LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

(Reference: Freedom of Information Act 1989)

Members:

MRS V DUNNE (The Chair)
MR J HARGREAVES (The Deputy Chair)
MS M HUNTER

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 29 OCTOBER 2010

Secretary to the committee:
Dr B Lloyd (Ph: 6205 0137)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

KINROSS, MS JULIE, Queensland Information Commissioner **39**

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Amended 21 January 2009

The committee met at 9.40 am.

KINROSS, MS JULIE, Queensland Information Commissioner

THE ACTING CHAIR (Mr Hargreaves): This is the inquiry into the Freedom of Information Act which the committee is engaged in. We welcome Ms Julie Kinross, the Queensland Information Commissioner. Thank you very much for sparing us the time, Julie. Have you had chance to look at what we are doing and where we are going with all of this?

Ms Kinross: No, I have not.

THE ACTING CHAIR: Okay. Essentially, we are looking into the Freedom of Information Act to see how efficacious it is for the ACT context. We have been using it for some time, and it is time to review it. The committee has been charged with doing just that. It has been complicated a bit because we have had some action in that the commonwealth parliament has been doing some work on it. Of course, if we wanted to recommend changes or something like that, we would not want to be inconsistent with the commonwealth parliament. We are also keen not to be terribly inconsistent with other jurisdictions, particularly if they have been the beneficiaries of further experience than we have in this sort of thing.

We thought it would be very useful if you could talk to us about your experience since your appointment on how it actually travels in Queensland, the difficulties you may have faced—without going into too much detail—and the sorts of issues that have been a challenge for you as the commissioner, the parliament and the people. That is essentially the context. Ms Hunter has got quite a number of issues that she would like to canvass.

I apologise for the chair's absence, and I apologise to the kidnappers as well. We also have this sort of a warning thing. If people come before committees and tell porkies then they go to jail. That is just a quick summation—except we cannot send anybody to jail. Given that you are the Information Commissioner, you are unlikely to do that. Can you just tell us, for the record, how long you have been the commissioner and what you have brought to the job, and also what benefits and things we can get and what lessons we can learn from what you have done?

Ms Kinross: I started in the role of Information Commissioner in 2008. I was asked to go to the Office of the Information Commissioner at that time because the government had the FOI Act under review and it knew it was going to propose some major reforms to it. I was put in place there really to hold the fort but also to help get the office set up once the new legislation was put in place. The legislation was put in place on 1 July 2009. I have been formally appointed, or reappointed, into that role since the new legislation has come into effect.

Briefly, the history is that when Premier Bligh became Premier in September 2007 she asked for an independent review of the FOI Act. I cannot really speak about what was in the Premier's mind, but if you look at what has transpired since, clearly she was concerned about modernising the Queensland public sector and doing what she could do to reform the institutions of government.

THE ACTING CHAIR: Who did the review?

Ms Kinross: There was an independent review panel chaired by Dr David Solomon. He was an interesting choice. He was an editor of the *Courier Mail*, the local paper in Queensland, but he was eminent in his own right, having written about 11 books on the constitution and the High Court and other matters. So that was the choice the cabinet made.

THE ACTING CHAIR: Is that report publicly available?

Ms Kinross: Yes, you will find it on the web. Essentially, the question he was asked was: did the FOI Act, when it was introduced in 1992 in Queensland, significantly reform and fundamentally change the institutions of government, the way they worked, and did it—in his words—democratise information in Queensland? The answer to that question and review resoundingly said no, it had not done that, for a range of reasons.

As to what he and the panel recommended in order to make FOI achieve what it was intended to achieve, essentially he said that it required political leadership, number one. The findings of the review were that there was an atmosphere in the public sector that was not conducive to making decisions in the spirit of the legislation and, really, the public sector needed a signal from its political leadership to bring about the cultural change that was required within the public service.

That cultural change was one of shifting from a culture of the public really not being told anything, unless the government decides that they need to know something, to an approach that the public has a right to know information. That was the sort of cultural change he thought was necessary. Political leadership was one.

THE ACTING CHAIR: Was it about starting from the perspective that all documents are released unless there is a good reason why not, instead of the other way around, which seemed to be the public service culture? Am I right there?

Ms Kinross: Yes. What he said was that the legislation alone will not bring about the reforms—you need other things. You could have the FOI Act—it could be effective—but you need to build around it these other things. One of those building blocks is political leadership. Another building block is having a strategic information policy.

That panel was critical of the government for being focused on ICT, the technology side of things, and the government having essentially neglected since 1992 the accessibility of public information. His recommendation was that government have a strategic information policy that ensured that priority was given to information management and making it more accessible to the public.

The third thing he recommended was a proper governance arrangement to make sure it happened, which includes having an information commissioner that would monitor the institutions of government to make sure that they were acting in accordance with the reforms and carrying the reforms forward. The basic idea there is that what gets measured gets done. So the information commissioner has beefed-up roles in order to

make that happen.

He also said that the other lead agencies in government needed to have defined lead roles. So the Public Service Commissioner has to take up the mantle in terms of leadership and capability. The Queensland government Chief Information Officer has to take up the mantle in terms of strategic information policy, reprioritising efforts away from technology into accessibility of information management. The State Archivist has a role. Another important building block is that you have to have good record keeping. If you are going to push information out, you have to have good record keeping practices. The State Archivist has a lead role. Of course, there is the Information Commissioner.

So it was about political leadership, a strategic information policy, governance arrangements and then, lastly, he made recommendations about how to, I guess, change the act to make it more encouraging of the public service in the way it went about its business. Changing the act alone will not achieve the objects of the act. You have to have those other things in place.

MS HUNTER: To underpin that?

Ms Kinross: Yes.

MS HUNTER: I am interested in the cultural change. I absolutely agree that you can have a piece of legislation, but unless you underpin it with ways to implement cultural change or whatever, it really does not move anywhere. How did Queensland go about that cultural change in the public service? You have talked about some key roles and lead agencies and how they have roles to play. On the ground, in government departments, how did that filter down? What process was put in place to change the culture around information?

Ms Kinross: Yes, I think the change in an organisation's culture takes years. We are at the beginning of that. I do not think there has been a miraculous change in the public sector climate and the way it goes about its business. We are still very much at the stage of feeling our way forward. Some public servants might say, "Well, the real test of the legislation is we'll just wait to see which public servant gets their head chopped off when they release information that they shouldn't have." So there is still anxiety about the consequences of releasing information that may not be necessarily favourable to the government of the day.

That anxiety will take a long time to free people up—when everybody gets an agreement around what the new settlement is, what information people can have and when it is okay to release it. It is, I guess, a new settlement about what access people will have to government information. People are feeling their way towards that.

One important mechanism the government has put in place is that in each CEO performance agreement there is a requirement that they not only demonstrate commitment to open government but they have something concrete to show for it. In Queensland, the CEO performance agreements are between the Premier and the CEOs. The Premier, at the end of the day, has oversight. There is a group of public servants—the Under Treasurer, the head of Premier and Cabinet and the Public

Service Commissioner—who manage the performance of CEOs. They undertake the performance reviews but, at the end of the day, the Premier is the one who is reported to and has a bit of a say over that.

That compliance approach, I think, is quite important, because it makes it clear to the senior echelons what the expectation is and there is a consequence if it is not achieved. Not everybody is in favour of a compliance approach, but it is necessary, I think, because it partly communicates to the public service that the government is serious.

MS HUNTER: So that is the link between the political leadership?

Ms Kinross: Yes, and their CEOs are serious because it is in their performance agreement.

MS HUNTER: What does that concrete action look like? Has that been rolled out yet? Have CEOs come up with: "We're going to be doing information sessions right across the department. We're releasing fact sheets or guidelines or whatever"? What does it actually look like?

Ms Kinross: Last month we ran a right to information forum. We had a number of senior people come and present what they had done in their agencies as a result of the RTI reforms. For example, the director-general of the education department came and told an audience of 260 people what the education department had done to implement the reforms. That is available on our website. If you want to see exactly what the education department has done, it is available publicly on our website.

Each agency would have a plan about how they are going to implement the reforms. What all of the CEOs will report is that the work is enormous. To implement the RTI reforms, the workload is enormous. I think it would be true to say that they are struggling with it, because it is not just about how they make their FOI decisions—it is something that affects every single business process. If you look at government contracting, the idea is that when people contract with government, they come with the expectation that government deals openly. So the contracts will be published, except for genuinely commercial-in-confidence information. But it does require a hard look at what commercial-in-confidence means, and it means a lot less than it used to mean. Every single government process you can think of—procurement, contracting—the RTI reforms affect that. I guess you cannot do everything overnight.

MS HUNTER: It is just interesting on that commercial-in-confidence, because it is used by governments a lot to deny access to information.

Ms Kinross: Yes.

MS HUNTER: So how far have you gone along that path of deciding what fits in the basket? You were saying there is less than there used to be that is considered in that basket?

Ms Kinross: Yes.

MS HUNTER: So how did that happen and where are you at at the moment? How is

it defined or decided?

Ms Kinross: It is an interesting area because it is an area where there is a lot of work that needs to be done. The government has put in place procurement standards where every contract over the value of $3 million has to be published in full. Every contract over $100,000 has certain essential details published. That is the sort of decision that people make. It is probably more administrative effort than it is worth to do that kind of work for contracts less than a certain amount. Other jurisdictions have a threshold limit set at $10,000. Ours is set at $100,000, and it is just a judgement that the government will make.

THE ACTING CHAIR: Is the commercial-in-confidence bit partly due to a lack of definition of what actually constitutes commercial-in-confidence? I can recall 40 years ago being involved in this sort of stuff. If it had the word "contract" on it, it was commercial-in-confidence—game over. Then it went to a stage where all of the calculations contained in the contract were commercial-in-confidence, but the rest, the specifications, were not.

Ms Kinross: Yes.

THE ACTING CHAIR: But the costings were. Also, all of the unsuccessful tender information was commercial-in-confidence so as to give nobody a commercial advantage. Then, later on, even that started to fade away, so that the judgement was whether or not there was any unfair commercial advantage to be gained or lost by the publishing of the information. Then the lack of that definition made us tread water.

Ms Kinross: Yes.

THE ACTING CHAIR: But, also—this is one of the things that faze us and I am interested in how it works in Queensland—there was a lack of trained people at the workplace to make those judgements. You can put as much as you like into the legislation or subordinate legislation by way of guidelines, but at the end of the day somebody has to make a decision on that. From what I have been able to glean, interstate anyway, there is a decided lack of people who have program experience that they can relate to their FOI bits. Is that the case in Queensland?

Ms Kinross: I think you have put your finger on one of the changes in FOI decision making that needs to happen. FOI units were frequently used by departments as a filter, so any request for information would just be sent straight to the FOI unit, so it became an immediate barrier for people to get information. Then the FOI unit basically saw itself as the gatekeeper, that they would stop. This is one of the things that Solomon was critical about, this culture of stopping the release of information.

Nevertheless, within that they came to a settlement about what the agency would tolerate around release of information. So at one level they did understand what could be released and what could not be released in the context of their own agency. Now, really what has happened is that the idea that the FOI unit is a gatekeeper has changed. It has not changed in practice yet, but the concept has changed. It is more like a concierge; it is there to help people get information out of the agency.

The second part of that is that the FOI unit was often left alone to make those decisions, uninformed by the program area. That role, that definition of the concept of its role, also needs to change. Sure, it is there to do the administration, but to make good decisions it has to engage with the program area and get proper input from them.

THE ACTING CHAIR: Yes. From what you have told us I understand that, originally, program areas and the FOI office were both on the same side of the fence, to stop getting people getting information, make it difficult for them. The change then is that the FOI office has as its charter that you have to be able to help people get it, and, of course, you have to go through your generational change there. But when that has happened do you anticipate a conflict between the program areas and the FOI office with that? They are going to say, "I'm not letting you into my kingdom. Hello."

Ms Kinross: The way that will get resolved is on review of the decisions, because FOI decision makers have always been in a tricky situation in making independent decisions when the program area does not want information to be released. You can see that in every single program area you can think of. How does that get resolved? You are either going to have an FOI decision maker that makes decisions in accordance, really, with the wishes of the agency, or the way they see it themselves, and the agency will either let them do that or the agency will deal with that issue—like move them on out of the role. But those decisions, if the applicants had them appealed, asked for an appeal or a review of the decision—those sorts of issues get sorted out on review.

THE ACTING CHAIR: Do you get told as commissioner the number of times agencies have had decisions taken to review? In other words, do you get a feeling for the number of requests that are dealt with routinely and everybody is happy? In other words, the review thing can be only two things: it can be that it is a bit confusing and somebody has taken the "err on the side of caution" approach, or the other one is that of being obstructionist. It can only be those two. Do you get a sense that the number of reviews can actually tell that story, and are you getting that story?

Ms Kinross: The government is required to produce an FOI report, which records the number of FOI decisions, the number of internal reviews that the agencies do, and, of course, I would know the number of applications for external review that come to me. So, yes, those statistics can be analysed and that kind of picture can be drawn.

Last financial year, 60 per cent of the matters that came to us were overturned on review, which is a significant number.

MS HUNTER: Sorry; that was first of all the internal review overturned?

Ms Kinross: Most of those matters have not been to internal review. Under our new regime, mandatory internal review has been abolished, so applicants can choose to get a second review by the agency or go straight to external review by the Information Commissioner.

MS HUNTER: Right.

Ms Kinross: What we are finding, almost in all cases, is that people are coming

straight to the external review agency, bypassing internal review. There is a lot less internal review work going on.

MS HUNTER: Sorry; so that figure was 60 per cent overturned?

Ms Kinross: Yes.

THE ACTING CHAIR: Could I just explore with you something which has bugged me for 40 years? That is the type of records that we have. I am sort of keen to get a sense on which ones people access the most, I suppose. I guess it is usually the case that they try to access a document which they perceive to be adversely affecting them and want to see what is going on and see how they can fix it. But I do notice that we have different sentencing rules for various documents, probably rightly so.

In the ACT I think the financial documentation is about the same as everybody else—about seven years, I think—and then it can be destroyed. I do not know what the sentencing regime was for health records. I did know, but I have forgotten. Education records, if they are just administrative decisions, can be culled from two years, or even less occasionally, but school records, whether or not a person is a good student or not, have to be kept for 50 years here.

I was just curious to know whether or not we have an issue about whether we need to have some consistency about how long you keep a record, and are people really accessing administrative decisions or are they looking for their own personal records and cannot get hold of them, or that sort of stuff? Have you got a view on that?

Ms Kinross: In terms of consistency, firstly, the State Archivist in Queensland has to approve all of the retention and disposal schedules by agencies. So that would be the point at which some consistency is arrived at. She will not sign off on anything unless she is sure that what the agency is proposing is satisfactory.

In terms of external review, what we see in terms of people after information, yes, it is always when people have been adversely affected by government. Whether or not that is an activity or service or a decision does not really matter. But I think the profile is changing a little bit with the new legislation. We are seeing more use of the legislation by members of parliament, greater use by the opposition after certain ministers' diaries or sensitive reports or whatever. So there is an increased usage there. There is much greater usage by the media. We would have had virtually no applications from the media in the last few years, but this year hardly a day would go by that I did not see an external review application from the media. They are not seeking personal information.

THE ACTING CHAIR: They are fishing, perhaps?

Ms Kinross: Yes, they are generally after the bad news stories.

THE ACTING CHAIR: What about third-party interest groups? We get a lot of that sort of activity around planning regimes and that sort of stuff; also community groups who feel that either an individual case or just generally speaking their particular sector or part of the sector is not being treated terribly well. Do you get a lot of that sort of

stuff?

Ms Kinross: Yes. Environmental groups who are after information about decision-making processes. In Queensland, infrastructure development is huge, so there are lots of affected people having their land reclaimed and so on, so the activity you would expect to see would be higher around FOI, and it is, from citizen groups.

At our RTI forum that I mentioned earlier, we had as a speaker Bernard Salt, a demographer. He made an interesting point about the ageing of the population, which is that we now have got a lot of educated, well-off people retiring who are turning into excellent complainants and excellent people at joining the latest citizen action group. He has noticed the formation of citizen action groups around a whole range of issues that come to deal with the issue and then they fold.

THE ACTING CHAIR: And then pop up again later on, and you see the same mushroom sitting up in that paddock?

Ms Kinross: Yes, that is right.

THE ACTING CHAIR: Yes, Queensland does not have a mortgage on that one.

Ms Kinross: No.

THE ACTING CHAIR: My solution for that was to deny PC access, pens, typewriters and anything else to anybody over the age of 70.

Ms Kinross: Yes. I think with our change in demography we can expect to see higher utilisation of the legislation.

THE ACTING CHAIR: Yes. One of the things that we have found as a challenge, and I am wondering if it is the same in Queensland, is the extent to which a person's interest is removed from a particular subject; for example, if we were talking about a personal record of some kind, whether a family member could actually seek access to that sort of stuff. Given that it is not a personal record, if, for example, there was a planning decision taken which adversely affected my daughter, could I actually seek access to that information or not? There seems to be a reluctance on the part of the bureaucracy to let it get too far from the actual point of conflict, if you want. That happens a lot in our planning stuff, doesn't it?

MS HUNTER: Yes.

THE ACTING CHAIR: I was wondering if you have got that kind of experience.

Ms Kinross: Yes, that happens quite a lot, and it is resolved quite readily if there is some kind of authority. If your daughter gives you an authority—

THE ACTING CHAIR: But it has to be personal, yes.

Ms Kinross: Yes, for you to act and make inquiries on her behalf. That resolves that issue fairly quickly.

THE ACTING CHAIR: That is provided when it is a personal record that we are trying to achieve. What if it is not a personal record? What if it is an administrative decision which affects, say, a neighbourhood? Ordinarily, anybody in that neighbourhood could ask for that information on the basis of the decision. What if I lived on the other side of town and I want access to that administrative decision?

Ms Kinross: There are two quick ways to resolve that. One is by getting the consent of the person involved for the release of the information, which you can get—

THE ACTING CHAIR: But ordinarily that would be a knock-back, would it?

Ms Kinross: No. You would work to get the consent of the person, or you could release the information with it de-identified.

THE ACTING CHAIR: Sure, but if it was a general decision; let us say half of a street was going to be allowed to be mowed down and a multi-unit development put up on the spot. Everybody on that street has an interest. I might also have an interest in the general community not wanting to see high rises in the suburbs. If I wanted access to those administrative decisions which allowed that generality to occur, how would it go in Queensland?

Ms Kinross: I think that would get released because it is a general planning decision.

THE ACTING CHAIR: Okay.

Ms Kinross: It is a planning decision. It is not really anybody's personal information. Sure, it affects people in the street, but it is—

THE ACTING CHAIR: Where, I think, there is some reluctance is about vexatious complainants who have no connection with the particular area or no stated connection with the particular area; there has been a reluctance to go down that track. Where we have seen it happen is that the power to engage in the appeal process of the planning decision has been denied to people if they are too far removed. I was just wondering if there was a connection about also refusing them access to the documents as well, whether there is a consistency here. It would appear not. It would appear as though, if I lived in Gulargambone, I could actually seek information around a development application in Dee Why, for example, if I wanted to. But what I could do with it is another story.

Ms Kinross: Yes. What the Queensland legislation would say is that the information is open to the public, and under right to information governments are expected to push out significant, appropriate and accurate information. So there is a question then about whether those sorts of planning decisions are something that you might not just put up on your own web, then you do not ever have to deal with people trying to pull the information out of you.

MS HUNTER: Which, I guess, also comes to that issue of accessibility and information management, which you had highlighted as one of the recommendations or issues that had come from Solomon. What happened in the Queensland public

service? Did there need to be a huge injection of dollars to be able to rejig information systems—IT and all of those sorts of things—around the accessibility of information? What is going on there?

Ms Kinross: There does need to be an enormous amount of work done. There is no additional funding for it. What that means is that agencies have to reprioritise within their budgets to achieve it. I think it means a whole range of different things. When I had a look at the *Courier Mail* last week, there were about five articles on IT concerning the Queensland government. It is the same every week. Last week there was a story that ministers were criticised for not reporting on the cost of trade missions. It is a government reporting requirement. They are required by the government to do it and they had not done it. Well, the *Courier Mail* says that they had done it but the information was in so many different places that it was almost impossible to identify it and collate it into any meaningful package of information.

What that means is that somebody had put in place a reporting requirement but then had not worked out how the report was actually going to be produced. So you have got some information sitting in a minister's office in the system, some in the departmental system—departmental officers accompanying the minister—and there is no way to bring it together. But then you have got this government reporting requirement that requires the information to be brought together.

So what happens is that the government gets criticised in the paper for not being transparent and not complying with its own accountability requirements. You can only speculate as to why that has not happened. Probably what has happened is that somebody has had the bright idea of the reporting requirement, but nobody has gone into the information systems and brought it all together. That newspaper article should never have appeared. The information should just be freely available. That is like a tiny example of what you are asking. There would be a million examples where people make decisions, but they have not put in place the appropriate systems to enable things to happen.

It requires lots of changes in terms of planning, system design and decision making so that everything is lined up behind it with appropriate costings of government decisions. If you are going to have a reporting system, you have got to make the financial commitment to get your systems in place to make sure you can do it. It really goes essentially to the way government does its business.

THE ACTING CHAIR: It is still about somebody having information and giving that information to somebody else—

Ms Kinross: Yes.

THE ACTING CHAIR: in a form that can be used?

Ms Kinross: Yes.

THE ACTING CHAIR: Whether it is paper or whether it is IT does not make any difference.

Ms Kinross: Yes.

THE ACTING CHAIR: So we are back to the human commitment about whether it is information that should be freely available or whether there is a proprietary nature and possession on that by the bureaucrat?

Ms Kinross: Yes.

MS HUNTER: It obviously goes back to a commitment by those departments and so forth to make it a priority and then to have the skilled people who understand how they might put in place solutions to be part of that.

Ms Kinross: Yes. Some of that is overwhelming. The work is. There is almost no end to it. One of the things I am encouraging agencies to do is to be strategic about it and figure out what are the data sets that are going to matter to the community that the community can utilise and that will help agencies problem solve and manage their own demand. So when you have a look at that, they would be things like the police force publishing crime statistics by locality. It just should be out there in the public.

THE ACTING CHAIR: I think you might have a massive blue with the police commissioner on that one, though.

Ms Kinross: Well, we need to bring it on.

THE ACTING CHAIR: The fight? It is a good fight.

Ms Kinross: Yes. The mining industry is wanting a whole lot of information it can overlay, but our spatial information is not integrated. The integration of all of our spatial data is a strategic matter and one that will help us achieve important economic goals. If people can invest in that, it will help people solve problems. It will help foster industry and so on in Queensland.

You look at early intervention information. We know how to grow children well. We know what the data sets are to measure from 0 to 12 how our kids are growing and learning. That data set would point every portfolio—health, education, communities—in the right direction. It would help them allocate their funding and reprioritise their programs—if we could get the data.

The data sets exist. We know what they are. They need to be brought together and published. Then the community can work on it and, by locality, they can say, "Well, that area is completely disadvantaged compared to everybody else in the community. Why is that?" It helps the government dialogue with the community around what the government's issues are and how the government allocates its funding. They would be a few examples of the sort of data sets I think government needs to prioritise and be strategic about. We cannot do everything at once. What are the strategic things that will make a difference to government and community business?

THE ACTING CHAIR: It seems to me, too, from what you have been saying and from some of the views that you have put—most of which I concur with—that that is the highlight of the actual atmospherics and the environment that we are sitting in at

the moment. We are still sitting in that adversarial conflict situation where governments and bureaucracies are living and working in a bunker mentality and the community, generally speaking, is getting more towards a consensus approach of how to go on and deliver for generations to come. But we are still closer to the bunker mentality than we are to the other, and therein lies part of our issue.

I was thinking about the police example. I was police minister for a while and I can remember the police argument about that: "If you want to tell everybody where the worst place in town is, go knock yourself out" or "If you want to make sure that the burglaries stop in this suburb, you put it in the paper"—"That is the worst place for burglaries." You can guarantee that it will pop up in this suburb. They cannot predict that one. It interferes with their prediction models, which is code for "We don't want to tell you, basically, because if we tell you everything, you don't need us anymore."

Ms Kinross: Yes, it is a very narrow view, and it is a risk averse view. It is not a view necessarily consistent with what has happened in practice. The New South Wales Police Commissioner advocates for the publication of licensed venues by the ones with the highest incident rates.

THE ACTING CHAIR: That is a name and shame concept, though.

Ms Kinross: Yes, but what that does for the community is it enables the community to make decisions about which place they are going to visit. It keeps the community safe because they can make those decisions for themselves. It puts a lot of pressure on licensed premises to get their act into order because they are likely to lose custom. The Queensland police commissioner probably does not want that information made public, yet you have got the experience of New South Wales which supports that approach in terms of controlling alcohol-fuelled violence.

The other aspect to it—and it is what you were saying, John, about the relationship between the government and the community—is that if you have got a bunker approach, you increase community expectation for the government to solve its problems for it. But if you have got a government sharing its information and saying, "Look, these are our problems," the community is much more likely to work with you around it. So if you publish police statistics by community—also social disadvantage statistics—it does not stigmatise those communities. The Canadian experience is that it actually mobilises communities. Those communities say, "Why is this happening in our community? We want our community to be different," and it helps mobilise communities. The police have their own view, but it is narrow view.

THE ACTING CHAIR: Can I just explore one last thing, and then I will hand to you, Meredith, because I am conscious of Julie's time commitments. The plane takes off at 12. We hope she will be with that plane. We have to make sure she has got enough time to check the bag in and all that sort of stuff.

You talk about the right to information. You talk about RTI. The language is all about the right to information. Our legislation is freedom of information. The feds talk about the freedom of information. It sounds to me as though there is a quantum difference between the two terms. It seems to me that if you are trying to engender an attitudinal change, you say to somebody, "You have a right to this," not "You have a freedom to

go and get it." Is this right? One, have I got it wrong, and, two, am I articulating it badly?

Ms Kinross: No, that is exactly why Solomon recommended that the name be changed, as a signal that things are different. But the debate around that I do not know has completely settled.

THE ACTING CHAIR: You said it before, didn't you? I think the term was, "Bring it on."

Ms Kinross: Bring it on, yes.

THE ACTING CHAIR: Maybe, in fact, this committee has been given the charter to bring on that conversation. Would I be correct there, Meredith?

MS HUNTER: I think you might be, John.

THE ACTING CHAIR: Over to you. I am happy as a little piglet now.

MS HUNTER: Thank you. I was interested in how the public interest test is being applied. So if you could run us through that, and ideas about when we might be able to put in an evaluation around that?

Ms Kinross: Under our old act, there were three public interest tests. One of the recommendations was that, to simplify things, there be a single approach to the public interest. The second thing that Solomon recommended was that there were exempt categories of information. What that did was to encourage agencies to pick an exemption and apply it without looking any further. Often the exemptions were structured, "This information is exempt," except that there was a public interest to disclose it. He thought that was the wrong way around, and we should say that everything is open unless it is adverse to the public interest to disclose it. So it just shifts the onus.

THE ACTING CHAIR: So it goes from the why to the why not?

Ms Kinross: Yes. What the Queensland government, quite rightly—and everybody understands why—is saying is that what is in the public interest really is for the elected representative. That is what the FOI Act achieved—the elected representatives in the statute set out what the exemptions are, and they completely defined that.

Shifting to a case-by-case approach, where everything is open unless it is adverse to the public interest, puts, in my view, a larger onus on individual decision makers to really weigh up, finally, what is in the public interest. So what the Queensland government was quite particular about doing was to make sure that all of the public interests that the elected representatives had identified were set out in the act.

MS HUNTER: Yes.

Ms Kinross: Because, if you just have a single provision that says, "It is open, unless it is contrary to the public interest," many decision makers, as you were saying before,

do not really have an appreciation, program area by program area, of what the relevant public interests are to weigh them up. That was one thing that they did, which I think was quite helpful—having all the public interests set out in a schedule to the act.

It still requires the decision maker to weigh them up, but the parliament has made very clear the classes of information and the different factors to be weighed in coming to a view about the public interest. I do not know whether that fully answers the question. One of the roles of the Information Commissioner is to monitor the application of the public interest test. It is probably a little early to do that.

What we have done is put intensive efforts into running training programs for the agencies—in particular, the decision makers. We trained over 4,500 people last year, so quite an intensive effort was made to make sure the decision makers were supported in the new framework. I think we will draw out learnings as we go forward, but it is probably a little bit early to draw too many conclusions. I think the decision makers are still operating in the space that they understood before—their understandings of what was exempt. There are some areas where they are being a little bit confronted about how that settlement has changed.

MS HUNTER: That is where some of the angst might be coming in, too, because of that move?

Ms Kinross: Yes.

MS HUNTER: I guess they have quite a bit of responsibility, and they are concerned that they might put something out.

Ms Kinross: Three areas stand out for me. One is health information, where sometimes separated parents are refused access to children's medical records or people are refused access to dead people's information: your mother has died in hospital and you cannot get access to the medical records. Some of the thinking around that is changing, where the accountability of the health service is given a higher weighting than the protection of the privacy of the deceased person. So there is some change in what information people can get access to there.

Again, with communities, kids in care, accessing their old case files, there are also some changes that the agencies are not necessarily comfortable with. My view is that, if you have been in care and the state has intervened and taken away your family relationships, part of understanding your identity and who you are is about understanding who your family is and the only way you can do that is by accessing information.

MS HUNTER: Absolutely.

Ms Kinross: So there are some changes there. Probably the last area where there are some changes in the information people are getting access to is the breaches of regulation. So, in health people previously had difficulties in getting access to, say, the butcher shop that had been busted by the health inspectors numerous times and it was all kept quiet. But really consumers should have the information to decide where

they buy their produce from. We get changes in workplace health and safety, where consumers should really understand which business entities are running safe infrastructure for consumers. All of that information has been kept confidential. So there are shifts happening across a range of different program areas in what information consumers and the public can get access to.

MS HUNTER: I have one question about cabinet document exemption and how that works under the Queensland act.

Ms Kinross: Essentially, there were two changes in the cabinet exemption. Cabinet documents are now available after 10 years rather than 30 years, which is a significant improvement in terms of accessibility. The second change is that for documents there is really a purpose test. So documents that were prepared for the purpose of consideration by cabinet are exempt documents. But that requires it to be established that they were prepared for cabinet, and attachments to those reports are considered in a different way. So, if there is a report that was prepared for another reason, which happens to be attached to a cabinet submission, the attachment does not fall within—

THE ACTING CHAIR: The same in the ACT.

Ms Kinross: So it is really the purpose test.

THE ACTING CHAIR: And cabinet notebooks and those sorts of things are exempt, are they?

Ms Kinross: Yes.

THE ACTING CHAIR: There was some suggestion with regard to cabinet documents that the cabinet notebooks would be exempt but the minutes of cabinet would not be.

Ms Kinross: Yes.

THE ACTING CHAIR: How does that work in Queensland?

Ms Kinross: Cabinet publishes its agenda, but it will decide what cabinet decisions will be published and when. Cabinet really retains that decision making, along with any submissions and how that decision is made public. The New Zealand model is more laissez faire than the Queensland one so you might also have a look at the New Zealand one.

MS HUNTER: They were some of the main points I wanted to cover today.

THE ACTING CHAIR: Okay. Thank you very much, Julie, for sharing that with us. It has been very enlightening. There have been a couple of things that I had not thought of which you have been able to give me, and I have been around the game for a very long time.

I have just one last thing I want your feeling on. In the 1960s—1968, 1969, something like that—the equal employment opportunity policy was developed across the country,

the EEO. We still do not have proper equality around female wages and opportunity in the public sector, and that is, I believe, for myriad reasons, part of which is that you have to have a generational change in the education and skill sets of women to be able to do that. However, in my view, they are—

MS HUNTER: I think we have done that so far.

THE ACTING CHAIR: I think they are about two generations behind that. I understood you could not do it in the first generation, but you could have had it a target for the second. But it required a cultural shift, particularly around disability in the workplace. There was an attitudinal change; you were talking about sheilas and cripples in those days. Now, if you talk about that in the public sector, you will get hung, drawn and quartered. That was 40 years ago. Are we looking at 40 years before people change their attitudes to information and the right to access it?

Ms Kinross: The history of FOI implementation in Westminster systems has not been a successful one. If you compare it with, say, the American system of government, where you have an elected president but the role of the Congress is to monitor what the executive does, the Congress has a vested interest in having very strong FOI laws so they can keep an eye on what the executive does. Under the Westminster system of government, the executive controls the parliament, so with FOI, almost universally, the laws have been introduced, but it is three steps forward, two steps back—sometimes four steps back.

It remains to be seen with this new wave of enthusiasm—all of the language is similar to or the same as the language that was around with the introduction of the FOI laws—how successful we will be on this occasion. It is largely, I think, due to the tension between the political interests of the government of the day and governing in the public interest. That then flows down into the public sector as a very powerful tension that is there.

All I can say to your question is that we will see.

THE ACTING CHAIR: We will still be around, both of us, in 40 years, to check it out.

MS HUNTER: It might also be helped with the movement towards having other parties in parliaments and balance of power and hung parliaments. I think that certainly could assist this movement.

THE ACTING CHAIR: Thank you very much.

The committee adjourned at 10.40 am.