

Auditor-General of Queensland

Your ref:
Our ref: 00-2158A
Mr P Brahman 3405 1199

11 MAR 2008

Mr D Solomon AM
Chair
Freedom of Information
Independent Review Panel
GPO Box 5236
BRISBANE QLD 4001

Dear Mr Solomon

Thank you for your letter of 30 January 2008, inviting me to comment on the issues raised in the *Enhancing Open and Accountable Government* discussion paper prepared by the review panel.

Whilst you noted that I had responded to the Legal, Constitutional and Administrative Review Committee regarding the discussion paper on the *Accessibility of Administrative Justice*, in particular on the issue of costs associated with Freedom of Information, I did not provide a detailed response as QAO only receives a low volume of applications.

I have no comments to provide to the Review Panel about the issues contained in the *Enhancing Open and Accountable Government* discussion paper however I would like to bring to the panel's attention an issue relating to *section 7.6 – Other exemption provisions* which encompasses section 39 dealing in part with audits undertaken by myself.

In February 2002 the then acting Auditor-General wrote to the Attorney-General and the Legal, Constitutional and Administrative Review Committee when consideration was being given to amending the public interest test in respect to this section by removing the "compelling reason" test. An extract copy of the reasons presented in the letter to the Attorney-General and the Committee is attached – Appendix A.

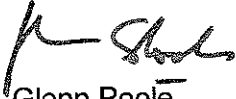
I continue to support this view and would appreciate your panel considering the reasoning for retaining this test when preparing your report.



Central Plaza One
Floor 11, 345 Queen Street, Brisbane Qld 4000
GPO Box 1139, Brisbane Qld 4001
Telephone 07 3405 1100
Facsimile 07 3405 1111
Email enquiries@qao.qld.gov.au
Website www.qao.qld.gov.au

If you would like to discuss this submission further, please contact me or have one of your officers contact Mr P Brahman, Assistant Auditor-General - Audit Policy and Quality, on 3405 1199.

Yours sincerely



Glenn Poole
Auditor-General

Enc.

Appendix A

The proposed amendment to s.39(2) removes the "compelling reason" test from this statute.

While I strongly support improved disclosure as a central platform to a properly functioning democracy, I propose that there is valid and convincing justification as to why the Queensland Parliament in the past and Parliaments in other jurisdictions have considered it appropriate to either exempt the audit office altogether from FOI requirements, or put in place mechanisms to protect audit workpapers and associated information deemed "protected" by s.92 of the Financial Administration and Audit Act.

At a minimum, as members of the accounting profession, there is a moral and ethical obligation incumbent upon auditors to maintain the confidentiality of information obtained from clients, unless of course there is a legal or professional duty for disclosure (for example, in the case of criminal proceedings). Such obligations are clearly specified in the codes of conduct of the key professional bodies.

Turning more specifically to the nature of the Auditor-General's role, I believe that there may be unintended negative consequences of a dilution of the "compelling reason" test. Briefly, these reasons include:

- Sections 93, 99 and 103 of the Financial Administration and Audit Act deal with reporting matters which are of significance in the opinion of the Auditor-General. These provisions clearly reflect Parliament's intention to strengthen the Auditor-General's independence in determining information to be placed in the public domain in the public interest. Access to protected information (such as workpapers) may result in the removal of the discretion of the Auditor-General by making issues public which in the Auditor-General's opinion may be harmful to individuals, or prejudice audit investigations. It may also result in improper influence being applied to the Auditor-General's examination of issues and, as such, may adversely affect the independence of the Auditor-General in terms of impartial and independent reporting.
- The audit function is carried out through review of information obtained from auditees. As such, this information is properly the property of the audited entity and the responsible minister. This office recently contested a request under judicial review where an applicant sought the names of individuals who were the subject of an item in an audit report. The applicant sought access to this information through QAO as the entity holding this information was exempt under s.11 of the FOI Act. This application was denied, as the "compelling reason" test could not be met.

I am concerned that a weakening of the "compelling reason" test may inadvertently cause applicants dissatisfied with decisions of entities/ministers acting in accordance with the FOI Act to make application for this information from the QAO. This outcome may be contra to the spirit of the FOI legislation or s.92 of the Financial Administration and Audit Act. I propose that disclosure of information which is the responsibility of particular entities through the FOI mechanism is more appropriately a matter for the consideration of and decision by the relevant entity/minister, and that QAO should not be used to circumvent this.

- In carrying out obligations imposed under the Financial Administration and Audit Act, authorised auditors through an appropriate audit process are freely given information, documents and explanations to assist in the formulation of fair and just conclusions. A relationship of co-operation and trust between audited entities and the audit office is central to the efficient and effective discharge of the functions of the Auditor-General. This relationship is built on the professional and confidential treatment of information which is protected under s.92 of the Act, and further protected from public disclosure via s.39(2) of the FOI Act. This relationship may be adversely affected if audited entities become concerned that their information may be subsequently publicly released.

Parliaments around Australia have recognised the sensitive position of audit offices in relation to the release of protected information, and have legislated accordingly to either exempt that information entirely from FOI or allow for FOI requests directed to the office to be referred immediately to the appropriate entity. The FOI provisions in Queensland currently applying to audit information already allow opportunity for more disclosure than any other audit office in Australia. This amendment if enacted will in effect move the QAO even further out of step with other audit offices in this regard.

I respectfully propose that if the suggested amendments to s.39(2) are effected, the discharge of QAO's statutory obligations, independence of the Auditor-General and the responsibility for agencies to make the appropriate decisions for release of their own information may unintentionally be eroded.

A heavy obligation already rests on QAO in terms of exercising careful and professional judgement concerning the type of information to be released into the public domain, to ensure that individuals and audits – current, future and past – are not adversely affected. While the QAO is committed to honouring the requirements and spirit of the FOI legislation by dealing positively and promptly with requests for access to documents relating to the internal administrative workings of the office, it must seek maximum protection of confidential audit related information for the reasons outlined above.

Accordingly, rather than a dilution of the "compelling reason" test advocated by the Committee, I believe that it may be timely for consideration to be given to making information deemed protected under the Financial Administration and Audit Act exempt under s.11 of the FOI Act. I understand from the Committee's report that you may be considering matters in relation to its report and s.11 in particular.