

PLOTTING A PATH THROUGH THE BUREAUCRATIC SWAMP

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As any community group will attest, making the NSW Freedom of Information Act work is about as easy as dancing in a swamp. It's dirty, full of traps for the unwary and it's almost impossible to know if you're making progress.

But the library staff in the NSW Parliament have just produced a briefing paper on the law which should prove a great help to individuals and groups trying to navigate a way through it and to use it as a tool to hold the Government accountable. Many community groups try Fol but quickly get discouraged. They make an application but don't know what to do when they get knocked back, unless they have an expert in administrative law on hand to give them advice.

This briefing paper goes a long way to help citizens understand the law in simple and direct language. It gives a thorough overview and summarises the key tribunal and court decisions that have changed how the law is interpreted, so that applicants have some idea of what lies ahead.

Thirteen years ago, the Government did something similar itself when it published its own guidelines on how the act should operate. For years the NSW Labor Government had been promising to update those hopelessly obsolete guidelines. In the middle of last year, it said the new version would be available by Christmas. Maybe they meant Christmas this year, because there's been nothing since.

In the meantime, the briefing paper, by Gareth Griffith, is the next best thing. But don't get your hopes up too high. Those librarians love a bit of history, and some of the Fol events they've dug up from years ago provide little comfort for those trying to use the law in 2007. Take this prediction, in 1988, from the then leader of the Opposition, Bob Carr, who complained about the woeful inadequacies of the draft legislation when it was introduced into Parliament by the then premier, Nick Greiner.

Carr warned that the bill would "give a false impression of openness which will be dispelled through the bitter experience of applicants seeking to utilise the legislation ...The bill is littered with clauses and schedules that even the most inept bureaucrat will be able to use to secrete embarrassing material from public gaze".

Not only did Carr get that right, he made damn sure he did nothing to fix the problems during his decade as premier, a point that's inescapable if you read the paper.

Defects are discussed in detail. And while there have been some improvements in the law, such as legislation requiring the publication of government contracts, the big picture is not good.

Dr Griffith quotes figures showing that NSW grants fewer requests in full than any other state. It also refuses in full three times as many requests as Victoria does, even though Victoria gets 22,500 requests a year compared with 16,000 in NSW.

Some refusals are appealed against in the Administrative Decisions Tribunal and then go on to the Supreme Court. After studying these cases, Dr Griffith concludes what regular users of the law already know: "What is clear from the case law is that attempts to gain access to more sensitive or contentious information held by government agencies are vigorously contested."

He reminds us of how the Government has failed for nearly 20 years to review the secrecy provisions in a host of different laws which neatly exempt whole chunks of government activity from the Fol Act.

He points out that the NSW houses of Parliament are exempt from the law, unlike those in India, South Africa, the Republic of Ireland and Britain. For real accountability, he mentions the Scottish Parliament, where MPs have their "detailed expenditure claims, utility bills, travel and mileage forms carefully logged on the Parliament's website for any constituent to see".

While the cost of going to court will often frighten off community groups, an appeal against an Fol decision in the Administrative Decisions Tribunal rarely costs more than the \$50 application fee. Costs can be imposed, and the briefing paper discusses in some detail the circumstances when that can occur.

It is full of the sort of information potential users of Fol need to know if they are to make sensible decisions about how hard to fight. You can find it on the NSW Parliament website.

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