

# Strengthening **trust** in Government ... everyone's right to know



Review of the *Freedom of Information Act 1991*

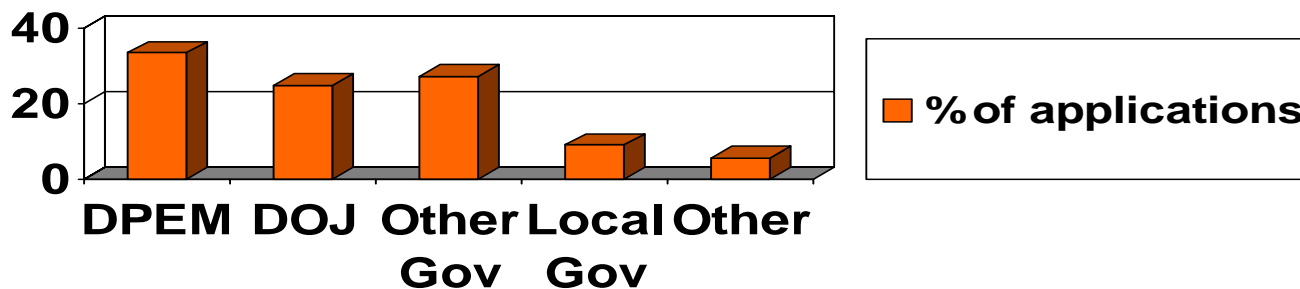
Dale Webster  
Department of Justice  
EDO Conference - 6 April 2009

# Review process

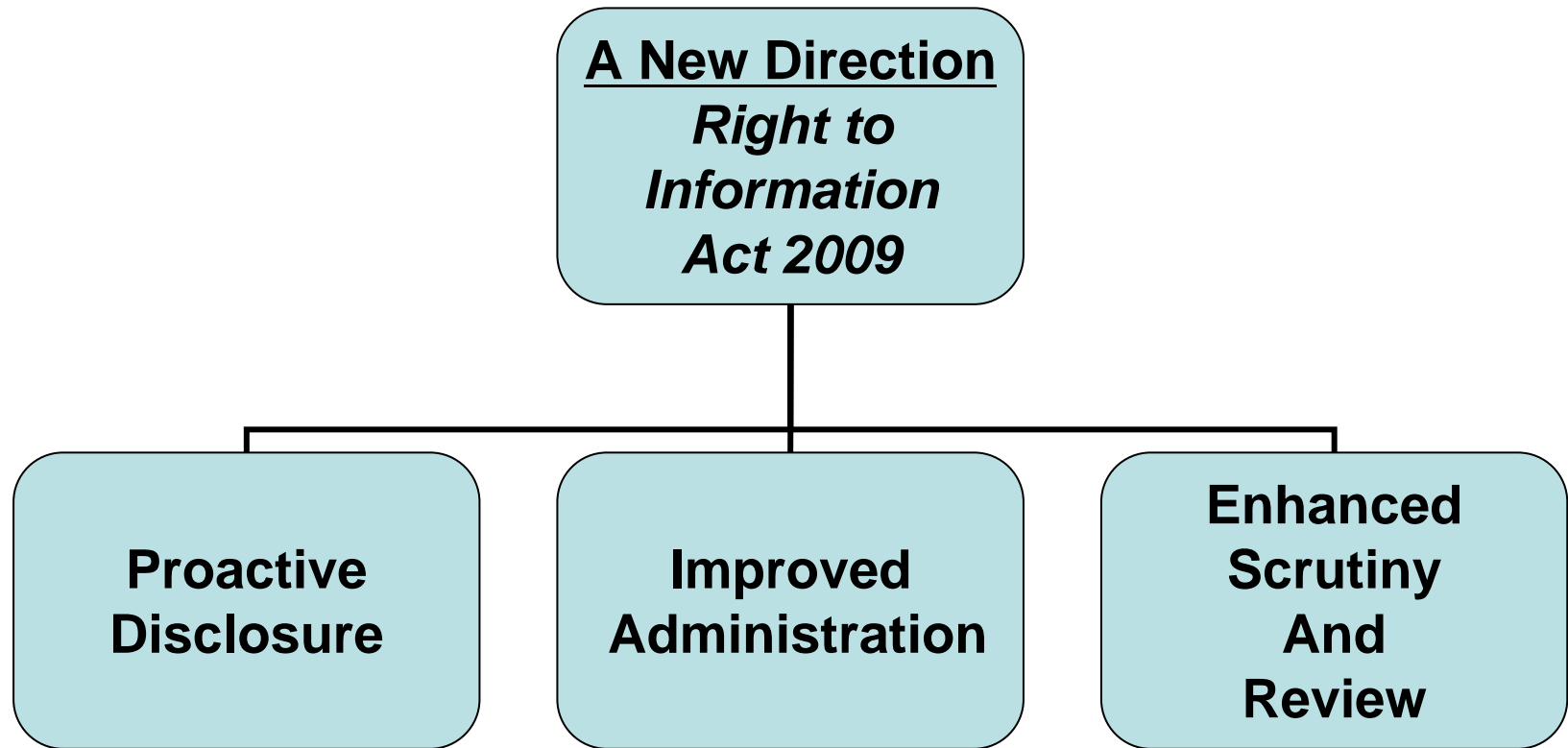
- The Government accepts there is a need for change and it will do that through a Bill for a new Act in the spring session (one of ten trust in democracy initiatives)
- Review team has made 44 recommendations
- Government wants to hear from the community about what they think about those recommendations (submissions invited until 8 May 2009)
- **Government will then make decisions** about the changes it will implement, based on the feedback

# Looking Back - Briefly

- **1786 Applications in 2006/07**
- **More than half of these made to just two public bodies**
- **Majority of the 98 public bodies received very few (over 40 rec'd nil)**
- **More than 86% result in disclosure**
- **Less than 5% result in external review**
- **Protection of Privacy most used reason for nondisclosure (30%)**



# Right to Know: key elements



# The Cornerstones to Pushing Out Information

Make Information available:

- **As Required**
- **Routinely**
- **By Active Response**
- **And as a last resort through **Assessed** disclosure**



# The Public Interest

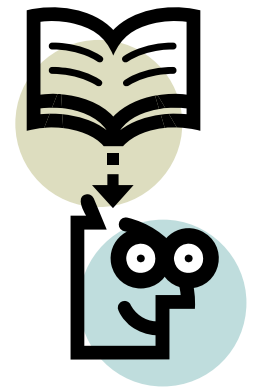
- Disclosure of information unless its disclosure, on balance, would be contrary to the public interest.
- Specify the Factors to be applied when assessing this test.....



# Eleven(+) Public Interest Factors

For example consider:

- The general public need for access
- The need to inform about the reasons for decisions
- The need to inform the public about the rules and practices of government
- Would it promote or hinder equity
- Would it promote or harm safety



# NOT Public Interest Factors



- The seniority of the person creating the information
- Disclosure might confuse the public
- Disclosure would cause loss of confidence in government
- Disclosure may result in a person misunderstanding the information

# Some information should be protected by its nature:

- Executive Council and Cabinet
- State Security
- Law Enforcement
- Legal Professional Privilege
- Information not related to official business of a minister

# Other Information

- Apply the public interest test...plus
  - Third party information – consult if substantial concern
  - Information from other State or provided in confidence – assess effect on future collection
  - Business affairs – prove ‘competitive disadvantage’



# Request v Application

- Information on request – phone call, email, letter, visit, library, special media, Google, Tasmania online, websites.....
- If not available on request then may need to make application for an assessed disclosure of information.....

# Assessed Disclosure

## **Step one:**

- Is it clear what the person wants?

## **Step two:**

- Is the information available already?

## **Step three:**

- Is the information something that should be actively disclose?

# Assessed Disclosure

## Step four:

- Is it exempt by nature?
- Is it in the Public Interest to release anyway?

## Step five:

- Is the information such that it would be contrary to the public interest to disclose?

# Enhanced Role for Ombudsman

- Guidelines and advice
- Professional development
- Publish decisions
- Reporting
- Extending time
- Referral to Supreme Court on point of law
- Onus of proof of exemption on public body
- Reviewing decisions
- Refusing Reviews
- Make same decisions as original decision maker

# Other Recommendations

- Fee free area, maximum fee retained, application fee
- Prescribe info to be given to applicant and to be provided to the public body in application
- Negotiation period to refine application
- Reduced period to consult third parties
- Non compulsory internal review
- Accredited decision makers and nominated responsible officers in each public body
- Refusal if repeat application or vexatious
- Offence to interfere with decision maker or deliberately 'hide' info.
- Full paper: [www.justice.tas.gov.au](http://www.justice.tas.gov.au)

# Right to Know

*United States President Barack Obama:*

**“A democracy requires accountability  
and accountability requires  
transparency.”**

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*United States Justice Louis Brandels:*

**“sunlight is said to be the best of  
disinfectants”**