Your Reference: 3439159

2 February 2017

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

Submitted by email: FeedbackRTIandprivacy@justice.qld.gov.au

Dear Sir/Madam

2016 Consultation on the Review of the *Right to Information Act 2009* and *Information Privacy Act 2009*

Energy Queensland Limited (**EQL**) and its subsidiaries, Energex Limited (**Energex**) and Ergon Energy Corporation Limited (**Ergon Energy**) welcome the opportunity to comment on the Minister's 2016 Consultation Paper on its review of the *Right to Information Act 2009* (**RTI Act**) and *Information Privacy Act 2009* (**IP Act**).

EQL supports the principles of accountability, honesty and transparency in the public sector. In this submission we will focus our response on the key matters of concern for EQL.

We would be pleased to discuss any of these comments further. Please contact [redacted] on [redacted] or by email at [redacted]

Consultation Question 3 - Should the way the RTI Act and Chapter 3 of the IP Act apply to GOCs, statutory bodies with commercial interest and similar entities be changed? If so, in what way? Is there justification for treating some GOCs differently to others?

We support the current application of the RTI Act and Chapter 3 of the IP Act to GOCs, statutory bodies with commercial interest and similar entities.

EQL notes that in relation to the reference to Ergon Energy in the Consultation paper, it is Ergon Energy Queensland Pty Ltd (EEQ); not Ergon Energy Corporation Limited that is excluded from the operation of the RTI Act and the IP Act for all their functions, except so far as they relate to community service obligations pursuant to Part 2 of Schedule 2 of the RTI Act. Accordingly, access rights to documents held by EEQ are limited only to those which relate to its community service obligations.

In our view, GOCs that operate in a competitive market should be treated differently from other GOCs. To facilitate competition, enable GOCs to operate efficiently and provide benefits for customers, the factors that currently inhibit GOCs from competition, including policies, regulation and market structures, need to be carefully considered in order to allow GOCs to enter the market on a level playing field.

We support the Consultation Paper suggestion that some GOCs may be excluded from the operation of the RTI Act and IP Act for all their functions because the entity operates in a competitive market and has commercial interests to undertake that arise from corporatisation principles. It would be desirable for the legislation to be clear on the "type of entity" to which the

RTI Act and IP Act do not apply. We consider that these entities should be excluded from the operation of the RTI Act and the IP Act for all their functions on the same exemption status as some GOCs currently identified under part 2 of schedule 2 of the RTI Act.

Question 5 Should GOCs in Queensland be subject to the Queensland's IP Act, or should they continue to be bound by the Commonwealth Privacy Act?

We recognise that the primary object of the IP Act is to provide for the fair collection and handling in the public sector environment of personal information[1].

We support GOCs remaining subject to the Australian Privacy Principles (APPs) on the basis that the APPs provide a higher level of privacy protection to individuals than the Information Privacy Principles (IPPs) in the IP Act.

As a point of consistency, we suggest that the APPs apply to all agencies subject to the RTI Act and IP Act.

Question 7 Has anything changed since 2013 to suggest there is no longer support for one single point of access under the RTI Act for both personal and non-personal information?

We believe that there is scope for change to a single point of access under the RTI Act should the IPPs be replaced with APPs as suggested in Consultation Question 5. In this respect, we submit that this would streamline the process making it more straightforward for applicants and agencies.

Question 9 Should the threshold for third party consultations be changed so that consultation is required where disclosure of documents would be 'of substantial concern' to a party?

We support the recommendation for a higher threshold requiring consultation with third parties only where disclosure could reasonably be expected to be of 'substantial concern to a third party'. In our view, the application of what constitutes 'substantial concern to a third party' should be less extensive and less administratively burdensome than the current requirement to consult with potentially more people under the lower threshold of 'reasonably to be expected to be of concern.'

The Office of Information Commissioner Queensland (OIC) should provide guidance material on the scope of the 'substantial concern' test, and there should be the ability to efficiently test an entity regarding whether disclosure would be of substantial concern.

12. Given the 2013 responses, should the public interest balancing test be simplified; and if so how? Should duplicated factors be removed or is there another way of simplifying the test?

We welcome the proposal to simplify the PIBT. The process of applying the current 'public interest balancing test' (PIBT) is burdensome.

We agree that where possible duplicate factors should be removed. For example, all factors under Part 3 Factors favouring nondisclosure in the public interest relating to an entity could be consolidated into the same paragraph with dot points on the factors for consideration in relation to an entity.

[1] S 3(1)(a) IP Act

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20. Should internal review remain optional? Should the OIC be able to require an agency to conduct an internal review after it receives an application for external review?

We support the concept of internal review remaining optional for applicants. In our view, applicants should be provided with the flexibility in the review process. Depending on the individual, some may prefer the independence of an external review whilst others may prefer the shorter time frame of an internal review.

In relation to the ability of the OIC to request than an internal review be conducted, we believe that this is inconsistent with the expectation of applicants who are seeking an independent external review.

23. Is the information provided in the Right to Information and Privacy Annual Report useful? Should some of the requirements be removed? Should other information be included? What information is it important to have available?

We consider the information and requirements of Right to Information and Privacy Annual Report is detailed and lengthy.

We recognise the importance of reporting. However, in our view, each requirement for the provision of inputs for reporting and the information that is presented in the Annual Report should have a clear purpose. It would be beneficial for the report to enable insightful analysis and consideration of opportunities for process improvement.

Other comments not raised in the 2016 Consultation Paper

We would like to emphasise our desire that the legislation continues to reflect the intent of the Government's commitment to ensuring accountability, honesty and transparency in the public sector, while not overly impacting the objectives of corporatisation of GOCs. This provides a high level of confidence that the Government supports any applications under the RTI Act that are reasonable and does not inhibit the conferring of the real benefits intended under Act.

Yours sincerely

[redacted]

Interim Company Secretary
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