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29 AUG 2014

26/08/2014
Ref No.: F2014/00535

The Director, Justice Policy
Department of Justice
GPO Box 6
Sydney NSW 2001

Dear Sir/Madam

Submission on the Review of Government Information (Public Access) Act

Forestry Corporation of NSW is a State Owned Corporation (SOC) and offers the following submission for consideration in the Department of Justice review of the *Government Information (Public Access) Act 2009 (GIPA Act)*.

State Owned Corporations and GIPA

The object of the GIPA Act is to maintain and advance a system of responsible and representative democratic government that is open, accountable, fair and effective by:

- a) authorising and encouraging the proactive public release of government information by agencies;
- b) giving members of the public an enforceable right to access government information; and
- c) providing that access to government information is restricted only when there is an overriding public interest against disclosure.

SOCs are subject to the Act as they are included in the definition of public authorities.

The *State Owned Corporations Act (1989)* outlines that the principal objectives of SOC are:

- a) to be a successful business and, to this end:
 - i. to operate at least as efficiently as any comparable businesses, and
 - ii. to maximise the net worth of the State's investment in the SOC, and
- b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
- c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
- d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.

Competitive disadvantage

Application of Government Information Public Access (GIPA) Act provisions to SOC potentially puts a SOC at a competitive disadvantage as it means that except in very limited circumstances where an overriding public interest against disclosure can be

demonstrated, the SOC is required to provide the commercial information sought by any organisation or member of the public.

There is a wide scope for commercial information obtained through GIPA being used against the SOC in a competitive environment or in litigation. For example, a customer or supplier can use the information sourced from the SOC to seek commercial advantage over a competitor or use the information to inform a possible legal challenge against the SOC.

FCNSW's experience has been that prices included in contracts between customers and the SOC were required to be released under GIPA despite objections from the customer and against normal business practice. These objections did not outweigh the presumption of disclosure under the Act. This has the potential to place customers of SOC's at a commercial disadvantage to customers of other companies.

Interest groups opposed to the business of a particular SOC can use the information sourced from the SOC through GIPA to mount campaigns against it and thus impact on its commerciality. At the very least, such campaigns create distractions and divert resources from business operations resulting in unnecessary costs being incurred.

Processing fees

The restrictions around processing charges also affect SOC's in a commercial sense. The fees outlined are significantly below the true cost of appropriate staff dealing with these applications. While there is an element of general administration or processing of applications there is also a significant element of decision making which requires time from senior staff at higher pay rates.

The prescribed processing fee of \$30 per hour does not cover the real on-costs associated with staff resources. FCNSW's experience is that real staff time costs for GIPA applications are closer to \$80 per hour than \$30 per hour. If SOC's are subject to GIPA consideration should be given to SOC's being able to recover the actual costs incurred through processing fees.

The mandated 50% discount on processing fees under financial hardship provisions for not-for-profit organisations further contributes to the commercial impost on SOC's. GIPA applications from interest groups opposed to the business of a particular SOC are then charged at just \$15 per hour leaving the SOC significantly out-of-pocket in providing information which may ultimately be used in an attempt to damage the SOC's business.

The Act is also unclear on requirements for payment of processing fees before information is delivered. In FCNSW's experience, the SOC also spends considerable time following up on payments after information is released. This situation would be resolved if the Act provided for applicants to be informed of the decision on their application but access to information withheld until processing fees are paid.

Unreasonable diversion of resources

The GIPA Act and associated resources from the IPC provide limited guidance on refusing to deal with an application due to an unreasonable diversion of resources. The business focus of SOC's tends to result in more streamlined staff resources available for activities like provision of information under GIPA. As such, the level at which an 'unreasonable diversion of resources' may exist is considerably lower than a large government department.

In FCNSW's experience, applications with wide-reaching terms like 'all documents related to' create a significant workload. Additional resources and encouragement from the IPC should further encourage applicants to request the specific information they are seeking rather than casting a wide net. Processing fees set at a more realistic cost-recovery basis would also encourage applicants to be specific in their information requests and lessen the burden on SOCs.

As a business FCNSW appreciates the importance of governance arrangements and transparency. However, as outlined above, particular requirements of GIPA do not apply appropriately to SOCs. Ideally SOCs should be exempt from GIPA but subject to disclosure rules applying to publicly listed companies.

Thank you for the opportunity to comment on the application of the GIPA Act to SOCs and I look forward to following the outcome of the review. Should you wish to discuss this submission further, please contact Manager Communications and Media, Joanna Bodley on 9872 0105.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ross Dickson', followed by a comma.

Ross Dickson
Acting CEO