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Legal Affairs, Police, Corrective Services
and Emergency Services Committee

The Research Director
Legal Affairs, Police, Corrective Services and
Emergency Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Director

Right to Information (Government-Related Entities) Amendment Bill 2011

I refer to the Committee's call for submissions commenting on the above-mentioned Bill.

The Bill proposes to insert a new s.16(1)(ba) into the definition of "public authority" contained in the *Right to Information Act 2009* (RTI Act). The effect is to extend the definition of "public authority" so as to include, within the coverage of the RTI Act, any corporation that is supported directly or indirectly by government funds or other assistance, or over which the State, a Minister or a department is in a position to exercise control. A definition of "control" is also inserted as a consequence of the extended meaning of a public authority.

I strongly support the Bill and the proposed extension of the scope of the RTI Act to cover corporations established by the government for a public purpose. I am firmly of the view that entities that carry out public functions using public funds and public infrastructure are accountable to the public for the way in which they perform those services and spend those funds, and should be subject to all the usual accountability measures, including the operation of the RTI Act.

In my role as Ombudsman, I have become aware of the increasing propensity of the Queensland government to establish corporations (incorporated under the *Commonwealth Corporations Act 2001*) to carry out special purpose projects on behalf of the government. One such example, which instigated the proposed amendment to the RTI Act, is City North Infrastructure Pty Ltd (CNI). CNI was clearly established by government, for an important public purpose, namely, management for the government of a number of significant infrastructure projects, including the Airport Link project. By establishing CNI under the *Corporations Act*, the government took it beyond the reach of the RTI Act, by virtue of the fact that the current definition of "public authority" in the RTI Act only covers entities established under a Queensland (and not Commonwealth) Act of Parliament.

In the *Ombudsman Act 2001*, the definition of "public authority" is contained in the several subsections comprising s.9. Section 9(1)(a) is similar to the current definition contained in the RTI Act. That is, it only includes entities established for a public purpose under a Queensland Act.

Section 9(1)(c) of the Ombudsman Act provides:

9(1) *A public authority is any of the following entities –*

- ...
(c) *an entity, other than an individual, declared under a regulation to be a public authority and –*
 - (i) *supported directly or indirectly by government funds or other help over which the government is in a position to exercise control; or*
 - (ii) *established under an Act; ...*

The proposed wording of s.16(1)(ba) of the RTI Act, as set out in the Bill, appears to be based broadly on the wording used in s.9(1)(c)(i) of the Ombudsman Act except for one important difference. The introductory words in s.9(1)(c) require the entity in question to have been declared under a regulation to be a public authority. This qualification has been omitted from the wording of the proposed s.16(1)(ba).

To the best of my knowledge, this Office has rarely, if ever, relied upon s.9(1)(c)(i) to assume jurisdiction over an entity. This is simply because governments do not adopt the practice of declaring entities to be public authorities under a regulation. It is difficult to identify any occasion in recent times where that has occurred. One assumes that it was for this reason that this qualification was omitted from the proposed s.16(1)(ba) – because it has the practical effect of negating the operation of the provision in the absence of the required declaration.

As the Committee is aware, I recently tabled in Parliament, a report into my Office's investigation of complaints made about noise associated with the Airport Link project. As part of my investigation, the administrative actions of CNI were reviewed. It is important to note that CNI did not satisfy any of the definitions of "public authority" contained in s.9 of the Ombudsman Act. The only section upon which I was able to rely in assuming jurisdiction over CNI was s.10(c) of the Ombudsman Act which provides:

10 *An administrative action of an agency includes –*

- (c) *an administrative action taken for, or in the performance of functions conferred on, an agency, by an entity that is not an agency.*

CNI initially disputed the application of s.10(c), although it subsequently accepted that my Office had jurisdiction to examine its administrative actions under this provision.

Summary

I am strongly of the view that entities that are established by government to carry out public functions using public funds and public infrastructure are accountable to the public for the way in which they perform those services and spend those funds, and should be subject to all the usual accountability measures. These include the application of the RTI Act and scrutiny by the Crime and Misconduct Commission, the Ombudsman and the Auditor-General.

The entities in question include corporations established under the Corporations Act as well as government-owned corporations (GOCs). My predecessor, Mr Bevan, made numerous submissions during his term as Ombudsman (including in response to the government's


Integrity and Accountability Green paper) requesting that the Ombudsman be given jurisdiction over GOCs. To date, this has not occurred. I agree with Mr Bevan's view that this is necessary from both an accountability and integrity perspective. Moreover, it is out-of-step with the community's expectations regarding the ability of independent bodies such as the Ombudsman to scrutinise the government's performance of the functions it undertakes on behalf of the community, no matter the type of body that performs the functions.

In summary, I support the proposed change to the RTI Act and consider that it represents a step forward in enhancing government accountability.

Thank you for the opportunity to comment on the Bill. I trust my comments will assist the Committee in its deliberations.

If you have any questions, please contact me on telephone 3005 7002.

Yours sincerely



Phil Clarke
Queensland Ombudsman