

Freedom of Information Amendment Bill 2004

Explanatory Notes

General Outline

Objectives of the Legislation

The *Freedom of Information Amendment Bill 2004* provides an exemption from the application of the *Freedom of Information Act 1992* (the “FOI Act”) to incentives for projects under an investment incentive scheme.

Reasons for the objectives and how they will be achieved

Discretionary investment incentive schemes, such as the Queensland Investment Incentive Scheme (QIIS) are administered by the Department of State Development and Innovation (the Department). The objective of an investment incentive scheme is to generate sustainable investment and spending, and jobs in Queensland by securing projects that are considered to have strategic merit and that, without Government intervention, would not occur in Queensland.

Under an investment incentive scheme, incentive agreements can be entered into between the Government and the applicant with the aim of offering incentives as a means of attracting the applicant to operate in Queensland. Incentives are offered on the condition that certain milestones and targets such as investment or employment will be met by the applicant. Incentives are flexible in order to best accommodate a range of major projects and can include payroll tax, stamp duty and land tax refunds, establishment grants and other forms of assistance, such as infrastructure works.

The processes involved in an investment incentive scheme include inquiries and discussion, application, negotiation and agreement, and the monitoring of the agreement. Throughout these processes, incentives and proposed incentives are documented. This information is considered to be commercially sensitive information, and as such, the parties, including the Government, have not disclosed such information in relation to particular

projects. It has always been the intention that this information be confidential.

Furthermore, the disclosure of information pertaining to incentives proposed or given to an applicant could expose the State to a number of negative impacts including the loss of any competitive advantage Queensland has over other States with the prospect that on disclosure of such information, other States could outbid Queensland in attracting major projects.

In March 2002, an application under the FOI Act was made to the Department for all documents relevant to incentives provided for a particular company under QIIS. The Department refused access to some of the documents on the basis the information was exempt from the FOI Act by virtue of the commercial in confidence exemption provided by section 45. Upon the external review of the Department's decision (*Seeney and the Department of State Development; Berri Ltd (third party)*), the Information Commissioner determined that section 45 of the FOI Act had no application to an incentive scheme such as QIIS and as such, determined that all requested documents, including those relating to the amount of incentives provided under a commercial agreement were not exempt from the FOI Act.

Given the significance of investment incentive schemes in generating strategic investment and employment opportunities and the potential harm to the Queensland Government in disclosing such information, amendments to the FOI Act are proposed to ensure that incentives and proposed incentives, as documented in the course of all processes involved in an investment incentive scheme, are exempt from disclosure under the FOI Act.

Administrative cost to Government of implementation

The amendment is cost neutral.

Consistency with Fundamental Legislative Principles

The Bill is consistent with Fundamental Legislative Principles.

Consultation

Community

There has been no consultation with the community.

Government

The Department of Justice and Attorney-General, Queensland Treasury and the Department of State Development and Innovation have been consulted on the Bill.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 states that the Act amends the *Freedom of Information Act 1992*.

Clause 3 inserts a new section 47A which applies to all processes under an investment incentive scheme, including inquiries, discussion and application for, and the negotiation, agreement and monitoring of, incentives for a project. The objective of an investment incentive scheme is to provide incentives to promote projects that entail investment or other spending and provide employment opportunities in Queensland. The section exempts disclosure under the *Freedom of Information Act 1992* of:

- Possible incentives proposed during inquiries of, and discussions and negotiations with the person, whether or not any application is made, any agreement is reached or any incentive is given or arranged; and
- Incentives given to or arranged for a person, whether or not that person or project continues to be monitored by the Department in accordance with an agreement.

An incentive is defined to include:

- monetary amounts, including any component that represents a refund or partial refund of a tax, fee or charge, whether as a lump sum or by instalments; and
- any other benefit, for example, installation or upgrade of infrastructure, release or compromise of a debt owing to the State or payments to someone else to provide training.