

Supplementary submission to the *Government Information (Public Access) Act 2009* Statutory Review

FACS Legal has reviewed our original submission and the following is an updated summary of the issues/suggestions we would like DoJ to consider in the review of the GIPA Act. Please refer to the submission for a fuller explanation of the issues.

- In view of the administrative changes to NSW public sector departments, there should be a review of the list of agencies declared to be part of other agencies in Sch 3 of the Regulation. In relation to FACS, the list should be amended to:
 - o add Multicultural NSW which is an agency that now comes under the FACS cluster
 - o remove Home Care Service of NSW (which is defunct and is in the process of being dissolved)
 - o amend the reference to the Disability Council, which is now established under the Disability Inclusion Act 2014
- Amend s 41 to expressly require an applicant to provide proof of their identity when making an access application for personal information
- Extend the timeframes for processing and responding to access applications, for particularly complex matters (see p 4-5 of the submission). In large cluster agencies, it can be difficult and time-consuming to locate the right area within the cluster which holds the relevant information. Third party consultations can also take time, particularly where the information is held by a contractor. FACS notes that processing times in other jurisdictions (eg Victoria, Cth, ACT, South Australia) are longer than those that apply in NSW.
- Review the operation of the Act in light of the increasing trend towards contracting funded service providers to deliver services on behalf of government. FACS, for example, has contracted and funded non-government agencies to deliver out-home care services, home care services and from 1 July 2016, most if not all disability services will be provided by non-government agencies.

The GIPA Act needs to be reviewed in light of such significant changes to the service delivery model, and as the Privacy Commissioner has suggested, consider whether non-government service delivery agencies should be captured within the legislative framework in their own right, and not merely under contractual arrangements.

From a practical perspective, some of the legislative issues that FACS has grappled with are:

- o Whether the definition of 'government contract' in Sch 4 cl 1(b) "a contract under which a party agrees to provide specific goods or services (such as information technology services), other than a contract of employment" covers only contracts that FACS enters into with third parties for services to FACS itself (to enable it to perform its own functions eg a contract with an external legal practitioner to provide legal services to FACS), or whether it also covers funding agreements that FACS enters into with other non-government entities to deliver services on its behalf to the public
- o the definition of government contract has implications for FACS' compliance with s 121
- o As "government information" that is the subject of the access application is often now held by the contracted non-government agency, this has implications for complying with processing timeframes, third party consultations and reviews. For example, it takes longer to process an access request where FACS has to first obtain the information from the contractor.
- o Are funding agreements reportable as contracts under Pt 2 Div 5, even though agencies have to report them in their annual reports under the Annual Reports (Departments) Regulation 2015 ? FACS submits that this is unnecessary duplication. A clearer definition of "government contract" would assist FACS and other agencies to comply with s 27. Consideration should also be given to whether the \$150,000 needs to be revised upwards.
- FACS submits that internal reviews of child deaths undertaken by FACS should be classified as excluded information of the agency in the same way as reviews undertaken by the Child Death Review Team (see Sch 2) and, as such, the conclusive presumption against disclosure on public interest grounds should apply to it (Sch 1) just as it does to other information that is classed as excluded information of an agency.

FACS does publish some (de-identified, and high level) information about children known to FACS who have died - including their characteristics, the circumstances of death and how FACS responded to families before and after their death - in the Child Deaths Annual Report at the end of each calendar year. This information is open access information, and available on the FACS website.

- consider extending the conclusive presumption of overriding public interest against disclosure to information prepared for industrial relations negotiations
- Regarding reviews, FACS submits that:
 - o A formal right of review is unnecessary where the grounds are of a routine administrative nature, eg a decision to transfer the application to another agency, or a decision that the information is already publicly available. Objections to such decisions can be handled by way of complaint rather than via review processes.

- o Allow timeframes for processing reviews to be extended where additional material needs to be located, or further consultation is required
- o internal agency reviews should be conducted before a matter proceeds to the Information Privacy Commissioner for external review, and this would require an amendment to s 89
- FACS submits that consideration be given to reverting to the previous name of the legislation, ie freedom of information legislation, as that is essentially how the public best understands this type of legislation
- A manual to assist and guide right to information officers would be welcome.

Please feel free to call or email if you wish to discuss further

Kind regards

A/Manager, Policy (Practice and Procedure), Legislative Reform and Right to Information

Department of Family and Community Services | FACS Legal