

# Transparency and accountability

## The need for transparency and accountability

The Administrative Review Council has described the importance of accountability in the following terms:

*Accountability is fundamental to good governance in modern open societies. It is necessary to ensure that public monies are expended for the purposes which they are appropriated and that government administration is transparent, efficient and in accordance with the law. Public acceptance of Government and the roles of officials depends upon trust and confidence founded upon the administration being held accountable for its actions.<sup>1</sup>*

Proper accountability enhances public confidence in government and the public sector and helps to ensure that government is properly responsive to the interests of the people.

Public officials are accountable for their decisions and conduct to their supervisors, their agency, their Minister, to Parliament, and ultimately to the people of NSW.

A useful conceptualisation of accountability was developed by Professor David Corbett of Monash University. His accountability model is based on a four part framework comprising:

- **upward accountability** – the obligation on public officials to report to and to take orders from superiors
- **outward accountability** – the obligation on public officials to be open to external scrutiny and to be responsive to the public
- **downward accountability** – the obligation on managers to be accountable to those they manage
- **inward accountability** – the obligation on public officials to obey their personal conscience and to act in conformity with the community's moral standards.<sup>2</sup>

To be properly accountable agencies should ensure that their policies and processes are as clear and transparent as possible and that they keep comprehensive records of their activities. In this regard, agencies should avoid an unhealthy resort to secrecy for its own sake.

For example, agencies should avoid entering into blanket confidentiality requirements or obligations without thought to what secrecy is actually required for the proper working of government and what information actually needs to be kept confidential. Such blanket provisions often demonstrate a desire to avoid proper scrutiny and a disregard for the public interest.

Agencies are also required to prevent the unauthorised disclosure of personal or otherwise sensitive information, and to protect official information to insure its integrity. Good public administration requires that a proper balance be drawn between these two competing interests.

## Accountability systems

Internally, accountability is primarily achieved through having policies, practices and records that can be scrutinised by others. Agencies should have appropriate internal governance structures, systems and practices in place to ensure that:

- staff are held properly responsible and accountable for their conduct, performance and use of public resources
- compliance with applicable procedures and practices is effectively recorded and monitored
- activities are carried out in ways which are legal, fair, reasonable and professional.

Public officials must make and keep full and accurate records of their official activities. Good record keeping assists in improving accountability and provides for transparent decision-making. Records are maintained as evidence of business activities and transactions. This evidence, which comprises the corporate memory of the agency and its narrative history:

- enables the agency and its staff to meet legislative and regulatory requirements
- protects the interests of the agency and the rights of staff and members of the public
- supports better performance of business activities throughout the agency by documenting organisational activities, development achievements and facilitating consistency, continuity and productivity in management and administration
- provides protection and support in litigation, including the better management of risks associated with the existence or lack of evidence of agency activity
- supports research and development activities.

Externally, there are a number of systems which are designed to ensure NSW state and local governments are kept accountable. These include oversight by parliamentary committees, powers of houses of Parliament to call for documents, statutory annual reporting requirements and accountability to the Auditor General, the Ombudsman, the Independent Commission Against Corruption and Commissions of inquiry into specific issues.

<sup>1</sup> Administrative Review Council, *Contracting Out of Government Services* (ARC Report No 42, 1998) 5, quoting Industry Commission, *Competitive Tendering and Contracting by Public Sector Agencies* (Report No 48, 1996) 4–5.

<sup>2</sup> Corbett, D [1992] *Australian Public Sector Management*, Allen and Unwin, Sydney.

## Access to information

Information is held by government agencies (both State and local) on behalf of the people of NSW. They have a right to know what has been or is being done or contemplated by government, unless there are good and lawful reasons for access to be restricted.

The main mechanism in NSW to enable members of the public to obtain access to information held by government is established under the *Freedom of Information Act 1989*. The purposes of the Act include enabling members of the public to effectively participate in the development and implementation of laws and public policy, promoting accountability and promoting good government. To achieve its purposes, the Act gives the public a legally enforceable right to be given access to an agency's documents in some circumstances.

However, ideally the FOI mechanism should be used as a last resort only. The Ombudsman supports an active approach by agencies to the disclosure of official information which includes:

- **proactive disclosure** – the voluntary publication of useful information
- **informal disclosure** – the automatic release of information on request
- **formal disclosure** – release in response to an FOI application
- **FOI reporting** – the publication of summaries of affairs, statements of affairs and FOI information in annual reports.

Given the importance of transparency to the accountability of government, the objects clause of the FOI Act contains a provision that is unique in NSW legislation:

*It is the intention of Parliament:*

- (a) *that this Act shall be interpreted and applied so as to further the objects of this Act, and*
- (b) *that the discretions conferred by this Act shall be exercised, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information. (s.5(3)).*

This issue was also addressed by His Honour Justice Kirby, the former President of the NSW Court of Appeal, in *The Commissioner of Police v The District Court of NSW and Peron* (1993) 31 NSW LR606, where he stated that:

*I tend to favour the view that the Act ... must be approached by decision-makers with a general attitude favourable to the provision of the access claimed. It is important that decision-makers ... should not allow their approaches to be influenced by the conventions of secrecy and anonymity which permeated public administration in the country before the enactment of the Act ...*

Given the clear objects of the FOI Act and the fact that none of the exemption provisions in the Act is mandatory, FOI decision-makers should have proper and compelling reasons for any decision to rely on an exemption clause to refuse access to documents. In assessing FOI applications, FOI decision-makers should ask themselves: '*Is there any good and proper reason in the public interest why these documents should not be released?*' In making this assessment, it is not appropriate for FOI decision-makers to be influenced by a desire to protect their agency, Minister or the government from public scrutiny or the embarrassment that could flow from disclosing certain information.

## Further information

For further information see:

- *Good Conduct and Administrative Practice*, NSW Ombudsman, August 2003
- *The Ombudsman's FOI Policies & Procedures* (2nd edition), NSW Ombudsman, July 1997, chapter 4.

## Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

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