



Ref: CS13-332
Letter No: B/D/13/32064

15 November 2013

RTI and Privacy Review
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4001

To Whom It May Concern

SUBMISSION TO THE RIGHT TO INFORMATION AND INFORMATION PRIVACY ACTS REVIEW

You have sought feedback on two discussion papers prepared as part of the review by the Department of Justice and Attorney-General of the *Right To Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act). This letter reflects feedback from CS Energy Limited on the two discussion papers.

About CS Energy

CS Energy is a government owned energy corporation established in 1997 under the *Government Owned Corporations Act 1993* (GOC Act). CS Energy owns and operates the:

- Callide B Power Station, near Biloela in Central Queensland;
- Kogan Creek Power Station, near Chinchilla in South West Queensland; and
- Wivenhoe Power Station, near Esk in South East Queensland.

CS Energy also owns 50 percent of the Callide C Power Station in a joint venture with InterGen and provides operations and maintenance services to the power station.

Callide A Power Station is the home of the Callide Oxyfuel Project, which is a joint venture between CS Energy and a number of Australian and international entities. We also own the Kogan Creek Mine, which supplies thermal black coal to the Kogan Creek Power Station, as well as the undeveloped Glen Wilga and Haystack Road coal resources near Chinchilla.

CS Energy has made comment on the questions which could impact on the Company's ability to achieve the key objective of being commercially successful in the conduct of its activities under Section 17 (1) of the GOC Act.

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- 4.4 *Should the way the RTI Act and Chapter 3 of the IP Act applies to GOCs be changed? If so, in what way?*
- 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?*
- 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 basic functions on behalf of government?*

The justification for originally excluding GOCs from the operation of the RTI Act still stands in that GOCs are operating in commercial markets and should not be disadvantaged (against other market participants) by being obliged to justify non-disclosure of commercially sensitive material.

The object of the RTI Act is to provide a right of access to documents in the possession or under the control of 'the government' (Section 3). GOC commercial activities are not government activities. GOCs commercial activities (other than community service obligations) are unrelated to public service/government activities (the discharge of which are of real and proper interest to members of the public).

The GOC Act outlines the key principles of corporatisation, including the requirement for competitive neutrality. Section 16 (d) of the GOC Act outlines that the elements of competitive neutrality are that:

- the efficiency of overall resource use in the State is promoted by ensuring that markets are not unnecessarily distorted;
- in order to ensure, wherever possible, that each GOC competes on equal terms with other entities carrying on business, any special advantages or disadvantages of the GOC because of its public ownership or its market power will be removed, minimised or made apparent;
- in circumstances where a GOC has excessive market power—
 - structural reform may be necessary to increase competition; and
 - special monitoring may be necessary to prevent market abuse.

Disclosure of information related to a GOC's commercial activities is likely to have a detrimental effect on the GOC and third parties legitimate business interests. A change in the application of the RTI Act and Chapter 3 of the IP Act could compromise CS Energy in the following ways:

- CS Energy's negotiating ability may be diminished by potential suppliers having access to historical data;
- Current and future tender processes are likely to be impacted by the disclosure of commercial information;
- Potential to breach confidentiality arrangements with suppliers, customers and partners;
- Potential suppliers may be reluctant to bid on work if commercially sensitive information is released, or if they believe this is a risk of doing business with CS Energy;
- Damage to existing relationships between CS Energy and its suppliers if commercial information on the supplier is divulged in public; and
- Complying with any push model information access regime will impose an unreasonable cost and administrative burden on GOCs, as opposed to their competitors

In particular, extension of the application of the RTI Act to GOCs will have a detrimental effect on the joint venture arrangements CS Energy has entered into with international and private sector entities. These arrangements are strategically critical to the Company's business activities. Extension of the RTI umbrella to these activities will potentially cover private sector information that is not otherwise subject to the RTI Act, will be prejudicial to those arrangements and will jeopardise future partnering opportunities that CS Energy may wish to consider.

Consistent with the abovementioned arguments, CS Energy opposes the application of the RTI Act and Chapter 3 of the IP Act to contractors performing work for the Company.

CS Energy remains committed to the proactive disclosure of non commercially sensitive information through our web based publication scheme in accordance with the GOC Release of Information Arrangements.

Yours sincerely



Martin Moore
Chief Executive Officer

Enquiries:

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