



Gladstone Ports Corporation

Growth, Prosperity, Community.

Our Ref: #712874 LMZJS
Mr Leo Zussino

11 November 2011

Research Director
Legal Affairs, Police, Corrective Services
and Emergency Services Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Sir/Madam

Right to Information (Government-related Entities) Amendment Bill 2011 (Qld)

We refer to your letter to Gladstone Ports Corporation Limited ("GPC") dated 19 October 2011 regarding the Legal Affairs, Police, Corrective Services and Emergency Services Committee ("Committee") review of the *Right to Information (Government-related Entities) Amendment Bill 2011 (Qld)* ("Bill"). Thank you for the opportunity to make submissions.

1. The Bill

From our review of the Bill, the sole amendment proposed is to amend the definition of "Public Authority" under the *Right to Information Act 2009 (Qld)* ("Act"). The definition of "Public Authority" is proposed to include "a corporation 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". For these purposes, "control" means "the capacity of an entity to dominate decision-making, directly or indirectly, in relation to the operation of another entity so as to enable the other entity to operate with it in pursuing the objectives of the controlling entity".

The Bill was introduced into the Queensland Parliament on 8 September 2011. From the Record of Proceedings, it appears that the rationale for the amendment is to extend the Act to entities which are established to represent the State and Communities of Queensland on major infrastructure projects. The practical effect is that organisations such as City North Infrastructure Pty Ltd, a company established to represent the State and communities of Queensland on major infrastructure projects such as the combined Airport Link, Northern Busway and Airport Roundabout upgrade projects, will be "Public Authorities" and subject to the Act.

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2. GPC's position

GPC is an "agency" for the purposes of section 14 of the Act. In that sense, the amendment to the definition of "Public Authority" does not directly determine whether GPC is subject to the Act. GPC does however have some concerns on the Bill, which are outlined below.

Definition of "Public Authority"

The definition of "Public Authority" is extremely broad. The requirement is that a Corporation be supported "*directly*" or "*indirectly*" by "*government funds*" or "*other assistance*". We note that "*other assistance*" is not defined. On one construction of this phrase, it may extend to any form of assistance, whether monetary or non-monetary. For example, "*other assistance*" may be the State constructing a building at a Corporation's premises rather than offering funds for the Corporation to construct the building. The insertion of the word "*indirectly*" means that there does not need to be a close causal nexus for the benefit to be received by the Corporation.

In the result, potentially any organisation which receives some assistance from the government, regardless of the form (i.e. whether monetary or non-monetary) could satisfy the definition of "Public Authority" and, therefore, be subject to the Act. A large number of organisations may satisfy this definition. For example, a Corporation which receives funding for a modest sum for an isolated project may still satisfy the definition. Similarly, the construction of a roadway or other infrastructure that is of benefit to an organisation may cause it to fall within the definition. The consequences for any organisation satisfying the definition of "Public Authority" are extensive. In the result, those organisations will be "agencies" and fully subject to the Act.

For this reason, GPC is of the view that it may be preferable to remove the words "*indirectly*" and "*other assistance*" to avoid inadvertently capturing more organisations than anticipated (as demonstrated by the Minister's speech to Parliament). Alternatively, Schedule 2 to the Act could be amended to include the specific organisations which the Parliament intends to be subject to the Act (for example, City North Infrastructure Pty Ltd).

Projects undertaken by GPC

GPC has a number of ongoing projects, for example the Fishermans Landing Northern Expansion Project, the Western Basin Dredging and Disposal Project and the East Shores Project. Various structures are employed to undertake these projects. If GPC were to receive government funds or any other assistance for any future projects and create new entities specifically for these projects (which are not subsidiaries of GPC for the purposes of the *Government Owned Corporations Act 1993 (Qld)*), there is a potential that those entities would satisfy the definition of "Public Authority" and be fully subject to the Act. If this were to occur, those entities would be required to deal with access applications. The result is that documents held by that entity may be released as part of Right to Information processes. While there are some exemptions in the Act as to why documents ought not be released, there is a prospect that sensitive information about those projects may be released into the public domain. GPC suggests that this outcome, the definition of "Public Authority" having such a wide compass, was not the intention of the amendments.

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Organisations now subject to the regime

The effect of the amendment is that a large number of entities who previously may not have been a "Public Authority" may now satisfy the definition of "Public Authority". These entities will be "agencies" and fully subject to the Act. This creates the potential for any document which is submitted by GPC to those public authorities being the subject of an access application. If that were the case, GPC would need to be consulted as a third party pursuant to section 37 of the Act on any document proposed to be released which could reasonably be expected to be of "concern" to GPC. The practical effect is that GPC may be consulted much more frequently as a third party on any documents submitted to these new public authorities. This creates an enormous administrative cost to GPC.

Use of the new definition

On a strict construction of the definition of "public authority", GPC may technically satisfy the definition. The concern is whether the new definition of "public authority" could be adopted in other Queensland legislation, in which case GPC may be fully subject to those Acts. We would hope that GPC would be advised if it were intended that the new definition of "public authority" were adopted in other Queensland legislation and afforded an opportunity to make submissions about the use of this definition.

Kind regards



LEO M ZUSSINO
CHIEF EXECUTIVE OFFICER