

Your Ref: 11.1.5.c

Our Ref: AXJ:MJH:21000918/11

9 November 2011

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

By email: lapcsesc@parliament.qld.gov.au

Dear Ms Powell

RIGHT TO INFORMATION (GOVERNMENT-RELATED ENTITIES) AMENDMENT BILL 2011

Thank you for providing the Society with the opportunity to make comments on the draft *Right to Information (Government-related Entities) Amendment Bill 2011* ("the Bill").

The Society appreciates the public interest reasons for the Bill in contributing to the transparency and accountability of government. However, it is concerned about the regulatory impact and financial consequences the Bill will have on some affected corporations.

The extension of RTI obligations proposed by the Bill makes no allowance for the resources available in the subject organisation to absorb the additional compliance burden. From the Society's experience, there are significant resources which need to be dedicated in a small organisation to RTI compliance, such as:

- establishing and maintaining a Publication Scheme;
- establishing and maintaining a Disclosure Log;
- contributing to reporting requirements under sections 184 and 185 of the RTI Act;
- processing RTI applications in accordance with statutory requirements; and
- training staff to become familiar with RTI Act requirements.

On this basis, the Society suggests that careful consideration needs to be given to the costs of implementation of the Bill and that additional government funding is provided to subject organisations to meet these additional costs.

In relation to the technical aspects of the Bill, the Society is of the view that the proposed sections 16(1)(ba) and 16(4) require clarification.

Section 16(1)(ba) of the Bill contains terms and issues that are ambiguous and uncertain, namely:

- **‘Government funds’** – this needs to be defined. In the context of the Society, it receives funding from the Legal Practitioner Interest on Trust Accounts Fund (“LPITAF”) but this is not considered public funding according to section 288(5) of the *Legal Profession Act 2007* (Qld) (“LPA”). However, as LPITAF is controlled by the Department of Justice and Attorney-General and funding from it is granted to the Society by the Minister pursuant to sections 289 and 290 of the LPA, it could still be regarded as ‘government funds’. A definition of this concept is recommended.
- **The scope of the provision is uncertain** – it is unclear what the parameters are in which the provision operates. For example, what level of ‘support’ or ‘other assistance’ will bring corporations within the scope of operation of the provision so that they are caught by the RTI Act? Further, the scope of what is caught by the phrase “supported ... indirectly by government funds” is uncertain. It would be helpful to insert some terms to clearly define the scope of the proposed provision to clarify its application. Further guidance, such as providing examples, would be useful as well.

In section 16(4), again, there are threshold issues to consider with the proposed meaning of ‘control’. Specifically, it would be helpful if guidance was provided to clarify the definition as the Society is uncertain what, for instance, would constitute an entity’s capacity to dominate decision-making in an ‘indirect’ way. By way of illustration, for the Society, depending on the level required to dominate decision-making, it may be indirectly controlled by a Minister on the basis that the Minister is responsible for notifying amendments to the *Legal Profession (Society) Rules 2007* under section 697(1) of the LPA, and approving the Society’s Code of Conduct under section 17 of the *Public Sector Ethics Act 1994*. One questions whether this would be sufficient to satisfy the legislative requirements in question.

Further, the terminology used to define ‘control’ is confusing, particularly the way reference is made to different entities. The Society would recommend the provision be redrafted so as to remove, as far as is practicable, the identified ambiguities.

Please do not hesitate to contact either myself or have a member of your staff contact our General Counsel, Malcolm Hinton, on 07 3842 5839 or m.hinton@qls.com.au if you wish to discuss this matter further.

Yours faithfully

Bruce Doyle
President