

Media statement

Release of *Opening up government: Review of the Freedom of Information Act 1989*

5 February 2009

This morning I tabled in Parliament a report following the review by my office of the NSW Freedom of Information Act. The report is titled “Opening up government”. It provides a blueprint for significant change. We need a new system, providing better access to government information.

It is 20 years this year since the FOI Act came into force, making the release of this report particularly timely.

For almost all of those 20 years I and my predecessors have been calling upon the government of the day to institute an independent review of the FOI Act and the problems for the people of NSW in accessing information held by government. Despite this, there has been no adequate response and so in April last year I announced that my office would conduct such a review.

My office is ideally placed to look into FOI. We have always been one of the avenues of external review for FOI decisions. We have dealt with thousands of matters and issued numerous reports. We have seen many of the failings of the Act first hand, working with both practitioners and applicants to best overcome them.

As part of this review we have investigated the FOI practices of 18 separate agencies, we sought a large amount of information, we audited agencies' FOI files and spoke with 70 front line staff who deal with FOI applications.

We issued a detailed public discussion paper and received a large number of submissions most of which are now on our website. We also researched and analysed various national and international approaches to accessing government information.

This report pulls together all of that work and I have made 88 recommendations to provide for a much better system for the future. Importantly the recommendations strike a balance between making information more available and easier to access and also making the task of government agencies and decision makers less difficult and less costly.

Since the FOI Act commenced in 1989 much has changed. Government has changed, community expectations have changed and information has changed. The FOI Act has failed to keep pace with any of these changes. One of the main reasons for this has been the consistent failure by government to recognise there were problems and to step back, look at the system as a whole and ask: Is the system achieving what it was set up to do and if not, what needs to be done to fix it?

The FOI Act has also become overly complex and unwieldy to use. It has been amended more than 60 times over the years. Many of these amendments appear to have been made to address a particular issue or concern, often without appropriate consideration for long term need or ongoing consequences.

We all know that the way government does business is not the same as it once was. We now have public sector bodies operating in competitive markets, public-private partnerships and the outsourcing of traditional government services to the private sector. The Act has also failed to address these changes.

The ways in which information is created, stored, distributed and accessed have altered dramatically since the Act came into force. Electronic records are becoming more and more

prevalent and agencies need help to assess what information needs to be released and how this can be done. The current Act also fails to deal with these issues

There are three key planks to what has been recommended in the report.

Firstly, the many problems with the Act and proper access to information can only really be corrected with a fresh start. This means a new Act, written in plain English which we recommend be called the Open Government Information Act.

Secondly, many of the problems we have identified can be overcome by simply requiring government to be more pro-active, by making more information available without the need for a formal application. We recommend that agencies establish publication schemes and disclosure logs similar to those in the United Kingdom. This will ensure that information about an agency and its work is not only readily available, but also easy to find and easy to understand.

Thirdly, FOI has for far too long been without a champion. I am recommending the creation of an independent Information Commissioner, who would encourage agencies to release more, provide them with guidance, help them when they fall short, hold them to account when they fail to release, and protect the public's right to access information. After considering the various options I have come to the view that the role should sit within the Ombudsman's office. We have extensive experience with the Act, we have a demonstrated ability to adapt to new responsibilities and placing the Information Commissioner in my office will avoid unnecessary cost, duplication and the difficulty of establishing a new oversight body. This role would see us continue to work as we do now but with a range of additional functions and responsibilities. It will also permit us to continue to address broader administrative issues as they arise, which a stand alone Information Commissioner would be unable to do.

While these three key planks are very important, they alone will not fix what the Premier has previously described so appropriately as a "broken" system. There needs to be a significant cultural change within government. The days of Sir Humphrey and overly secretive government are well and truly over. The public has both a right and a reasonable expectation to be able to easily access information about how its government is operating.

While there have been some encouraging statements advocating a more open system and the government has been supportive of my review, it is important to recognise reality. Incumbent governments will always be reluctant to release information that may embarrass them or potentially damage their public position. Opposition parties will always make strong statements in support of greater openness and transparency. This is a very easy thing to do in opposition. It is a very different matter to implement those promises and provide the support needed to make sure the system is effective. Now is the time for government and opposition to demonstrate a bipartisan willingness to fix a broken system, setting the foundation for proper, easy and fair access to information and as a consequence greater openness and transparency of our government.

Reforming the way people access information about their government may raise the level of political debate. The recent presidential election in the United States of America has demonstrated that modern methods of communication make it possible to intelligently involve large numbers of people in the political process. One of President Obama's first actions was to decree a greater openness in his government and much broader and fairer access to information. I hope that we will see a similar development in NSW.

This report provides the foundation for change. It is now up to the government to make that change a reality.