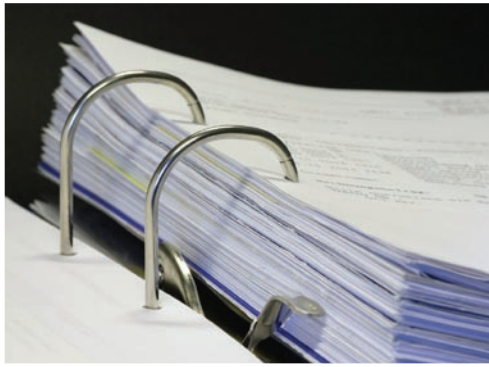


Restoring Your Right to Know

Improving Freedom of Information in NSW



October 2008

Restoring Your Right to Know – Improved FOI in NSW

October 2008

The NSW Liberal/Nationals Coalition believes that the community has the right to openness, accountability and transparency when it comes to Government decision-making and information.

The NSW Liberal/Nationals Coalition commits to open government through the highest standards of public access to Government information, including best practice in Freedom of Information (FOI) processes.

Community scrutiny of Government - including through increased access to Government information - both protects the public interest and propels better public sector decision-making and performance.

Central to the NSW Liberal/Nationals Coalition approach is breaking down Labor's "culture of concealment" and making easy access to Government information the standard practice rather than the exception.

By significantly increasing the overall quantity and quality of Government information that is readily available to the public, the NSW Liberal/Nationals Coalition will reduce citizens' current need to rely on FOI.

Citizens should not need to be forced into the position of having to demand information from Government – it should be freely available.

At the same time, the NSW Liberal/Nationals Coalition will improve the FOI process itself as an important democratic accountability measure.

The NSW Liberal/Nationals Coalition supports the NSW Ombudsman's comments that *"effective freedom of information legislation is central to our system of government. It helps to ensure that government decision making is open and transparent, and that decision makers can be held accountable for their decisions and actions."*¹

Key reforms under a NSW Liberal/Nationals Government will be:

- pro-active disclosure of Government information as a guiding principle
- "one-stop on-line shop" for information from all Government agencies
- enforced public disclosure of Government contracts and grants
- appointment of a fully independent Open Government Commissioner
- no cost for FOI applications and the establishment of mandatory deadlines

¹ NSW Ombudsman, Discussion Paper: Review of the Freedom of Information Act 1989, September 2008, page i.

Fundamentally, the NSW Liberal/National Coalition's approach is about creating a culture and systems in Government that presume that sharing information is the norm – rather than being selective in its release or holding onto it and waiting for FOI requests.

Ultimately, the people of NSW have the right to know how they are being governed.

Current Situation in NSW

It has been almost two decades since the NSW Coalition first introduced the *Freedom of Information Act* into NSW as a commitment to openness, accountability and responsibility.

However, over the past 13 years, NSW residents have watched the gradual erosion of the standards of government accountability and openness through FOIs.

The NSW Ombudsman reported in 2007 that *'there has been a significant and disturbing downward trend in matters where it is reported that documents [FOIs] were disclosed in full'*.²

NSW does not compare well to other jurisdictions in terms of release of material after FOI requests – with nearly 50% of requests either partially or fully refused.

	Full release	Partial refusal	Full refusal	Determined
NSW (2005-06)	52%	40.5%	8%	26500*
WA (2005-06)	61%	30%	9%	8,767
Cwth (2005-06)	78.0%	16%	6%	38,987
VIC (2005-06)	78%	19%	2.5%	21,396
QLD (2004-05)**	75%	11%	13.5%	10,455
SA (2005-06)	78%	12.5%	9%	8,519

* Estimated figure based on applications made to audited agencies.

** Percentages based on number of "documents" not applications.

Source: NSW Ombudsman, "Audit of FOI Annual Reporting 2005-2006", mid 2007, p. 5.

The NSW Liberal/Nationals Coalition is concerned by the increased opportunity for political interference in FOI applications under Labor.

In 2005, the NSW Auditor-General reported his concerns about the possibility of Ministerial interference in FOI applications. Despite this, the Labor Government proceeded to codify Ministers' ability to be involved in FOI requests in the NSW FOI Manual.³

² NSW Ombudsman, "Audit of FOI Annual Reporting 2005-2006", 26 October 2007, p. 4.

³ NSW Ombudsman, "The NSW FOI Manual", NSW Department of Premier and Cabinet and the NSW Ombudsman, August 2007.

Developments in FOI Practice

In contrast to the situation in NSW, other jurisdictions are moving to improve their FOI frameworks to make them more responsive to community needs and thereby feature greater openness, accountability and transparency.

Victoria signalled significant FOI reform in November 2007. Victoria's changes seek to "dramatically increase the information freely provided on the internet about Government functions" and made FOI applications free to lodge.⁴

Queensland Premier Anna Bligh announced an overhaul of the state's FOI laws soon after assuming office. In June 2008, the former Chairman of Queensland's Electoral and Administrative Review Committee Dr Solomon delivered the report titled, *The Right to Information*.⁵ The report contained 141 recommendations for improving Queensland's current system of dealing with FOI.

A fundamental conceptual change to FOI is central to contemporary reform efforts, eg, shifting the presumption of Government practice and culture to one of disclosure.

Moira Paterson, a Senior Lecturer in the Faculty of Law at Monash University has said:

*"one way of ensuring a more pro-disclosure approach [in the FOI Act] would be to insert into the Act 'a principle of availability which establishes the principle that information should be made available unless there is good reason for withholding it'."*⁶

This suggestion is along the lines of the New Zealand *Official Information Act 1982*, which states:

*"The question whether any official information is to be made available, where that question arises under this Act, shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it."*⁷

Queensland's Solomon Report also advocates a "push" versus "pull" model. This model emphasises identifying the possible public interest in a document (prior to a request) and consequently circulating information about the document or the document itself (or posting it on relevant government websites).⁸ The process of identifying these "public interest" documents and distributing them is referred to by the Solomon report as RD/AD – "routinely disclose and actively disseminate".

⁴ Brumby, John, "Brumby Government Introduces FOI Reforms", *Media Release*, 20 November 2007.

⁵ Queensland Government Website, "Freedom of Information – Independent review of FOI", retrieved 16 October 2008 from <http://www.foireview.qld.gov.au/>.

⁶ Griffith, Gareth, "Freedom of Information – Issues and Recent Developments in NSW", *New South Wales Parliamentary Library*, Briefing Paper No 6/07, May 2007, Executive Summary.

⁷ Official Information Act 1982, New Zealand, s. 5.

⁸ Solomon, David (Chair), "The Right to Information – Reviewing Queensland's Freedom of Information Act", *Queensland Department of Justice and Attorney General*, June 2008, Appendix 1.

⁸ *Ibid*, p. 16.

It is suggested that a shift to a “push” model with Government information increasingly makes formal FOI requests the “last resort” in accessing information.

Another significant recommended change in FOI practice is that access to personal information be moved from standard FOI practices and processes to a separate privacy regime.⁹

Such moves reflect the current regime in New Zealand in which people seek personal information about themselves under a Privacy Act allowing FOI officers to focus on releasing information specifically relating to government activities.¹⁰ The Queensland review of their FOI laws recommended that Queensland adopt a similar model as the one operating in New Zealand, which separates the FOI Act and the Privacy Act.

The aim of such reform is to free FOI officers up to concentrate on what should be their main function, eg, the release of information to the public detailing government activity.

⁹ Solomon, David (Chair), “The Right to Information – Reviewing Queensland’s Freedom of Information Act”, *Queensland Department of Justice and Attorney General*, June 2008, Appendix 1.

¹⁰ *Ibid*, pp. 38 & 42.

NSW Liberal/Nationals Coalition Policy for Improved FOI

The NSW Liberal/Nationals Coalition will introduce the following reforms to restore the community's right to know, promote open government and to improve FOI in NSW:

1. Adopt the principle of pro-active and on-going disclosure and sharing of Government information with the public.
2. Make it compulsory for Government agencies to post all information on public websites that serves the public interest (and does not compromise individual privacy, national security or legitimate commercial-in-confidence).
3. Establish and promote a central website as a one-stop on-line shop for searching for and downloading information from all Government agencies, as well as making FOI applications if still necessary.
4. Introduce KPI's into the contracts of Government agency Director Generals for public disclosure of agency information.
5. Ensure that Government contracts, such as PPP infrastructure projects, and all Government funding of and grants to external bodies are made public on public websites within 90 days of their establishment.
6. Require public disclosure of termination payments of senior officials.
7. Require public disclosure of all Ministerial office staff positions and the personnel who hold them.
8. Appoint an Open Government Commissioner - within the Office of the NSW Ombudsman - to play an independent "watchdog" role and drive the information sharing performance of Government agencies toward the highest standards of openness, accountability and transparency.
9. Have the Open Government Commissioner annually report on the Government's overall performance and on the comparative performance of individual Government agencies, including aspects such as total number of requests, number of requests complied with, turnaround times, number of complaints and number of complaints upheld or denied.
10. Have the Open Government Commissioner provide citizens with advice, and hear complaints on FOI and other Government information matters.
11. Give the Open Government Commissioner the power to require an agency to release information the Commissioner believes should be made available.
12. Establish guidelines that aim to differentiate the processing of FOI requests of personal and private nature in order to free up resources and speed up the overall processing of FOIs.

13. Eliminate the potential for political interference in FOI application consideration by ensuring communications between Ministerial offices and agencies on FOI matters are subject to public disclosure.
14. Abolish FOI application fees.
15. Establish a mandatory deadline to notify an applicant of a decision on a request as soon as practicable but not later than 45 days after the day on which the request is received by or on behalf of the agency or Minister and monitor agencies' performance against that deadline.
16. Establish consistent reporting formats for Government agencies' Annual Reports to enable comparison of performance against indicators.
17. Move to reduce the quarantine period on Cabinet documents to the completion of two terms of Parliament, eg, less than 10 years.

The NSW Liberal/Nationals Coalition will also introduce reforms designed to otherwise ensure open government to increase the accountability and measure the performance of Government agencies, and deliver greater public participation in Government decision-making.

The NSW Liberal/Nationals Coalition will also introduce reforms to improve Ministerial and Parliamentary processes – such as a public register of lobbying activity and conduct of Question Time on all Parliamentary Sitting Days - to provide greater openness, accountability and transparency.