



## Procedure 2.04 - Right to Information Access Application

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### 1. Application

NQBP is a Government Owned Corporation (**GOC**) subject to the *Right to Information Act 2009* (Qld) (**RTI Act**) and *Information Privacy Act 2009* (Qld) (**IP Act**).

This procedure applies to the member of the legal group designated to manage the Right to Information (**RTI**) access application (for the purposes of the RTI Act, the **RTI Officer**), RTI Decision Maker (**DM**) and Subject Matter Expert(s) (**SME**).

### 2. Compliance with State Government policy and legislation

The objective of the RTI Act is to provide a general right of access by entities to information in the government's possession or under government control subject to limited exceptions. The IP Act gives a person the right to access personal information.

The principal officer (the CEO) or their delegate is responsible for NQBP compliance, decision making, operation and administration of the RTI Act and IP Act.

The RTI Act and the Qld Government Department of Commercial Monitoring guidelines require NQBP to have available on its website:

- a. A Publication Scheme requiring that all relevant standard forms, policies and routine documents are published on the website;
- b. A Pro-disclosure Scheme whereby material and records are reviewed and published on the website where appropriate;
- c. Disclosure Logs recording documents released pursuant to previous RTI requests where appropriate; and
- d. A Request for Access process outlining how an external party may seek access to information not already disclosed under the above Schemes.

### 3. Accountabilities

The RTI Officer manages the RTI process and supports the DM and the SMEs.

The DM is delegated the authority to make decisions dealing with the application pursuant to the RTI Act and the NQBP Instrument of Delegation.

The SME is the information owner and is responsible for conducting document searches in association with the NQBP Records Officer and providing quality advice on the discovered documents to the RTI Officer and DM. This person should be the project or section manager.

All Staff will assist with the management of the RTI request when required.

### 4. Procedure – Preliminary Administrative Matters

Any person, natural or legal, can seek access to information by lodging an Access Request (**RTI request**).

Any staff member receiving a RTI request must forward it as soon as possible to the legal group.

The Associate General Counsel will designate the lawyer to be the RTI Officer who will ensure an appropriate RM8 file is created and notify and the relevant General Manager where

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appropriate. At a minimum, the COO, as the delegated principal officer under the RTI Act should be notified.

A DM will be identified pursuant to the current NQBP Instrument of Delegation and briefed by the RTI Officer. The DM will be the signatory on all correspondence with the applicant.

The RTI Officer will also identify an appropriate SME or SMEs. The SME will be responsible for working with the RTI Officer to process the request. As soon as possible the RTI Officer and SME must meet to discuss the subject, size, scope and interpretation of the request to inform future management of the RTI request.

### 5. Procedure – Preliminary Statutory Matters (see attached RTI Flowchart also at E13/09353)

#### a. Other Forms of Access

The RTI Officer must determine whether a RTI request is the appropriate form of access or whether the information is available in the Publication Scheme, Disclosure Process, Disclosure Log, or is available from another source.

The applicant might request their own personal information and the RTI Officer will need to determine whether it is more appropriate to process the request under the IP Act.

#### b. Valid Request (section 24 RTI Act)

The RTI Officer must determine whether the request is in the approved form compliant with section 24 of the RTI Act.

A non-compliant request is invalid and the RTI Officer must contact the applicant and give them an opportunity to rectify the problem. The applicant must be contacted within 15 business days.

An applicant must be given a reasonable opportunity to respond and make the application valid. If the applicant does not respond within a reasonable time, NQBP may issue a written notice declining to process the request. A written notice must be issued within 10 business days from making the refusal decision.

This process does not impact upon the statutory timeframe for processing valid requests.

#### c. Consider whether to Transfer the Request (Section 38 RTI Act)

In the event that another agency holds the requested information, then the RTI Officer will contact that other agency to discuss a transfer under section 38 of the RTI Act.

A transfer cannot occur without the consent of the other agency. In this situation a valid request must be processed, even if NQBP does not have the information, unless the applicant withdraws the RTI request.

#### d. Documents Out of the Scope of the Act (Section 32 RTI Act)

Section 32 of the RTI Act excludes certain entities and business functions from the scope of the Act and provides a basis for refusing to process the request. A refusal to process on the basis that the documents are outside of the scope of the RTI Act must be made within 10 Business Days.

These entities and functions are set out in Parts 1 and 2 of Schedule 2 in the RTI Act respectively.

Importantly, for NQBP section 21 in schedule 2 of the RTI Act excludes documents relating to the asset disposal of declared projects under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* (IIARD Act).

#### e. Statutory Timeframes

Once validated, an RTI access request must be processed within 25 business days under sections 46 of the RTI Act. An additional 10 business days is provided if consultation with an affected third party is required under section 37 of the RTI Act, as explained further below.

Day one of the processing period is the next business day after a valid request is received or a non-compliant request is validated.

Failure to respond within the statutory timeframe entitles the applicant to presume that access has been denied, obliges the refund of fees and provides a right of external review.

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The statutory timeframe is suspended when a Non-Compliance Notice, Charges Estimate Notice (**CEN**), or Effect on Agency Function Notice are issued under sections 32, 33, and 41 of the RTI Act respectively.

The suspension periods begins on the day the notice is issued and finishes on the day the applicant responds.

The RTI Officer must calculate and, where appropriate upon the giving of a notice, recalculate, statutory timeframes and plan processing to ensure statutory deadlines for notices and the decision are met.

In the event that statutory timeframes may not be met, the RTI Officer will need to consider seeking additional time from the applicant under section 35 of the RTI Act.

### 6. Procedure – Scope, CEN, Search and No Documents (see attached RTI Flowchart also at E13/09353)

Informed by consultation with the SME, the RTI Officer must estimate the scope of the request and the volume of documents potentially captured.

After consultation with the SME, a review of the records management system and a sample document review, the RTI Officer may determine that the request is too large to process. The RTI Officer may recommend a notice be issued to the applicant seeking to reduce the size of the request (Section 42 of the RTI Act).

The RTI officer must calculate the estimated applicable fees and charges under the RTI Act and Regulations and record the factors taken in account. Charges cannot be levied for locating documents that are not stored in accordance with NQBP record keeping policy and the Public Records Act or for the legal expenses incurred in reviewing documents.

A CEN must be issued by the DM before the end of the processing period for the application. The CEN must detail the estimated time to carry out the search, document review, editing and preparation of a document schedule. Where possible the schedule of documents setting out a brief description of the classes of document relevant to the application and the number of documents in each class (the **Schedule**) should be provided with the CEN. The applicant has 20 business days to confirm the request or consult to reduce the scope of the request and hence the estimated cost.

The SME may commence a full search for the documents when the RTI request is deemed manageable i.e. the scope is understood and the volume of documents is reasonable whether or not the response has been received to the CEN.

Sometimes requested documents cannot be located and back-up systems must be searched under section 52(2) of the RTI Act.

### 7. Procedure – Decision Making (see attached RTI Flowchart)

The RTI Officer will load all documents as one PDF in Adobe Pro with Redax plug-in.

The RTI Officer will review the documents against exemptions and the contrary to public interest test and consult closely with the SME(s) (and Associate General Counsel) regarding sensitive information. (Note also the template Public Interest Checklist at RM8 reference E13/09373 to be used as a tool to assist with the decision making process)

Pursuant to section 37 of the RTI Act, it may be necessary to consult with affected third parties, particularly NQBP's business partners (i.e. entities with which NQBP has a business/contractual relationship), regarding commercial and personal information. The RTI Officer will plan an appropriate consultation with the SME and the procedure set out in section 37. A consultation under this section extends the processing period to 35 days.

Note also that some agreements to which NQBP is a party may provide for prescribed RTI consultation procedures which may involve onerous time frames to be complied with in addition to the obligations under section 37. The relevant SME should be consulted immediately a section 37 consultation is being contemplated to ensure compliance with those obligations under any agreement.

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A recommended decision regarding the RTI request will be prepared after consultation with the SME, the NQBP legal team, external legal advisor (only if necessary and after consultation with the NQBP legal team) and other stakeholders.

### 8. **Statement of Reasons, Release of Information and Disclosure Log** (see attached RTI Flowchart)

In consultation with the DM, the RTI Officer will provide the decision outlining the statement of reasons and statutory basis for the decision. It is Parliament's intention that the RTI Act should be administered with a pro-disclosure bias and a DM may give access to a document even if the RTI Act provides that access to the document may be refused (see section 44(4) of the RTI Act).

DMs must satisfy themselves that they agree with the recommended decision. It is within the authority of the DM to ask for clarification or seek further action before finalising the decision. It is an offence under the RTI Act for a person to give a direction, either orally or in writing, to a DM directing the DM to make a decision the DM believes is not the decision that should be made under the legislation (see section 175 of the RTI Act).

Consultation around the decision with, for example, the DCEO, General Counsel/Company Secretary, CFO, Associate General Counsel, ICT Manager, Knowledge Manager, and SME should be sought by the DM and RTI Officer if considered appropriate. Guidance should be sought from the RTI Officer and another member of the legal as to the extent of the consultation. At a minimum, the DCEO as the delegated principal officer under the RTI Act, the RTI Officer, another member of the legal team and the relevant SMEs should be consulted for comment.

A Decision Notice, Statement of Reasons and Charges that complies with section 54 of the RTI Act will be issued to the applicant. In the event charges were waived, any documents for release should be dispatched together with the Notice of Decision.

When the applicant has paid the charges for access to released information, the RTI Officer will make arrangements to provide access to any documents.

### 9. **Internal Review, External Review and QCAT Appeals**

#### a. **Internal Review**

The RTI Officer will manage an Internal Review in accordance with Part 8 of Chapter 3 of the RTI Act.

An Internal Review arises when a person affected by the reviewable decision makes an application to NQBP for review by another NQBP delegated DM. The new DM is obliged to make a new decision as if the reviewable decision has not been made. A reviewable decision is defined in Schedule 6 to the RTI Act.

A DM will be selected and provided advice by the RTI Officer. The Internal Review DM must not have been a participant in the original decision procedure.

The RTI Officer will manage the Internal Review in accordance with Part 8 of the RTI Act. The procedure will be per the originating application

#### b. **External Review**

An External Review is an appeal to the Office of the Information Commissioner (**OIC**) for an independent determination regarding a decision, whether an original or Internal Review decision.

In the event of an External Review, appropriate external legal advice may be required. Consult with the legal team before seeking any external legal advice. The RTI Officer will be the point of contact with the OIC and coordinate participation in the review process.

#### c. **QCAT Appeals**

Appeals under the QCAT Act will be managed on a case-by-case basis with appropriate internal and external legal advice obtained.

The CEO, COO, CFO, Director: Legal, People and Governance, Associate General Counsel, Chief Information Officer and SME will be informed of all reviews and advised of the outcome.

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**10. Reporting**

A request register is located on RM8. This register should be used to track the progress of requests and collate statistics for mandatory annual reporting to Department of Justice and Attorney General.

Any Instruments of Delegation under the RTI Act must be notified to OGOC by the Principal Officer or their delegate.

**11. Compliance Policy, Procedure, Standard and Legislative Framework**

NQBP is a Government Owned Corporation and port authority and is required to comply with its own policies, prescribed applicable legislation and State Government policies and procedures. This procedure should be read in conjunction with:

- a. Guideline 2.04 - Privacy
- b. Policy 2 - Compliance
- c. Procedure 2.01 - Compliance
- d. Procedure 2.04 - Right to Information Procedure
- e. *Government Owned Corporations Act 1993 (Qld)*
- f. *Government Owned Corporations Release of Information Arrangements 3.0*
- g. *Information Privacy Act 2009 (Qld)*
- h. *Information Privacy Regulation 2009 (Qld)*
- i. *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*
- j. Australian Privacy Principles
- k. *Privacy Act 1988 (Cth)*
- l. *Public Interest Disclosure Act 2010 (Qld)*
- m. Public Interest Disclosure Standard No. 1
- n. *Public Records Act 2002 (Qld)*
- o. *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*
- p. *Right to Information Act 2009 (Qld)*
- q. *Right to Information Regulations 2009 (Qld)*

**12. Procedure Review Date**

This procedure should be reviewed by 31 October 2019.

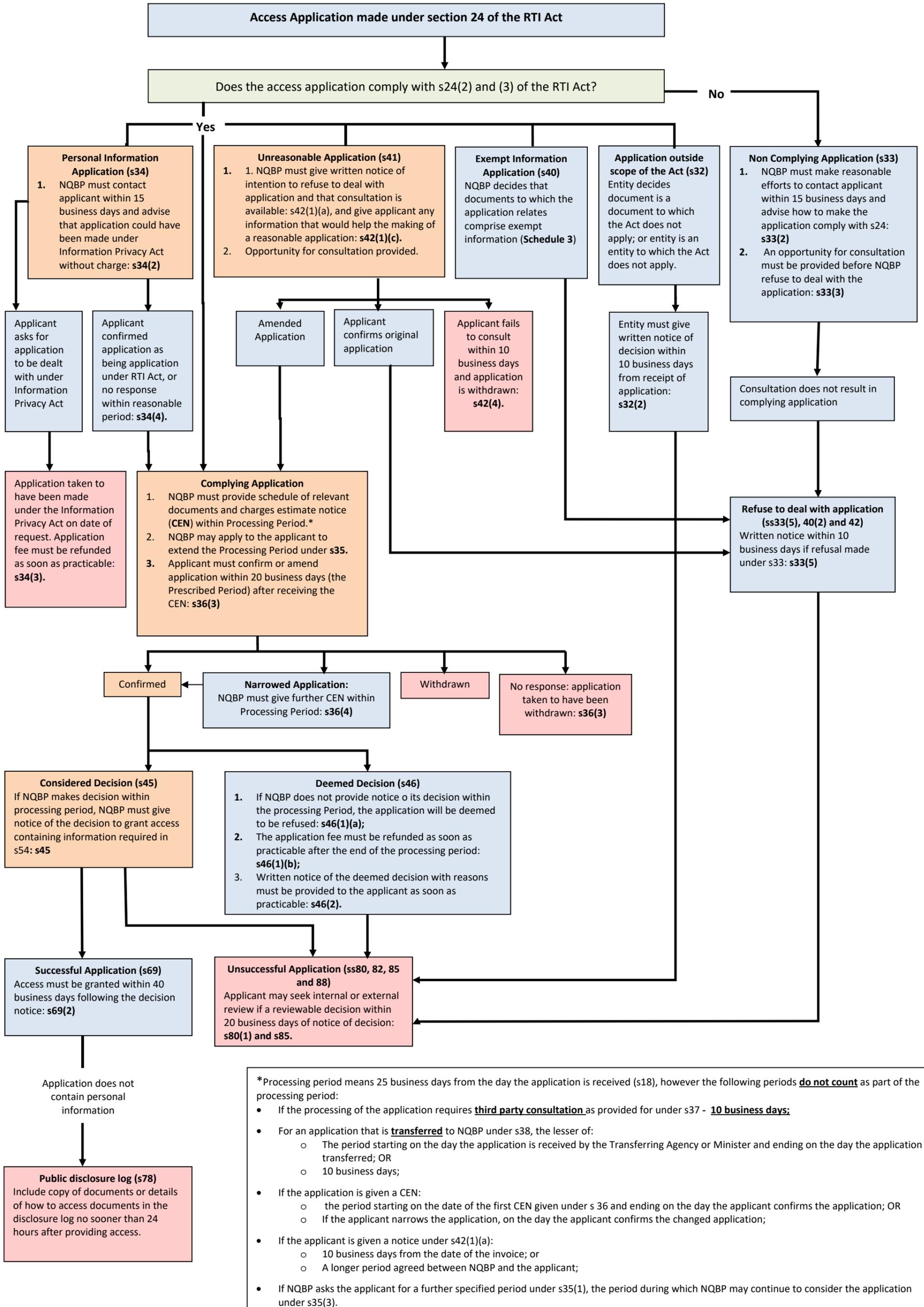
**13. Definitions**

Unless stated otherwise, defined terms used in this procedure have the same meanings as those terms in the *Right to Information Act* and *Regulations 2009 (Qld)*

**NQBP:** means North Queensland Bulk Ports Corporation Limited ACN 136 880 128.

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# RTI ACCESS APPLICATION FLOW CHART



\*Processing period means 25 business days from the day the application is received (s18), however the following periods **do not count** as part of the processing period:

- If the processing of the application requires **third party consultation** as provided for under s37 - **10 business days**;
- For an application that is **transferred** to NQBP under s38, the lesser of:
  - The period starting on the day the application is received by the Transferring Agency or Minister and ending on the day the application is transferred; OR
  - 10 business days;
- If the application is given a CEN:
  - the period starting on the date of the first CEN given under s 36 and ending on the day the applicant confirms the application; OR
  - If the applicant narrows the application, on the day the applicant confirms the changed application;
- If the applicant is given a notice under s42(1)(a):
  - 10 business days from the date of the invoice; or
  - A longer period agreed between NQBP and the applicant;
- If NQBP asks the applicant for a further specified period under s35(1), the period during which NQBP may continue to consider the application under s35(3).