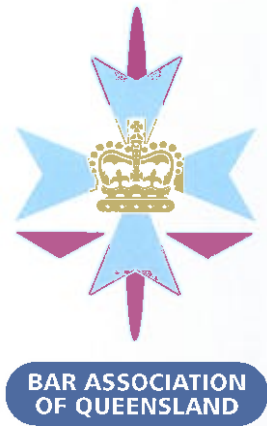


CLH:es



8 February 2017

RTI and Privacy Review
Department of Justice and Attorney-General
GPO Box 149
Brisbane Qld 4001

By email: feedbackrtiandprivacy@justice.qld.gov.au

Dear Sir/Madam

Review of the *Right to Information Act 2009 (Qld)* and *Information Privacy Act 2009 (Qld)*

I refer to the review of the *Right to Information Act 2009 (Qld)* (Act) and *Information Privacy Act 2009 (Qld)*.

Thank you for extending the opportunity for the Bar Association of Queensland (**Association**) to make submissions in relation to the review.

The Association expresses the following views:

1. The Association is of the view the application of s16(1)(a)(ii) of the Act should be extended in scope to apply all entities established by the Queensland Government for a public purpose.

At present, the Government can establish entities to operate activities with public policy objectives on its behalf. These entities carry out activities of a government nature. Under the current wording of the Act, unlike the Government, not all such entities are subject to accountability under the Act.

2. The Act gives the public, right of access to documents of a public authority.¹ In s16(1)(a)(ii) the term 'public authority' is defined as an entity that has been 'established by government under [a Queensland] Act for a public purpose'.

The Association submits this definition is too narrow. For example, it has been held not to include an entity (City North Infrastructure Pty Ltd) even though the Government (the Coordinator-General) established it for a public purpose (to manage the procurement of infrastructure projects) in the exercise of executive power (do all such acts and things as are necessary to provide for State planning and development) granted by a Queensland Act (the *State Development and Public Works Organisation Act 1971 (Qld)*).²

3. The Association acknowledges that, in certain circumstances, genuine commercial or other reasons may provide grounds for excluding certain entities from application of

¹ Sections 23, 14(1)(c).

² *Davis v City North Infrastructure Pty Ltd* [2011] QSC 285.

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part or all of the Act, and that compliance with the Act may place a financial burden on the entities. The current law, however, allows the government to selectively evade its obligations under the Act without having to meet any statutory criteria. This legal loophole undermines the object of the Act.

4. The Association submits the Act should be amended to apply to all entities created by government. Adequate statutory provision can then be made to deal with those situations where a relevant entity has genuine commercial or other reasons for seeking exclusion from the application of, or is financially burdened by compliance with, the Act.³ The Association is of the view this would strike a more appropriate balance between the relevant public interests.

Once again, on behalf of the Association, I thank you for the opportunity to make a submission.

Yours faithfully,



Christopher Hughes QC
President

³ In the latter case by, for example, adopting a provision similar to s 6 of the *Freedom of Information Act 1982* (Cth) which would require the entity subject to an application for access to its documents to provide those documents to a relevant government agency for processing of the application.