

CHAPTER 22

PUBLICITY

22.1 The sections 8 and 9 publication requirements were revised by the 1986 amendments to the FOI Act. Most submissions on this reference had been received before the 1986 amendments were proposed, and consequently did not address the revised sections 8 and 9 publication requirements.

Section 8 material

22.2 The 1986 amendments did not affect the scope of the material required to be published by section 8 concerning functions and documents of agencies. The 1986 amendment to section 8 altered only the method of publication.

22.3 The Committee endorses the 1986 amendment which introduced the requirement that section 8 material be included in agencies' annual reports, or, in the case of agencies which do not issue annual reports, in the annual reports issued by the parent departments. The Committee notes that the IDC Report contains an extensive discussion of the savings in costs which will flow from this method of publication.¹

22.4 The Committee does not regard incorporation of section 8 material into annual reports as being inferior to independent publication.² The Committee recognises that, in whatever form this material is published, there is unlikely to be hard evidence that the benefits of publication outweigh the costs. This is true of much of the information published by government.

1. IDC Report, Attachment B.

2. But contra: submission from Mr Paul Chadwick, p. 1.

22.5 The quantities of annual reports printed for sale and free distribution vary as between agencies. As a broad generalisation, the quantity for free distribution is considerably larger and the quantity for sale smaller than the corresponding copies of the section 8 statements as part of the Commonwealth Government Directory. While the pattern of distribution may vary, the Committee does not consider that, in general, agency annual reports are any less widely available than are the parts of the Directory.

22.6 The section 8 statements in the Commonwealth Government Directory were published on a portfolio basis, not agency by agency. Most agencies of any significant size or consequence issue annual reports. One beneficial effect of the 1986 amendment to section 8 is to reduce the occasions on which people seeking information about agencies need to discover the identity of the umbrella department.

22.7 Incorporating the section 8 material may alter the emphasis in annual reports in that the reporting of annual statistics and events affecting agencies during the year may be balanced by the presence of increased material about the structure of the agencies.³ The Committee considers that this may be desirable, provided the quality and quantity of information about annual statistics and the like is not reduced.⁴

 3. The Committee is aware that concern has been expressed by the Joint Committee on Publications on the increasing size of annual reports in its Review of the Cost and Distribution of the Parliamentary Paper Series (1986) pp. 10-15. But the concern is directed at inclusion of promotional material, rather than section 8 type material.

4. The Committee notes Recommendation No. 6 in Report No. 262 of the Joint Committee on Public Accounts, Guidelines for Annual Reports, (1986) and the recommendation of Joint Committee on Publications on p. 14 of its report, Review of the Cost and Distribution of the Parliamentary Paper Series (1986) that Government guidelines on the content and production of annual reports contain reference to the requirements of FOI Act, s.8.

Section 9 material

22.8 Section 9 requires each agency to make available two categories of material. The first comprises the pre-existing documents which make up the 'internal law' which each agency applies in its decision-making. This includes the manuals, guidelines, precedents, administration and enforcement procedures, etc. by which the agency administers legislation, and which are not otherwise published. The second category is a statement or index indicating where copies of the first category of documents may be inspected or purchased. Each agency is required to create a statement or index and keep it up to date.

22.9 The Inter-Departmental Committee Report noted that:

Some agencies have found that the s.9 requirement has great advantages for the efficiency of their internal management and has generally improved their administration. The production of an index along the lines of that required by s.9 is now viewed as good administration, although other formats may be preferred. Similar indexes may be maintained by some agencies even if the FOI s.9 requirement were abolished.⁵

22.10 The Committee does not consider that the costs of preparing and updating section 9 statements should be large.⁶ Most of the material in these statements is already on in-house

5. IDC Report, p. B5.

6. The Inter-Departmental Committee estimated the 1984-85 salary and overhead costs of preparing and publishing section 9 indices was about \$1m. (p. B3) No estimate was made of other costs involved. However, even apart from this omission, the Committee is not convinced that this is an accurate indication of the true on-going staff costs of publishing section 9 indices. The estimate derives from a sample survey of selected agencies and relies upon 1984-85 figures. Of the 25 agencies responding, one (Department of Social Security) accounted for 11 staff-years out of the total of 22.75 reported (p. A10). The next highest totals reported were 4.30 staff-years (Tax) and 4.16 (Territories). These seem high when compared to the totals for other departments such as Employment and Industrial Relations (0.72, fourth highest), Veterans Affairs (0.46), Aviation (0.40), Industry, Technology and Commerce (0.25) and Attorney-General's (0.06).

computer systems and is (or should be) automatically amended as relevant files are created or closed. Even where the statements are very detailed (as is the case with the Department of Social Security and the Australian Taxation Office), the cost of preparation should be small. As files are opened, or manuals created etc., it is necessary only to flag them on the agency computer index of files as files which should be identified for section 9 purposes. A list of flagged items may then readily be printed with little difficulty. Once the filing system has been established along such lines the annual costs of generating section 9 statements should be minimal.

22.11 Accepting this as the case, the Committee is of the view that section 9 statements should continue to be produced and kept up to date.

22.12 The 1986 amendment to sub-section 9(2) removed the requirement of publication in the Gazette, and replaced it with a requirement that these statements or indices made available for inspection and purchase at each Information Access Office. (See above on these Offices).

22.13 The Committee endorses this amendment, subject to the earlier noted reservations about the value of the Information Access Offices. Equally, the Committee would not object to a system in which statements were made available at agency offices upon request. Submissions from agencies generally supported this system,⁷ and a similar system applies under the Victorian Freedom of Information Act.⁸

Other proposed publication requirements

22.14 The Committee received few suggestions for the mandatory

7. E.g. submission from the Department of Arts, Heritage & Environment p. 6.

8. See also the IDC Report, p. B11.

publication of additional categories of information. The Victorian Freedom of Information Act, section 10, requires the publication of a register of Cabinet decisions containing details about each decision, its reference number and the date on which it was made. 'The Age' recommended that a similar register should be published by the Federal Government, but without any provision for discretion to omit particular decisions.⁹

22.15 The Committee does not support any proposal for the establishment of a public register of Cabinet decisions. If there were to be such a register established, it would be essential to incorporate into the register a mechanism by which to omit references to sensitive decisions (for example, on impending tax rate changes). A partial register might convey a misleading impression of Cabinet activity.

22.16 Another suggestion¹⁰ also drew upon the Victorian Freedom of Information Act - publication of detailed lists of the types of documents which are required to be included in the indices which agencies are required to publish.¹¹ The Committee does not support this proposal. In the Committee's view, it is sufficient that, upon request, such material may be made available under the FOI Act.

22.17 One user suggested that, 'in the spirit of openness which the Act represents', a public register should be established to record the details of all freedom of information

9. Submission from 'The Age', p. 12 (Evidence, p. 197). The recommendation draws upon the views of the minority report of the Coombs Royal Commission into Australian Government Administration of 1976, although that report recommended that the Prime Minister should have a discretion whether to enter details of a decision in the register. [RCAGA, Appendix, vol 2, p. 17].

10. Submission from 'The Age' p. 11; (Evidence, p. 196); submission from the Law Institute of Victoria, p. 7 (Evidence, p. 380).

11. E.g. reports by inter-departmental committees, committees and sub-units within agencies, and experts of various kinds, whether agency staff or outsiders. The range of experts includes management, scientific, technical, environmental and valuation experts. This would exclude pre-decisional documents and internal working documents.

access requests including name of requesters, dates of requests, and brief descriptions of documents to which access was sought.¹² The Political Reference Service Ltd suggested that the public availability of this data

would provide readily accessible information about the use of FOI procedures. It might also allay to some extent continuing concerns, for example in the business community about the possibility of error or oversight in the administration of the reverse FOI procedures.¹³

22.18 A public register of this type would raise significant privacy issues. Questions have been raised in Parliament, but not resolved, on whether it is proper for Ministers to reveal details about FOI requests made by private citizens (including the requester's identity) to the Parliament.¹⁴

22.19 A public register of freedom of information requesters may assist agencies to co-ordinate their responses where a requester makes essentially similar access requests to a number of agencies. But this is speculative, and agencies did not suggest or support the idea of a public register in the evidence to the Committee.

22.20 The Committee does not support the suggestion of a public register of freedom of information access requests. In particular, the Committee is concerned about the possibility of invasions of privacy and the uncertainty as to any benefits which might flow from the establishment of the register.

12. Apparently some agencies maintain and (internally) circulate this information informally. Submission from the Political Reference Service Ltd, p. 11 (Evidence, p. 961).

13. Submission from the Political Reference Service Ltd, p. 11 (Evidence, p. 961).

14. House of Representatives, Hansard, 28 February 1985, pp. 385 (N.A. Brown) and 447 (Speaker). See also the submission from the Business Council of Australia, p. 6 (Evidence, p. 776). (Opposed the disclosure of the identities of businesses opposing access in the reverse-FOI context).

FOI Handbook and other publicity measures

22.21 It is not certain how far publicity about the FOI Act has penetrated.¹⁵ A sample survey, reported in the Attorney-General's FOI Annual Report 1983-84, pp. 106-7, found that only 38% of interviewees had heard of the FOI Act. More recent data is not available. It was suggested to the Committee that further efforts to publicise FOI are desirable.¹⁶

22.22 The Committee recognises that more can always be done to publicise a government program: even highly expensive publicity which aims to saturate will not reach all its intended audience. However, the Committee considers that adequate steps have been taken to publicise the FOI Act.

22.23 The Committee does not envisage any major publicity campaign on freedom of information. But the Committee is concerned lest the Government direction against further publicity should inhibit minor but useful publicity measures either by the Government as a whole or by individual agencies.

22.24 The Committee does not think that there is sufficient justification for producing an FOI Handbook. Non-government publishers have supplied many of the needs intended to be met by

 15. Submission from the Attorney-General's Department, p. 7 (Evidence, p. 12). For an example of the types of publicity, see *ibid.*, pp. 69-70 (Evidence, pp. 74-75); FOI Annual Report 1984-85, pp. 108-110. In 1985, a page of information on freedom of information was added to the Community Information pages of telephone directories. In addition, a number of individuals and non-governmental organisations have provided publicity about freedom of information.

16. E.g. Evidence, p. 444 (Confederation of Australian Industry); submissions from the Australian Pensioners' Association, p. 4; the Library Association of Australia, p. 10.

the Handbook. The Committee notes that, according to the 1986-87 FOI Annual Report, the Attorney-General's Department plans to produce a revised edition of the Freedom of Information 'Guidelines' book as resources permit.¹⁷

Nick Bolkus
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17. FOI Annual Report 1986-87, p. 49. The individual guidelines are aimed more towards agencies than they are to the general public. Since the book was published in 1982, updates and new guidelines have become available in loose-leaf form.