

# **Review of the *Right to Information Act 2009* and Chapter 3 of the *Information Privacy Act 2009***

## **Submission by Stadiums Queensland**

**Date: 15 November 2013**

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Stadiums Queensland, a statutory body corporate established under the *Major Sports Facilities Act 2001* (Qld), commenced operation in December 2001 and is an "agency" for the purposes of the *Right to Information Act 2009*.

Stadiums Queensland has the statutory function of managing, operating, using and promoting facilities that are declared by regulation to be major sports facilities. Stadiums Queensland has responsibility for the following facilities:

- a) The Brisbane Cricket Ground (became part of Stadiums Queensland in December 2001);
- b) The Brisbane Entertainment Centre (transferred to Stadiums Queensland on 30 June 2002);
- c) Sleeman Sports Complex (transferred to Stadiums Queensland on 30 June 2002);
- d) Queensland Sport and Athletics Centre (transferred to Stadiums Queensland on 30 June 2002);
- e) Suncorp Stadium (transferred to Stadiums Queensland on 30 May 2003);
- f) 1300Smiles Stadium (transferred to Stadiums Queensland on 6 January 2004);
- g) The Queensland Tennis Centre (transferred to Stadiums Queensland on 2 December 2008 and commenced operations in January 2009);
- h) Skilled Park (commenced operations in February 2008); and
- i) Metricon Stadium (commenced operations in May 2011).

## **Part 4: Scope of the Acts**

### **4.5 Should corporations established by the Queensland Government under the *Corporations Act 2001* be subject to the RTI Act and Chapter 3 of the IP Act.**

Some statutory bodies, while not established under the *Corporations Act 2001*, have a commercial charter and should be excluded from the operation of the RTI Act and IP Act. Stadiums Queensland, by virtue of its legislation, is required to act commercially which means entering into commercial contractual arrangements with service providers, hirers and tenants. These arrangements are commercially sensitive to both contracting parties as all

participants operate in a highly competitive market. The disclosure of information around these commercial arrangements would prejudice the ability of both parties to achieve competitive outcomes. The ability of Stadiums Queensland to secure the best outcome for the taxpayers of Queensland by generating the highest possible return would be jeopardised if such commercial information was known to the market.

#### **4.6 Should the RTI Act and Chapter 3 of the IP Act apply to the documents of contracted service providers where they are performing functions on behalf of government?**

Stadiums Queensland fulfils its statutory functions pursuant to a combination of business models with some facilities being managed on behalf of Stadiums Queensland by contracted venue managers (the Brisbane Entertainment Centre, Suncorp Stadium, Metricon Stadium and the Queensland Tennis Centre) and with the remaining facilities being managed and operated by Stadiums Queensland directly. The financial and contractual arrangements of private sector businesses that manage and/or hire venues from Stadiums Queensland are the commercial affairs of those businesses.

Stadiums Queensland has contracts with many businesses and commercial sporting bodies and franchises whose financial dealings are protected by confidentiality clauses. It is not for Stadiums Queensland to disclose the financial dealings of these companies or businesses, and to do so would, in fact, be breach of faith. Such detail, if it was disclosed, would be commercially valuable to competitors of those companies. This information should be exempt matter under the Act.

If commercially sensitive information is disclosed, it can work against the public interest where entities such as Stadiums Queensland regularly test the open market for services. If the commercial information of services providers is disclosed under the RTI Act, it limits Stadiums Queensland's ability to obtain competitive pricing and best value for money.

The discussion paper raises the issue of problems arising with the provision of services by a non-government body. Service delivery issues should not be resolved by the release of contractual arrangements (which would in all likelihood contain commercially sensitive information), rather by diligent contract management by the government agency and ensuring when contractual arrangements are established, the proper protections are built into the contract to enforce the service delivery within contract law .

## **Part 7 Refusing access to documents**

### **7.2 Are the exempt information categories satisfactory and appropriate?**

Stadiums Queensland operates in a highly competitive market consisting of sophisticated competitors both in Australia and internationally. While Stadiums Queensland has responsibility for all of the major publicly owned facilities in Queensland, it competes with interstate and international venues to attract major national and international events to Queensland. There is also competitive pressure from the international market for the right to host major international sporting events, including events involving Australian teams that

have historically been held at domestic venues, e.g. a 2008 Bledisloe Cup fixture was held in Hong Kong.<sup>1</sup>

Stadiums Queensland has a statutory obligation to perform its functions in a way that is consistent with sound commercial principles. The *Major Sports Facilities Act 2001* states:

### **7 Authority's functions**

- (1) The Authority's functions are -
  - (a) to manage, operate, use and promote major sports facilities; and
  - (b) to undertake development of any of the following—
    - (i) major sports facilities;
    - (ii) sports, recreational or entertainment facilities for declaration as major sports facilities;
    - (iii) infrastructure associated with major sports facilities or proposed major sports facilities.
- (2) The Authority must perform its functions in a way that—
  - (a) is consistent with sound commercial principles; and
  - (b) has regard to the requirements of tenants of the facilities.

The *Freedom of Information Act 1992* contained provisions that provided protection for the commercial activities of certain agencies, for example:

### **11 Act not to apply to certain bodies etc.**

- (1) This Act does not apply to –
  - (r) Queensland Events Corporation Pty Ltd ACN 010 814 310, its wholly owned subsidiaries, in relation to their competitive commercial activities.

A provision such as this is required to protect Stadiums Queensland's commercial activities, otherwise disclosure of Stadiums Queensland's and third parties' commercially sensitive information including venue operators and entities leasing or otherwise using the venues, to other entities competing in the same market/industry would damage the interests of these third parties and as such the disclosure of the information would be contrary to the public interest.

Stadiums Queensland's records contain information that would allow a competitor to derive income, margins and profits through extrapolating or "reverse engineering" the financial data. If this were to occur, the information's commercial value would diminish as competitors would then be able to utilise the data to inform their own operations and undermine Stadiums

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<sup>1</sup> Other examples of events Stadiums Queensland has hosted and/or competed for include the 2003 Rugby World Cup, 2008 Rugby League World Cup, Rugby Union internationals, Rugby League national and international events, football internationals, international cricket, national swimming championships, major concerts and entertainment events and international tennis events.

Queensland or its contracted venue managers in future competitive bids for venue hire and negotiating contractual arrangements with third party service providers.

It is in the government's and the taxpayers' interest to attract events to increase the utilisation of Stadiums Queensland's venues to maximise the investment made by the government (and by definition, the taxpayer) in those venues. It is an 'uneven playing field' to be subject to the RTI Act when other industry participants are not. The release of commercial information can prejudice the ability of a government organisation to effectively compete in an industry, given that such government entities are subject to the federal Competition and Consumer Act requirements in any case.

#### Information Relating to Legal Proceedings

Information that is the subject of, or related to, legal proceedings should be exempt from release under the Act. The release of this type of information prior to the exchange of documents during the discovery phase may prejudice the legal process. While an argument can be made that it is not in the public interest to release information of this type, a clear exemption would assist the efficiency of the decision making process.

#### **12.1 Are there any other relevant issues concerning the operation of the RTI Act or Chapter 3 of the IP Act that need to be changed?**

Stadiums Queensland operates in a highly competitive market consisting of sophisticated competitors both in Australia and internationally. As such, the vast majority of the records created or received by Stadiums Queensland are sensitive commercial information.

Stadiums Queensland submits that information detailing business operations clearly has commercial value, as information of this nature is important and essential to the profitability and viability of each of the facilities as separate business units and significantly to the overall profitability and viability of the business as a whole. Disclosure of such information by providing a competitor venue or stadium operator with an advantage (that would result in that competitor knowing at what price point it could attract events away from Queensland) could have an adverse effect on the business, financial or commercial affairs of Stadiums Queensland.

Stadiums Queensland submits that due to the commercial nature of its business and the sensitivity of the information contained in the records held, consideration should be given to making Stadiums Queensland an entity to which the Act does not apply under Schedule 2 Part 1 of the Act, Entities to which this Act does not apply.