

**OFFICE OF THE INFORMATION  
COMMISSIONER (W.A.)**

**File Ref: F2023056**

**Decision Ref: D0162024**

Participants:

**Local Government Elected Members'  
Association Inc**

Complainant

- and -

**Western Australian Local  
Government Association**

Respondent

## **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION – refusal of access – right of access to the documents of an ‘agency’ – meaning of ‘agency’ – meaning of ‘public body or office’ – whether respondent is a ‘public body or office’

*Freedom of Information Act 1992 (WA)*: sections 3 and 10; Glossary

*Corporations (Western Australia) Act 1990 (WA)*

*Court Security and Custodial Services Act 1999 (WA)*

*Fluoridation of Public Water Supplies Act 1966 (WA)*

*Freedom of Information Act 1992 (Qld)*

*Interpretation Act 1984 (WA)*

*Local Government Act 1995 (WA)*

*Planning and Development Act 2005 (WA)*

*Prisons Act 1981 (WA)*

*State Records Act 2000 (WA)*

*Channel 31 Community Educational Television Ltd v Inglis* [2001] WASCA 405

*Local Government Association of Queensland Inc v Information Commissioner & Anor* [2001] QSC 52

*Re Brennan and the Law Society of the Australian Capital Territory* [1985] AATA 163 (5 July 1985)

*Renmark Hotel Inc v Federal Commissioner of Taxation* (1949) 79 CLR 11

*Western Australian Turf Club v Federal Commissioner of Taxation* (1978) 19 ALR 167

## DECISION

The respondent's decision to refuse the complainant access to the requested documents is set aside. In substitution, I find that the respondent is not an agency as defined in the Glossary to the *Freedom of Information Act 1992 (WA)* and, as a result, the complainant has no right of access to the requested documents under the *Freedom of Information Act 1992 (WA)*.

Catherine Fletcher

INFORMATION COMMISSIONER

20 December 2024

## REASONS FOR DECISION

1. This application for external review arises from a decision made by the Western Australian Local Government Association (**WALGA**) to refuse the Local Government Elected Members' Association Inc (**the complainant**) access to documents under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**).

### BACKGROUND

2. In December 2022, the complainant wrote to WALGA requesting certain information about its nominations to State government committees, panels and other organizations. The information to which the complainant sought access included a list of bodies to which WALGA makes nominations; the names of current WALGA nominees and their remuneration; and a copy of certain related minutes. WALGA provided a substantive response, outlining the nomination and selection process. WALGA otherwise advised that it was unable to provide the requested information and documents for the reasons given to the complainant.
3. On 7 January 2023, the complainant sought to make an 'FOI request' to WALGA in the following terms:

Thank you for your prompt response on 23 December 2022 to our request for information about WALGA nomination and selection of committee members sent to you 15 December 2022.

We regret that your response does not respond to our information requests, as copied below.

I now make that request formally pursuant to the FOI Act s.12 as follows:  
I write to request information about WALGA nominations to State government committees, panels and other organisations to which WALGA makes nominations for membership as follows:

1. Can you please provide a list of bodies to which WALGA makes nominations?
2. Can you please advise us of the names of current WALGA nominees who sit on such bodies and the remuneration they receive from those appointments?
3. Can you please provide the minutes for the last 24 months of the WALGA committee responsible for deciding which persons are nominated, redacted as permitted under the FOI Act?<sup>1</sup>

Please advise me about how to pay the \$30 FOI fee, at your earliest convenience.

4. Of most relevance to the access provisions of the FOI Act and to this office is the part of the request seeking access to specifically described documents (**requested documents**).

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<sup>1</sup> The numbering in the list has been added by my office for ease of reference.

5. By letter dated 2 February 2023, WALGA gave to the complainant a copy of documents addressing items one and two in the list above. However, with respect to item three, WALGA advised:

As per [clause] 3 of Schedule 1 of the Freedom of Information Act 1992, minutes of the committee are exempt as they contain personal information.

6. Although WALGA referred to a specific provision of the FOI Act as grounds for its decision not to give access to certain documents, WALGA did not specifically state whether it accepted, or did not accept, that it is an agency subject to the FOI Act.
7. On 15 February 2023, the complainant wrote to my office requesting external review of WALGA's decision.

### **REVIEW BY THE INFORMATION COMMISSIONER**

8. By letter dated 21 March 2023, I wrote to WALGA:
  - a. stating that I had received an application for external review in this matter but was yet to formally decide whether to deal with the application as a complaint under section 65 of the FOI Act against a decision of WALGA;
  - b. stating that, based on the information then before me, I was inclined to proceed on the basis that the complainant had made an access application under the FOI Act and that WALGA has made a decision under the FOI Act to refuse access to the requested documents;
  - c. requesting information from WALGA as to whether it accepts or disputes that it is an agency under the FOI Act; and
  - d. requesting, in the event that WALGA disputed that it is an agency under the FOI Act, that WALGA provide me with written submissions in support of that position.
9. By letter dated 18 April 2023, WALGA stated that it 'wish[ed] to advise that WALGA accepts that it is a 'public body' and therefore subject to the application of the FOI Act.' WALGA did not provide any substantive submissions in support of its position, including in relation to several specific issues on which I invited its submissions.
10. By letter dated 22 November 2023, I advised the parties that, following receipt of WALGA's 18 April 2023 letter, I had given careful consideration to whether I should, in the circumstances, proceed on the basis that WALGA is an agency under the FOI Act and that I have jurisdiction to deal with the application for external review. I summarised the conclusions of some relevant preliminary research carried out by my legal staff and stated that, notwithstanding WALGA's apparent acceptance that it is an agency under the FOI Act, I was not persuaded that there was sufficient information before me to proceed on the basis that WALGA is an agency under the FOI Act and that I have jurisdiction to deal with this application for external review.
11. I advised the parties that, in the circumstances, I considered it necessary to make a formal determination as to whether or not WALGA is an agency under the FOI Act,

following a proper consideration of all the material before me, including further submissions from the parties.

12. WALGA did not provide any substantive submissions in response to my 22 November 2023 letter. Instead, by letter dated 16 January 2024, WALGA advised me that

[f]ollowing a review of your letters, I wish to advise that WALGA does not hold a firm view on the issue of whether or not WALGA is an agency, as defined in the Glossary to the Freedom of Information Act 1992 (WA) (FOI Act), and therefore subject to the application of the FOI Act.

WALGA will respect the Commissioner's decision about the matter.

13. On 15 December 2023, the complainant provided detailed written submissions to my office in support of its claim that WALGA is an agency under the FOI Act **(the complainant's submissions)**.

### **IS WALGA AN 'AGENCY' FOR THE PURPOSES OF THE FOI ACT?**

14. The question for my determination is whether WALGA is an 'agency' as defined in the Glossary to the FOI Act.
15. The complainant submits that WALGA is an agency. As noted above, WALGA's position is that it does not hold a firm view on the matter and will abide my decision as to whether or not it is an agency. I consider that for me to exercise my statutory powers and functions, I must be satisfied that the entity in question is, in fact, an agency for the purposes of the FOI Act.
16. Section 3(1) of the FOI Act states:
- The objects of this Act are to —
- (a) enable the public to participate more effectively in governing the State; and
  - (b) make the persons and bodies that are responsible for State and local government more accountable to the public.
17. Section 10 of the FOI Act creates a right for a person to be given access to the documents of an agency (other than an exempt agency) subject to and in accordance with the FOI Act.
18. If WALGA is not an agency within the meaning of the FOI Act, then the FOI Act does not apply and the complainant has no right of access to the requested documents under the FOI Act.
19. The term 'agency' is defined in the Glossary to the FOI Act to mean:
- (a) a Minister; or
  - (b) a public body or office.
20. The Glossary further defines 'public body or office' to mean:

- (a) a department of the Public Service;
  - (b) an organization specified in column 2 of Schedule 2 to the *Public Sector Management Act 1994*;
  - (c) the Police Force of Western Australia;
  - (d) a local government or a regional local government;
  - (e) a body or office that is established for a public purpose under a written law;
  - (f) a body or office that is established by the Governor or a Minister;
  - (g) any other body or office that is declared by the regulations to be a public body or office being –
    - (i) a body or office established under a written law; or
    - (ii) a corporation or association over which control can be exercised by the State, a Minister, a body referred to in paragraph (a), (b), (e), (f) or (g)(i), or the holder of an office referred to in paragraph (f) or (g)(i); or
  - (h) a contractor or subcontractor.
21. ‘Written law’ is defined in section 5 of the *Interpretation Act 1984* (WA) (**Interpretation Act**) to mean, ‘all Acts for the time being in force and all subsidiary legislation for the time being in force.’
22. The definitions of the terms ‘contractor’ and ‘subcontractor’ in the Glossary to the FOI Act make it clear that it is only persons who provide services within the prison system under the *Court Security and Custodial Services Act 1999* (WA) and the *Prisons Act 1981* (WA) who are covered by paragraph (h) above.
23. To be an ‘agency’ for the purposes of the FOI Act, WALGA must come within one of the categories in paragraphs (a)–(h) of the definition of ‘public body or office’ in the Glossary to the FOI Act. In my view, in the circumstances of this matter, the only category which could apply is paragraph (e) of that definition (**paragraph (e)**).

### **The complainant’s submissions**

24. The complainant provided a 24-page written submission to this office in support of its contention that WALGA is an agency for the purposes of the FOI Act.
25. I have examined all of the complainant’s submissions and consider that not all are relevant to the matter for my determination. I have summarised the complainant’s relevant submissions below:
- a. *Channel 31 Community Educational Television Ltd v Inglis* [2001] WASCA 405 (**Inglis**) is not binding on my office. Alternatively, *Inglis* stands only for the proposition that Channel 31 is not an agency.

- b. *Local Government Association of Queensland Inc v Information Commissioner & Anor* [2001] QSC 52 (**Price**) is binding on my office. Alternatively, it is highly persuasive.
- c. In any case, WALGA has exceptional powers of the type required by the Supreme Court of Western Australia in *Inglis* for an entity to be considered an ‘agency’, conferred by the statute under which it is established, namely:
- i. WALGA may of its own motion make representations and submissions to the Minister on any matter or thing relating to or affecting its members (sec 9.58(6)(a) *Local Government Act 1995* (WA) (**LG Act**));
  - ii. WALGA may with the approval of the affected members, arrange contracts of insurance on behalf of all or any of its members for any purpose (sec 9.58(6)(b) *LG Act*);
  - iii. Long service benefits for employees of WALGA are to be provided in accordance with regulations (sec 5.48(2) *LG Act*);
  - iv. WALGA is to establish and manage, for the benefit of itself and any eligible body that chooses to participate, a group self-insurance arrangement against liability to pay compensation under the *Workers' Compensation and Injury Management Act 1981* (WA) (sec 5.49(2) *LG Act*);
- d. WALGA is established under the *LG Act* with the objects and functions set out in its constitution (sec 9.58(3) *LG Act*). The objects in the WALGA constitution are clearly for public purposes.
- e. ‘WALGA’s influence and voice in the WA system of local government is wide ranging and pervasive’. This includes WALGA’s representation of the local government sector on various committees and working groups, 35 of which are listed in the complainant’s submissions.<sup>2</sup>
- f. WALGA is considered a government organization for the purposes of the *State Records Act 2000* (**SR Act**). The complainant submits:

[T]he fact that the [State Records Office] has recognised WALGA as a body established for a public purpose overcomes any common law precedent that holds otherwise.

In the alternative ... the [SR Act] subsidiary legislation being the Standard is highly persuasive in deciding WALGA is an agency for the purpose of the FOI Act WA

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<sup>2</sup> The complainant stated on page 5 of their submissions that the State Government is required to consult WALGA in relation to planning policy pursuant to section 28(1)(b) of the *Planning and Development Act 2005* (WA). That provision, however, does not exist in the current version of that Act and although ‘WALGA’ is defined in that Act, it is not otherwise referred to in that piece of legislation. See [Planning and Development Act 2005 - \[04-ab0-00\].pdf](#)

- g. Section 18 of the Interpretation Act requires that in the interpretation of a written law, a construction that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to a construction that would not promote that purpose or object. The complainant submits:

[I]n the interpretation of the provisions of the FOI Act WA, a construction that WALGA is a body which is part of a system of local government serving a public purpose whose public affairs relating to local government should be open to public scrutiny, would promote the FOI Act WA's remedial purpose, even if that remedial purpose is not expressly stated in the FOI Act WA. Accordingly, WALGA being interpreted to be an agency for the purpose of the FOI Act WA must be preferred to a construction that would not promote that remedial purpose.

### **WALGA's submissions**

26. As noted above, WALGA declined my request to provide submissions in relation to its status as an agency under the FOI Act and stated it would abide my determination as to whether or not it is an agency for the purposes of the FOI Act.

### **Consideration**

27. Guidance to the interpretation of the definition of a 'body or office that is established for a public purpose under a written law' in paragraph (e) is contained in *Inglis*, in which Hasluck J stated:

[I]t is not simply a question of whether there is a written law... which enables the body to function. The crucial question is whether the establishment of the body and the public purpose for which it exists is explicitly referable to and carried into effect by or pursuant to a written law.<sup>3</sup>

28. In that case, the body under consideration, Channel 31, was a company limited by guarantee and registered under the *Corporations (Western Australia) Act 1990* (WA). It had been issued a licence relating to community broadcasting under the *Broadcasting Services Act 1992* (Cth). By its memorandum and articles, the objects of Channel 31's establishment were stated to be public educational purposes, not private commercial purposes. Channel 31 established and operated a broad-based community television station with active community participation. Furthermore, benefits flowed to the relevant tertiary institutions associated with Channel 31, those tertiary institutions being themselves established for public purposes. However, none of these characteristics were determined by the enabling legislation. Ultimately, the Supreme Court of Western Australia found that Channel 31 was not a body 'established for a public purpose under a written law'.

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<sup>3</sup> *Inglis* at [43].



29. Hasluck J stated:

It is apparent from s 3, that the objects of the [FOI Act] are to be achieved by creating a general right of access to State and local government documents. The right of access is constituted by s 10 in respect of the documents of an agency...

The provisions of the *Freedom of Information Act* do not suggest that institutions other than governmental agencies are required to provide access to their records, and indeed the contrary is suggested by the way in which the objects of the Act are confined to agencies involved in the process of government. Channel 31 has no **special or regulatory powers conferred upon it by a particular statute or written law** and I am therefore not satisfied that it can be characterized as a body “established for a public purpose under a written law.”<sup>4</sup> [emphasis added]

30. Hasluck J also reviewed the case law and gave consideration to the characteristics of ‘public purposes.’ His Honour stated:

[I]f the powers available to a body by its domestic constitution are no greater than those available to an individual and have not been specially conferred by government, then, consistently with the reasoning in [*Renmark Hotel Inc v Federal Commissioner of Taxation* (1949) 79 CLR 11 (*Renmark*)], this would be a basis for concluding that the body did not have a public purpose. Such a conclusion would be further reinforced if it were apparent that the government or electors played no part in the appointment of the governing committee. The *Renmark* (supra) case shows that this conclusion is not displaced by the fact that the body in question is not a profit making enterprise and confers benefits upon the public.<sup>5</sup>

31. His Honour included the following quote from *Renmark*:

The characteristics of a public authority seem to be that it should carry on some undertaking of a public nature for the benefit of the community or of some section of the community and that it should have some governmental authority to do so... Coercive powers over the individual are given to many governmental authorities which could be called public authorities, but it is not an essential part of a conception of a public authority that it should have coercive powers, whether of an administrative or a legislative character. It may, however, be an essential characteristic of the conception that it should have exceptional powers or authority, for instance a tramway board or trust has the exceptional authority of taking its trams down a public street. A water authority may lay its water mains, a lighting authority may do the like. Some **exceptional powers of doing what an ordinary private individual may not do** are generally found in any body which we would describe as a public authority... [emphasis added]

[The appellant] has no statutory powers enabling it to do what a private individual could not do. The elements upon which the appellant relies for the claim to be a public authority are restrictive, not enabling. They consist of provisions of the law and of documents adopted under the law directed to confine its activities to public purposes.<sup>6</sup>

32. His Honour also considered the objects of the FOI Act in determining whether a body is an agency under the FOI Act and stated at [48]:

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<sup>4</sup> Inglis at [54]f.

<sup>5</sup> Inglis at [30].

<sup>6</sup> Inglis at [25]f, citing Rich J in *Renmark Hotel Inc v Commissioner of Taxation* [1949] HCA 7 at page 18f.

...The central idea reflected in the objects of the [FOI] Act is that persons and bodies responsible for State and local government are to be made more accountable to the public. It is inconsistent with such a notion to hold that an incorporated body such as Channel 31, which does not exercise regulatory powers, or carry into effect governmental decisions, should be regarded as an “agency” within the meaning of the Act.<sup>7</sup>

33. That the public purposes of an entity must be set out in the legislation establishing that entity was an argument advanced by Counsel for Channel 31 in *Inglis*. Hasluck J indicated he was persuaded by those arguments<sup>8</sup> and ultimately held that Channel 31 was not a body established for a public purpose under a written law and therefore not an agency under the FOI Act.
34. Whether or not *Inglis* is binding on my office, respectfully, I agree with Hasluck J’s approach and consider that
  - a. the public purposes for a paragraph (e) public body or office need to be found in the statute establishing the body or office; and
  - b. those public purposes must be able to be characterized as ‘exceptional’, ‘special’ or ‘regulatory’ in nature.
35. In *Price*, the Supreme Court of Queensland considered a question similar to the matter presently before me. In that case, Ronald Price had made an application under the *Freedom of Information Act 1992 (Qld)* (**the Queensland FOI Act**) to the Local Government Association of Queensland (**LGA Queensland**). LGA Queensland asserted it was not subject to the Queensland FOI Act. The Queensland Information Commissioner determined on external review that LGA Queensland is a body established for a public purpose under an enactment; an agency for the purpose of the Queensland FOI Act; and that the Queensland FOI Commissioner had jurisdiction to deal with the application for external review. LGA Queensland appealed the Queensland Information Commissioner’s decision to the Supreme Court of Queensland.
36. In *Price*, Atkinson J was not persuaded it was necessary for the public purpose to be set out in the enactment by which the relevant body is established. Her Honour was satisfied that all members of the LGA Queensland (being local governments and Aboriginal Councils), as opposed to LGA Queensland itself, were established for public purposes and that those purposes were set out in relevant legislation. Her Honour added:

It would seem to be almost inevitable that an association whose only members are bodies established for public purposes would itself be established for a public purpose. The objects set out in [the LGA Queensland] Constitution and Rules confirm that this is so...<sup>9</sup>

37. Her Honour also stated:

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<sup>7</sup> *Inglis* at [48].

<sup>8</sup> *Inglis* at [46].

<sup>9</sup> *Price* at [17].

The Local Government Association was established both by an enactment and for a public purpose. The purpose set out in the rules is incorporated into the enactment by s 799 of the 1993 Act although not set out in the enactment. The association was therefore established for a public purpose by an enactment and is a public authority subject to the *FOI Act*.

This is enough to dispose of the application. In this case, however, even if the applicant were correct in its argument that the body which is established for a public purpose by an enactment must have the public purpose set out in the enactment by which it is established, that criterion is satisfied in this case.

Section 1194, by which the Local Government Association was established, is found in Pt 1 of Ch 18 of the 1993 Act which deals generally with the Local Government Association. Section 1195 sets out how the Local Government Association may make rules. The section provides that while a rule is not subordinate legislation it has effect only if approved by the Governor in Council. If the Governor in Council approves the rule, notice of the approval and of the rule must be published in the Gazette. Section 1196 provides that the Local Government Association may pay amounts towards expenses of litigation for matters of common interest to local governments. The remaining sections in Ch 18 Pt I provide for when payments by local governments are payable to the Local Government Association and the keeping of accounts by the Local Government Association.

These provisions, in particular s 1196, show that the Local Government Association has been established for a public purpose and that public purpose is set out in the enactment. Payment for the conduct of litigation which is for matters of common interest to local government, for example, is clearly a public purpose as local governments are themselves established for the public purpose of local government.<sup>10</sup>

38. *Price* is a decision from a superior Court in another State with similar facts, albeit considering freedom of information legislation in another Australian jurisdiction. I consider it is persuasive but not binding on me.
39. I now turn to the relevant provisions of the LG Act.
40. Section 9.58 of the LG Act states:
  - (1) The Western Australian Local Government Association (“WALGA”) is constituted as a body corporate with perpetual succession and a common seal.
  - (2) Proceedings may be taken by or against WALGA in its corporate name.
  - (3) WALGA has the objects and functions set out in its constitution.
  - (4) Subject to subsection (5), WALGA may, at any time, amend its constitution and, whenever it does, it is to forthwith —
    - (a) give to the Minister; and
    - (b) lodge with the Commissioner as defined in the *Fair Trading Act 2010* section 6, a copy of the amendment to the constitution.

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<sup>10</sup> *Price* at [19]ff.

- (5) WALGA is not to change the objects for which it is constituted without the approval of the Minister.
  - (6) Without limiting the generality of subsection (3), WALGA may —
    - (a) of its own motion, make representations and submissions to the Minister on any matter or thing relating to or affecting its members; and
    - (b) with the approval of the affected members, arrange contracts of insurance on behalf of all or any of its members for any purpose.
  - (7) WALGA may do all things necessary or convenient to be done to enable it to achieve its objects and perform its functions.
41. I am satisfied that WALGA is established pursuant to section 9.58(1) of the LG Act and is therefore established ‘under a written law.’
  42. I consider that any public purposes which would make WALGA a paragraph (e) public body or office would need to be found within the LG Act. I consider this is consistent with *Inglis* and is, respectfully, the correct approach.
  43. As set out above, the complainant submits that sections 9.58(6)(a), 9.58(6)(b), 5.48(2) and 5.49(2) of the LG Act are examples of such public purposes.
  44. Section 5.48(2) of the LG Act states, ‘Long service benefits for [WALGA] employees are to be provided in accordance with regulations.’
  45. Section 5.49(2) of the LG Act states:
 

WALGA is to establish and manage, for the benefit of itself and any eligible body that chooses to participate, a group self-insurance arrangement against liability to pay compensation under the WCIM Act.
  46. WALGA also has the objects and functions set out in its constitution by virtue of section 9.58(3) of the LG Act.
  47. Consistent with *Inglis*, I have turned my mind to whether these purposes confer some ‘exceptional’, ‘special’ or ‘regulatory’ powers or functions.
  48. WALGA’s objects are set out in clause 3 of its constitution and are:
    - (a) to provide a united voice for Local Government in Western Australia;
    - (b) to promote the credibility and profile of Local Government;
    - (c) to speak on behalf of Local Government in Western Australia;
    - (d) to represent the views of the Association to the State and Federal Governments on financial, legislative, administration and policy matters;
    - (e) to provide services to Local Government in Western Australia;

- (f) to promote Local Government issues of importance by involvement with national bodies;
  - (g) to do all and any such other things as in the opinion of the State Council may conveniently be carried on by the Association or which promote or assist or are incidental or conducive to the attainment of these objects or any of them, or anything considered beneficial to the members of the Association; and
  - (h) to use the property and income of the Association solely for the promotion of the objects or purposes of the Association. No part of the property or income of the Association may be paid or otherwise distributed, directly or indirectly, to members of the Association, except in good faith in the promotion of those objects or purposes.
49. Considering the powers or functions set out in sections 9.58(6)(a), 9.58(6)(b), 5.48(2) and 5.49(2) of the LG Act as well as the objects imported from WALGA's constitution, on balance, I do not consider any of those provisions have the character of 'exceptional', 'special' or 'regulatory' powers or functions.
50. WALGA's statutory powers or functions are largely permissive – they allow WALGA to do certain things but do not require it to do anything. That is to be contrasted with statutory functions of the type given to, for example, a Law Society which regulates the legal profession, or responsibilities given to a turf club to licence racehorses.<sup>11</sup>
51. The exception is the requirement in section 5.49(2) of the LG Act to 'establish and manage for the benefit of itself ... a group self-insurance arrangement against liability to pay compensation under the *Workers' Compensation and Injury Management Act 1981* (WA).' It is arguable the requirement to provide long service benefits for employees of WALGA in section 5.48(2) of the LG Act also falls into this category. However, despite being framed as requirements, I do not consider these provisions have the character of 'exceptional', 'special' or 'regulatory' powers or functions.
52. To the extent that WALGA may have the capacity to influence government through advocacy, including through its membership on government committees, I do not consider this to be materially different from other interest groups which may lobby government on matters affecting their members or supporters. That a body seeks to advocate to government does not, of itself, mean that body will be subject to the FOI Act. To take one example, under section 5(3) of the *Fluoridation of Public Water Supplies Act 1966* (WA), three members of the Fluoridation of Public Water Supplies Advisory Committee (**FPWSA Committee**) are to be appointed by the Minister from names put forward by the Australian Medical Association (Western Australian Branch) (**AMAWA**), the Australian Dental Association (Western Australian Branch) (**ADAWA**) and WALGA. Neither AMAWA nor ADAWA is an agency for the purposes of the FOI Act.
53. I note that in *Price*, the Court found that a body similar to WALGA did have public purposes in circumstances that were broadly similar. However, as noted above, that decision is not binding on me as it is from a different jurisdiction. Importantly, the

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<sup>11</sup> See for example *Re Brennan and the Law Society of the Australian Capital Territory* [1985] AATA 163 (5 July 1985) and *Western Australian Turf Club v Federal Commissioner of Taxation* (1978) 19 ALR 167.

Court in *Price* did not give close consideration to the characteristics of ‘public purposes’ in the manner the Court did in *Inglis*. Furthermore, the decision in *Inglis* was an appeal against a decision of this office and gave close consideration to the provisions of the FOI Act in Western Australia. It is arguable that *Inglis* is binding on my office. Even if it is not (for example, if the decision held only that Channel 31 is not an ‘agency’ and does not otherwise have a *ratio decidendi* relevant to the issue for my determination), I in any event respectfully agree with the approach taken by the Court, in particular in relation to the matters set out at [34] above, and have applied it to this matter.

54. In summary, I am not satisfied WALGA’s statutory purposes are properly characterized as ‘exceptional’, ‘special’ or ‘regulatory’ powers or functions in the way that term is used in *Inglis*. In my view, WALGA is better described as an advocacy body for local government with some statutorily conferred functions consistent with its role. However, I do not consider that those functions rise to the level required to establish that WALGA’s purposes are public purposes, as required by paragraph (e).
55. I have considered the complainant’s submission that WALGA is recognised as a body established for a public purpose by a written law for the purposes of the SR Act.
56. I note that WALGA’s 2023-24 annual report states that, in the reporting period, its Record Keeping Plan 2024-29 was submitted and approved by the State Records Commission (**the Commission**), in compliance with section 19 of the SR Act.<sup>12</sup>
57. I observe that section 19 of the SR Act provides that ‘[e]very government organization must have a record keeping plan that has been approved by the Commission under section 23’.<sup>13</sup> ‘Government organization’ is defined in section 3 of the SR Act to mean ‘an organization in Schedule 1 but does not include an organization in Schedule 2’.
58. I note that the organizations listed in Schedule 1 to the SR Act include, at item 9, ‘[a]n incorporated or unincorporated body established or continued for a public purpose under a written law.’ I recognise that item 9 is cast in almost identical terms to paragraph (e) of the definition of ‘public body or office’ in the Glossary to the FOI Act.
59. I understand the Commission first approved a record keeping plan for WALGA in 2016. I have not inquired into how it came to pass that WALGA submitted a record keeping plan to the Commission for approval or on what basis WALGA was, or is, regarded as a government organization for the purposes of the SR Act (apart from noting the points stated in [56] above and in this paragraph).
60. I also observe that, from at least 2009 until as recently as 1 April 2024, WALGA’s website stated that it is not a government department or agency.<sup>14</sup> By way of comment, I consider it is somewhat anomalous that WALGA has been complying with obligations that apply to government organizations under the SR Act since at least 2016

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<sup>12</sup> <https://walga.asn.au/awcontent/Web/Documents/Advocacy/WAL15498-Annual-Report-2023-24.pdf>, page 40

<sup>13</sup> As Information Commissioner, I am an ex-officio member of the Commission by virtue of section 58 of the SR Act.

<sup>14</sup> See <https://web.archive.org/web/20090214024256/http://walga.asn.au/> and <https://web.archive.org/web/20240401073402/https://walga.asn.au/>

and yet continued to state on its website that it is not a government department or agency.

61. I consider that even if WALGA is a government organization for the purposes of the SR Act, that is not determinative of whether WALGA is an agency for the purposes of the FOI Act. In determining the issue before me, I am required to consider all of the material before me which includes the decision in *Inglis* and the guidance provided by the Court regarding the interpretation of paragraph (e) of the definition of ‘public body or office’ in the Glossary to the FOI Act.
62. As noted at [25g.] above, section 18 of the Interpretation Act requires that, in the interpretation of a written law, a construction that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to a construction that would not promote that purpose or object.
63. The objects of the FOI Act, cited at [16] of this decision, are to enable the public to participate more effectively in governing the State and to make the persons and bodies that are responsible for State and local government more accountable to the public.
64. In light of my views expressed at [54] and the comments of Hasluck J at [54]–[55] of *Inglis*, cited at [29] of this decision, I do not consider that access to the documents of WALGA under the FOI Act would promote the objects of the FOI Act.
65. Having considered all of the material before me, I am not satisfied that WALGA is a body or office established for a public purpose under a written law as defined in paragraph (e) of the definition of a ‘public body or office’ in the Glossary to the FOI Act.

## CONCLUSION

66. I find that WALGA is not an agency as defined in the Glossary to the FOI Act. As a result, the complainant has no right of access to the requested documents under the FOI Act.

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