents, such as the title, subject, author and date of creation (as referred to on page 114 of the Discussion Paper), publicly and freely available through a centralised, online database. The online resource should also set out information on how to access unpublished government information, similar to the "inforoute" service offered by the Office of Public Sector Information in the United Kingdom. To implement such measures, Government agencies should ensure that to the greatest extent possible, information about documents is stored electronically and categorised in a way to facilitate quick and accurate retrieval.
- 9.3 Apart from the potential for cost and time savings, better electronic document management is likely to equip government agencies to identify the documents which fall within the scope of FOI requests with greater precision. This is likely to help FOI applicants access information which is more relevant to the terms of their request.
- 9.4 RTK recognises that any online system for identifying and releasing government information would need to incorporate measures to protect personal privacy. RTK supports technology-based reform of the QLD FOI Act and associated government procedures which includes appropriate safeguards to restrict access by the public to the personal information of individuals.

## **10. Fees, charges and time-frames**

- 10.1 Costs and charges remain one of the major constraints to the media's effective use of FOI law in Queensland. Agencies can and do charge exorbitant costs, thwarting any realistic option for payment by individuals seeking to use FOI. Even relatively well-resourced media companies struggle to meet the costs which are imposed by agencies.
- 10.2 From the Fitzgerald Inquiry into corruption through to the so-called "Dr Death" hospitals commission, the media have been and remain the single most important external body to government in exposing failings, corruption and misadministration by Government. The media, while motivated by commercial reasons, performs a role in essential public interest through its scrutiny of the Government without fear or favour and at no cost to the public purse.
- 10.3 There should be recognition of the essential public interest in the media's performance of its watchdog role. RTK's view is that the cost of providing information about Government to inform the public should be borne by the Government, particularly as media organisations invest significant funds in training and employing journalists using FOI. Media organisations often receive little benefit from the investigations that produce no result.
- 10.4 Agencies also need to develop and maintain effective record keeping practices and ensure appropriate staff training which would enhance openness and accountability and also reduce the cost of FOI.
- 10.5 RTK accepts abuse of FOI legislation can lead to frivolous, vexatious, repetitious or voluminous requests and supports measures to reduce the impact of these requests on effective administration. However, the decision to decide any applicant has engaged in such a manner should be reviewable by an appropriate court or tribunal.

10.6 RTK also notes that under Section 27(7) of the FOI Act, the agency has 45 days from receipt to decision. This should be brought down to 30 days in line with best practice in Australia.

## 11. Commercial in confidence claims and GOCs

11.1 One of the major failures of the QLD FOI Act is the diminished scrutiny through commercial in confidence claims against the release of information. This failure comes as all Australian Governments have significantly increased the extent of contracting and consultancies used in the public sector.

11.2 As a bare minimum, Australian Law Reform Commission (**ALRC**)/Administrative Review Council (**ARC**) recommendations should be implemented. Those recommendations included requirements that:

- agencies include provisions in contracts requiring that contractors record and provide adequate information to the agency and to allow Parliamentary scrutiny as well as public information access rights;
- complaint procedures be adequate and not lost or diminished as a result of a service being provided by a contractor rather than the Government; and
- contractors' documents that directly relate to the performance of contractual obligations be deemed to be in the possession of the relevant agency.

11.3 RTK supports the ARC view that that the QLD FOI Act should require contractors to provide documents to the agency when an FOI request is made. In addition, all contractors should be advised that they fall within the scope of FOI legislation and that any documents produced as a result of a consultancy fall within the scope of the QLD FOI Act. An essential public interest test should apply in this area and the onus for proving that release should not occur should be with the agency and the contractor.

11.4 The Discussion Paper notes that a Government Owned Corporation (**GOC**) is a government-controlled entity established as a body corporate by an Act. The exclusion of GOCs from the scope of the QLD FOI Act is of major concern.

11.5 Public agencies owned by the taxpayer carrying out public functions must be open to the QLD FOI Act, given the considerable expenditure of public money, their accountability to Ministers and ultimately, the public. Importantly, GOCs are normally involved in public functions or service delivery often in a less competitive or monopoly market and therefore need to be accountable on performance and administration. Any GOC failings present significant political problems for the relevant Minister and Government and a vigorous FOI regime reduces the temptation for secrecy.

11.6 RTK also contends that other bodies in receipt of government funding should fall within the scope of the QLD FOI Act. For example, significant public funding is provided to the private school sector in Queensland, yet parents of students in the private school system cannot access records through FOI, which is available to parents in the public school system. Organisations in receipt of government funding need to be accountable for that funding, funding disbursements and related decisions, administration and management - not only to the Government but to citizens. Given the extent of public funding into the private sector, issues like teacher and school performance standards must be available to citizens.

11.7 As a general rule, any organisation receiving government funding and established by an Act of Parliament should be accessible under Freedom of Information laws.

## 12. Information Commissioner and review options

- 12.1 As the Discussion Paper notes, all jurisdictions provide for a review of FOI decisions by a person aggrieved by a decision. Initially that review is conducted by the agency to which the original application for FOI was made (internal review). A second appeal is normally available to an independent body of some kind (external review).
- 12.2 Unfortunately, while internal review is cost effective and relatively quick, agencies are placed in a position of conflict-of-interest in considering whether their initial decision was flawed. The more politically sensitive the subject matter of the request, the less likely an agency is to substantially change its decision - although some less relevant documents may be released in an attempt to appear fair and balanced.
- 12.3 Applicants should have the option of bypassing internal review and proceeding directly to external review. Agencies need to place more emphasis on getting the decision right in the first instance.
- 12.4 The Discussion Paper notes that in four Australian jurisdictions, the external review function is conducted by a tribunal – at the Commonwealth level by the Administrative Appeals Tribunal, in NSW by the Administrative Decisions Tribunal, in Victoria by the Victorian Civil and Administrative Tribunal and in the Australian Capital Territory by the Administrative Appeals Tribunal.
- 12.5 In three jurisdictions, external review is the responsibility of an Information Commissioner – Queensland, Western Australia and the Northern Territory. In two the function is performed by the Ombudsman – South Australia and Tasmania.
- 12.6 RTK supports the retention of a review capacity for the Information Commissioner in Queensland. However, applicants should have an alternate option of appealing directly to a Queensland Administrative Tribunal.
- 12.7 While Information Commissioners do have the capacity to assist with external review, the option of tribunal review is an important component of any effective scheme. A hearing in an independent tribunal would allow applicants to directly hold public servants accountable for FOI decisions in a public forum. The value of the AAT in the Federal jurisdiction in improving FOI through decisions has been significant in recent years.
- 12.8 The Information Commissioner should also be empowered to:
- audit agencies' FOI performance and compliance;
  - prepare an annual report on FOI;
  - collect statistics of FOI requests and decisions;
  - publicise the QLD FOI Act in the community;
  - issue guidelines on how to administer the QLD FOI Act;
  - provide FOI training to agencies;
  - provide information, advice and assistance in respect of FOI requests at any stage of an FOI request, at the request of the applicant, the agency or a third party; and
  - provide legislative policy advice on the QLD FOI Act.

### **13. Conclusion**

13.1 In making these submissions, RTK recognises the general public interest and interest of the media in particular in simpler and more uniform Freedom of Information law at the State and Federal level. In this vein, RTK notes that the views expressed in these submissions are consistent with the Federal Government's planned review of the *Freedom of Information Act 1982* (Cth) later this year. As set out in the Discussion Paper, the Federal Government proposes, among other things, to:

- revise the Commonwealth Act to promote a culture of disclosure and transparency;
- rationalise the exemption provisions; and
- abolish the power to issue Ministerial certificates.

13.2 RTK wishes to signal its support of these proposals and requests that the Review consider the Federal Government's reform agenda in making its recommendations for review of the QLD FOI Act.

### **Australia's Right to Know**