

Solomon Lecture 2018.

Extended version.

Introduction

At the outset could I acknowledge the traditional custodians of the land, the Turrbal and Jagera people and their elders past, present and emerging. I also acknowledge other Aboriginal and Torres Strait Islander elders and people present this morning.

I would like to particularly thank Rachel Rangihaeata, the Information Commissioner for inviting me to deliver the Solomon Lecture to celebrate RTI Day this year.

Since its beginning with a lecture by Dr David Solomon in 2009, those sharing their wisdom have included a stellar group of senior academics, journalists and commentators. It is an honour to join their ranks.

At the outset, I would like to acknowledge the huge contribution that David Solomon has made to public administration in Queensland and nationally. Of course, I knew of David's work in heading EARC post-Fitzgerald. But it wasn't until I worked closely with him when I was DG of DPC and with David in his adept leadership of the landmark review of Queensland's Freedom of Information laws, as Integrity Commissioner and in reviews of lobbying and electoral funding initiated by then Premier Anna Bligh that I saw first-hand the deep commitment David had to pursuing the public interest at all times and advocating for transparency as one of the major tools we have to drive better public administration and to keep all public officials, elected or appointed, duly accountable.

My focus here today will be reflecting on my time as a bureaucrat in Queensland from mid-1990 until mid-2011 when I left 'active service'. Since then I have spent a few years based in London and for the last 18 months I have been working as a 'pracademic' (an awful term I know) at the Australia and New Zealand School of Government (ANZSOG).

A major problem in government is the relentless demand on our time from issue and crisis management. We all know about the 24/7 news cycle and that demands on public officials result in proper deliberation being sacrificed on the altar of expediency and short-term problem solving. In many ways, the problem for current governments is they can't find the space to 'see the wood for the trees'.

I am increasingly coming to the view that sabbaticals should be a compulsory feature for those working in the public sector, as they are for the academy. There

must be time to read, write, reflect and understand the bigger picture in which we should operate rather than being ground down by a relentless onslaught of administrivia.

In the lecture today, I will focus on a range of issues we face as public officers, some very local but some impacted by global trends. I want to: reflect on declining trust in governments and representative liberal democracies; discuss the threat to transparency as the global trend to illiberalism and authoritarianism strengthens, and; advocate the need to return to the basics of our fundamental purpose of ensuring public trust, and the need to always operate in the public interest rather than serve narrower sectional interests.

I will contend that greater access to information and transparency will reverse some of these negative trends, and create greater legitimacy by ensuring our representative democracies and their support institutions provide the space for deliberative and informed community engagement. In essence, this means open government, achieved by working with the community, rather than simply delivering what we as elites think is best for 'them'.

The decline in trust and its consequences

A decline in public trust and a rise in populism and alternative voices, is the biggest background trend facing governments

Global political events over the past few years have underlined serious and ongoing threats to the free flow of information and indeed to democracy itself.

First, the clear rise or consolidation of authoritarian strongmen such as Duterte in the Philippines, Orbán in Hungary, Putin in Russia, Trump in the U.S., and Erdoğan in Turkey, to name but a few.

Second, the Cambridge Analytica data mining scandal on Facebook, and third, the related ongoing controversy around electoral interference or more broadly political misinformation in the 2016 US presidential election and the 2016 Brexit campaign.

In this vein, I fear less the perils of "fake news", but more importantly a growing global aversion to evidence and an undermining of shared facts in political debate. We might broadly call this the retreat of truth.

When a senior Cabinet Minister in the UK in a populist outburst says that the eras of the 'experts' has had its day, we should begin to worry. Science, once revered as the search for truth, has for many the same status as belief systems,

whether related to climate change, creationism, or indeed whether the earth is flat (seriously). There is a growing view of the right to having one's beliefs treated equally as so-called scientific facts.

The rise of populism is both a product of, and a contributor to, a growing loss of trust. Not just in our politicians and established parties, but in the democratic institutions that support them.

Major international and Australian surveys map out warning sign after warning sign. I'd like to talk about a few of them to help establish the extent of the problem.

The Freedom House "Freedom in the World" research project has for many years tracked an increase in civil liberties and political rights. Since 1872, with some minor hiccups, the trend to democratisation had been almost unfailingly positive. Now, since 2005, the figures are heading southward.¹

To take a more specific measure from Freedom House, with a direct relation to RTI, we can assess the health of Internet freedom—which is the ease of access people have to the Internet, and their ability to use it to express themselves. For the past seven years, Internet Freedom has declined worldwide.²

Meanwhile, the Pew Research Centre in the USA has documented public trust in institutions back to 1958. In the time of Eisenhower, Kennedy, and even the early years of LBJ's presidency, trust in the government in Washington was high—well over 70%. Trust in political institutions and the political process were equally strong.

It is astounding to see how sharply this has changed over the 60 years to 2017. As partisan acrimony grows, overall faith in government and political leaders has fallen through the floor. Now, by the time of Trump the percentage of the nation who trust the government in Washington is below 20%, close to a 60% drop in as many years. But the trend was clearly in place way before Trump came on the scene.³

Such statistics from the US remind us that today's focus on individual scandals, and the day-to-day minutiae of politics, can blur the fact that the decline in trust in

¹ Freedom House, *Freedom in the World 2018: Democracy in Crisis*, 2018, https://freedomhouse.org/sites/default/files/FH_FITW_Report_2018_Final_SinglePage.pdf [18 September 2018]

² Adam Segal, "When China rules the web", *Foreign Affairs*, September/October 2018, p. 17; Freedom House, *Freedom on the Net 2017: Manipulating Social media to Undermine Democracy*, 2017, <https://freedomhouse.org/report/freedom-net/freedom-net-2017> [18 September 2018]

³ Pew Research Center, *Public Trust in Government: 1958-2017*, 2017, <http://www.people-press.org/2017/12/14/public-trust-in-government-1958-2017/> [18 September 2018]

government is a long-term phenomenon which is affecting the ability of our democracies to respond to future crises.

Decline is especially pronounced from one generation to the next.

The World Values Survey documents changes in values in beliefs over time and allows for comparison between different “birth cohorts”, or generations. (However, their “world” spans the US and Europe, alas we Antipodeans don’t quite count.)

A commitment to liberal democracy is *far* stronger amongst baby boomers than the following generations.

Those cohorts following the baby boomers possess a decreasing desire to live in a country that is governed democratically.⁴ Many commentators diagnose this as apathy, but the weight of learnt experience that creates such a consistent result should not be discounted. These younger generations have dwindling faith that democracy can deliver what they need and want.

In an article in the *Journal of Democracy*, Roberto Stefan Foa and Yascha Mounk, from Melbourne and Harvard universities, call this phenomenon the “democratic disconnect”.

If you’d permit me to read a couple of quotes, I think Foa and Mounk really effectively drive home the dangerous future this disconnect could create.

In their conclusion, they lament that:

“Even as democracy has come to be the only form of government widely viewed as legitimate, it has lost the trust of many citizens who no longer believe that democracy can deliver on their most pressing needs and preferences.”⁵

They write:

“it is possible that, even in the seemingly consolidated democracies of North America and Western Europe, democracy may one day cease to be the “only game in town”: Citizens who once accepted democracy as the only legitimate form of government could become more open to authoritarian alternatives.”⁶

⁴ World Values Survey, <http://www.worldvaluessurvey.org/wvs.jsp>, in Roberto Stefan Foa and Yascha Mounk, “The Danger of Deconsolidation: The Democratic Disconnect”, *Journal of Democracy*, vol. 27, no. 3, 2016, p. 7.

⁵ Foa and Mounk, “The Danger of Deconsolidation: The Democratic Disconnect”, p. 16.

⁶ Foa and Mounk, “The Danger of Deconsolidation: The Democratic Disconnect”, p. 15.

This decline in trust could be extremely damaging. We—those in elected office, the public service, or in the universities—must seek to rebuild trust in our fundamental democratic institutions.

Because Australia is not immune from the problem set out in these international surveys, either.

Far from it.

Indeed, Professor A.J. Brown from the Centre for Governance & Public Policy at Griffith University and his colleagues have collaborated on the *Australian Constitutional Values Survey*, and it tells a very similar story.

Decline is universal, and decline is stark.

This is especially the case at a *federal level* in Australia.

The *Australian Constitutional Values Survey* covers the years 2008 to 2017. During this time, trust in state and local government has stayed relatively stable, at around the mid 50% level.

Meanwhile, trust in the federal government has plummeted from almost 82% to 49%.⁷

The cause is not a mystery.

There are numerous troubling cases of misbehaviour and unethical conduct through to serious corruption in public office at a national level, as well as in state and local government.

Here in Queensland, there have been several prominent cases, particularly in the local government sector—Ipswich and Logan City are prime examples. Yet arguments remain about transparency and right to information as if it is counter to good public administration. These Australian examples underline the importance of systemic approaches to political accountability and integrity.

The danger is that the public begins to believe there is “one rule for them and another for the rest of us”, especially in cases where officials may not have broken the rules, but their behaviour is arguably unethical and clearly unacceptable to the public.

Trust in the system and our public institutions is almost impossible to maintain under these conditions.

⁷ A.J. Brown, *Australian Constitutional Values Survey 2017: Results Release 1*, Centre for Governance and Public Policy, Griffith University, 2017, p.7.

Work that makes government more transparent or improves integrity must be seen as essential for rebuilding the trust that makes it possible for governments to operate effectively and work for the public good.

Fitzgerald: a defining moment on the path to reform

One of the primary reasons for the Solomon Lecture is to remind us of the dangers of ahistoricism. It is a plague of our age. We see again and again that important lessons from our past are disregarded. Whereas we should be involved in single- if not double-loop learning from our past failures as well as successes.

We must not just remember but act on these lessons, lest we simply repeat the mistakes of the past. In last year's Solomon Lecture, Kerry O'Brien, spoke strongly on this exact point. We would do well to heed his reminder.

The Fitzgerald Inquiry is clearly a defining moment not just in the history of this state, but of the nation.

Integrity and trust in Queensland's public institutions was critically damaged by the shocking revelations of corruption in our core public institutions in the late eighties. However, as we all know, these issues weren't unique to Queensland.

Fitzgerald took the opportunity to shine a light on events and relationships that may well have remained hidden if it wasn't for him and others in the parliament, the media, police, and honest public officials who had the courage and persistence to strive for transparency.

Restoring these fundamental qualities is far harder than losing them. Restoring integrity and trust to an entire political system, to a number of public institutions and the public officers who are meant to uphold their integrity, takes vision and leadership, commitment and courage.

Tony Fitzgerald brought these attributes and more to the most challenging of tasks. He was faced with hardened corruption and criminal behaviour and unethical conduct on an institutional scale.

Now this really was a question of institution-wide misconduct and institutional culture. Fitzgerald spoke directly to the failures of the Queensland Police Force (later importantly to be renamed Service), but reinforced that this behaviour is possible *in all institutions* if the right integrity framework is not in place:

“It should be plainly understood that the influence of institutional culture is not unique to the Police Force. It is capable of affecting any group of

people or institution. In bodies other than the Police Force, such cultural influence manifests itself in more diffuse ways, but affects attitudes to change, and can lead to or be associated with official misconduct.

Not all members of a group or institution, including the Police Force, subscribe to their body's culture but that does not lessen its significance if it can be used to aid or conceal official misconduct. Left unrecognized and unchanged, any such culture can easily be exploited to obstruct or prevent reform."⁸

I don't have time in this lecture to discuss the importance of institutional integrity being 'a priori' over attempts to monitor that of individual public officers. Suffice to say that Dr Nikolas Kirby from Blavatnik School at Oxford and more recently, our own Simone Webbe have done some interesting writing in this area.

For now, I would just like to reinforce Fitzgerald's point about the importance of a robust *system* to combat corruption and other unethical practices—a system in which right to information (RTI) legislation is an essential component.

Fitzgerald's experience had taught him that the "selfish and corrupt are infinitely flexible in their ability to adapt and work around new regulatory structures."⁹ And so he warned: "Individuals who work in institutions in need of reform must recognize that checks and balances and changes in attitudes are necessary if the activities of their less scrupulous colleagues are to be detected and controlled."¹⁰

Importantly, Fitzgerald understood nothing could be achieved without faith in the system itself. He argued, and I quote, that "the restoration of public confidence in the integrity of a vital element of public life is the paramount public interest to which other public interests must be accommodated."¹¹

Fitzgerald considered deeply the importance of the public interest. The idea is arguably *the* central premise of the landmark report.

The Fitzgerald Inquiry is essential in a discussion about David Solomon and his career not just because David led one of the two institutions proposed by Fitzgerald, the Electoral and Administrative Review Commission. It is essential because balancing competing public interests is the fundamental question in RTI frameworks.

⁸ G.E. (Tony) Fitzgerald, *Report of a commission of inquiry pursuant to orders in council*, Commission of Inquiry into Alleged Illegal Activities and Associated Police Misconduct, Queensland, 1989, p. 6. (hereafter *The Fitzgerald report*)

⁹ *The Fitzgerald report*, p. 6.

¹⁰ *The Fitzgerald report*, p. 7.

¹¹ *The Fitzgerald report*, p. 10.

Immediate Post-Fitzgerald reform

The reforms which followed the bombshell which was the Fitzgerald Inquiry, released on 3 July 1989, were put in place by the Ahern, Cooper and Goss governments.

The institutional framework of the Criminal Justice Commission (CJC), chaired by Sir Max Bingham, and the Electoral and Administrative Reform Commission (EARC) chaired initially by Tom Sherman, then Colin Hughes and subsequently Dr. David Solomon were both established post-Fitzgerald to ensure that the reform agendas recommended by the Fitzgerald Inquiry were not lost once the final report was delivered.

Most of the legislative reforms were put in place by the Goss government elected in late 1989, five months after the Fitzgerald Report release. As Janet Ransley outlines in "The Goss Government. Promise and Performance of Labor in Queensland", these 2 bodies accountable to parliamentary committees effectively took charge of a large part of the reform agenda.¹²

Effectively, the significance of the report itself overwhelmed any policy agenda of those contesting the 1989 election, with policies recommended by Fitzgerald being given priority, often beyond the commitments that would have otherwise been developed by the parties themselves. Particularly in a unicameral system, establishment of two powerful independent bodies with strong authorisation from Fitzgerald heavily impacted the parliamentary system and its standard approaches, given the usual reliance on strong leadership and arguably a more powerful executive than exists in a bi-cameral system.

Despite the perceived restrictions on parliamentary autonomy, the list of reforms implemented in the Goss government's first term were impressive and included judicial review legislation, introduction of FOI legislation, legislative standards, whistle-blower's protection, introduction of pecuniary interest registers and code of conduct for ministers, freedom of assembly, introduction of administrative law requiring administrative decisions, fundamental legislative principles and decriminalisation of homosexuality.¹³

Interestingly, the processes recommended by Fitzgerald impacted positively on Government's policy approaches in Queensland that were, and have subsequently, been "characterised as centralist, closed and secretive, in contrast

¹² Janet Ransley, "Legal and Administrative Law Reform", in Bron Stevens and John Wanna (eds), *The Goss Government. Promise and Performance of Labor in Queensland*, South Melbourne, Macmillan, 1993, p. 106.

¹³ Ransley, "Legal and Administrative Law Reform", pp. 111-2.

to the public and consultative methods adopted by EARC and to a lesser extent by the CJC".¹⁴

So David Solomon has changed his spots very little over the last few decades!

The reforms also weren't without controversy, from the most senior members of Cabinet and within the reforming public service who were against the intent and the cost of measures such as FOI, Equal Opportunity and judicial review, "which were promoted to government as being expensive, administratively difficult and likely to lead to potential embarrassment for the government."¹⁵

There is an important lesson for the Information Commissioner and all public institutions from a CJC report at the time:

"it is very important to guard against complacency; the gains of the last few years can be quickly eroded if there is a lessening of commitment to the process of police reform, or if the framework of external oversight is weakened or undermined."¹⁶

How little things change, as I will refer to subsequently.

Policy development: the FOI Review

I still clearly remember when Anna Bligh became Premier in 2007. Literally, her first act as a newly minted Premier was to announce the review of the FOI Act. This was more than 18 months prior to her election as the first female premier. Bligh clearly wanted to put a distinct reform stamp on her administration (given the ALP in Queensland had a long continuous period in government under the leadership of Peter Beattie who had been Premier from 1998 until retiring in 2007).

As a new Director General of the Department of the Premier and Cabinet, I was tasked with providing advice on the approach to the review of the Act and preparation of necessary Cabinet documentation. I have been through such exercises many times, having worked on the establishment of various Commissions of Inquiry, and policy and legislative reviews which governments of the day were keen to progress.

I am sure you can appreciate the difficult task of getting the right expertise appointed to carry out complex tasks of government, like the fundamental review

¹⁴ Ransley, "Legal and Administrative Law Reform", p. 109.

¹⁵ Ransley, "Legal and Administrative Law Reform", p. 116.

¹⁶ Queensland Criminal Justice Commission, *Integrity in the Queensland Police Service: Implementation and Impact of the Fitzgerald Inquiry Reforms*, Queensland, 1997, foreword.

of FOI legislation in an environment which had changed dramatically since the introduction of the original legislation by the Goss Government in the immediate post-Fitzgerald reforms of 1992. For example, we all forget that public, let alone public service, use of the Internet and email was not common place. There are some wonderful stories about email systems being introduced in the Office of Cabinet around that time. The problem was that while a few individuals had an email address, they couldn't use it, as they had no one to send emails to. I can still remember that period of transition from paper-based records to electronic communication and storage. One always rang the recipient to ensure they actually got a message sent.

It was indicative of Bligh's priority that the responsibility wasn't 'hand-balled' to the Attorney General and his department. She wanted to personally drive this commitment through cabinet and subsequently through the parliament to put her authority on the reforms and assuage the doubters in both her own party and in government generally of the need for fundamental reform.

The appointment of the independent team in September 2007 of David Solomon, Simone Webbe and Dominic McGann was one of the easier appointment processes I was involved in. Their individual and collective expertise was never in dispute.

The work proceeded at pace with a discussion paper released in January 2008, the final report in June, and the government's response in August of the same year. In 2009, Bligh led the introduction of the RTI Act through the Queensland Parliament and it became law in July 2009.

Responsibility for the legislation remained with the Premier and her department, DPC after introduction for approx. 12 months, later transferring to the Attorney's portfolio.

The bureaucracy is (and should be) relatively silent in its support. But I must recognise 2 great efforts during the process, acknowledging there were many others. But I would particularly like to acknowledge Cathy O'Malley and Christine Castley, at the time in DPC, and the Information Commissioner at the times of the reforms, Julie Kinross, as great public servants for their dedication, professionalism and persistence in developing and delivering these landmark reforms 'behind the scenes'.

David Solomon and his co-authors sought not just to update the Freedom of Information Act, but to fundamentally rethink the approach to freedom of information (FOI) in Queensland.

Crucially, they set out a system for how governments should assess the public interest on a case-by-case basis. The authors recognised the novelty of their logic, openly acknowledging in their introduction that:

“the Panel was invited by its Terms of Reference and comments by the Premier to produce recommendations that would look at best practice around Australia and the world. Whilst it has done that, in some respects it has gone beyond best practice, in the belief that it can produce a better, more effective model that, in the public interest, will improve the delivery and availability of information held by government.”¹⁷

This language mirrors that of Fitzgerald almost 2 decades earlier. Fitzgerald spoke about the essential task of giving “information to the community about what has occurred.”¹⁸

On this point, the Fitzgerald report bears quoting at length one more time. He sets out here the fundamental tension at the heart of FOI and RTI. He articulated that there is a:

“need for a free flow of accurate information within a society. Such a flow of information is needed if public opinion is to be informed. Public opinion is the only means by which the powerful can be controlled. However, there is a conflicting right of individuals to privacy. In some circumstances, such privacy results in the secrecy which allows corruption to breed and official misconduct to escape detection.”¹⁹

RTI exists to provide this flow of information. Under David’s expert guidance, it also serves to balance the competing rights to privacy and information.

And yet, Post-Fitzgerald, it is vitally important to remain vigilant.

A culture of secrecy and a desire for non-disclosure are still commonplace across many areas of politics and the bureaucracy. It is vital that those who value a strong and effective liberal democracy advocate for transparency being firmly on the side of the public interest. We need to understand our relative position as public officers within the community as elites and ensure that government is not perceived as being of the elites, by the elites, and for the elites.

Arguments remain about transparency and right to information as if it is counter to good public administration.

Simplistic notions that FOI regimes are leading to a diminution of the public service’s capacity to give the three “F’s”—free, frank and fearless advice—are in

¹⁷ FOI Independent Review Panel, *The Right to Information: Reviewing Queensland’s Freedom of Information Act*, Queensland Department of Justice and Attorney-General, 2008, p. 7. (hereafter *The Solomon report*)

¹⁸ *The Fitzgerald report*, p. 5.

¹⁹ *The Fitzgerald report*, p. 6.

my opinion overstated. Public service advocates of this position (of whom there are many) posit that advice given by the public service could embarrass the minister or government if made public and therefore significantly affect the productiveness and trust relationship between the public service and the political class.

Putting it perhaps overly simplistically, I would contend that this could happen for 2 broad reasons.

Firstly, the public service advice is not based on evidence, and is wrong or not nuanced to enable consideration of all workable options. Alternatively, the advice embarrasses the minister and the government because it doesn't align with its own world view to meet its own sectional interests, irrespective of the evidence presented.

In both cases there is a strong case for transparency. There is an incentive in the former to always provide the highest quality evidentiary advice, and in the latter to fully and explicitly explain a decision or position if an alternative decision is made to ensure it is legitimately and consistently in the public interest.

Of course, one might hope today's threats to fair and ethical public administration are not so endemic, so entrenched, so egregious, as they were in the days covered by the Fitzgerald Inquiry.

But if we simply assume this is the case, if we let a transparent and accountable system fall into disrepair, we will be complicit in the unethical outcomes that inevitably follow.

In their 2008 review of the Queensland FOI Act, opened with a challenge to parliament, the executive and the public service. While they wrote with Fitzgerald front of mind, they were troubled too by more recent cultural failings in access to information:

“History in Queensland, as in many other jurisdictions, has proven unambiguously that there is little point legislating access to information if there is no ongoing political will to support its effects. The corresponding public sector cultural responses in administration of FOI inevitably move to crush the original promise of open government and, with it, accountability.”²⁰

The battle for transparency is not won through one inquiry, or one piece of legislation. It is one that needs to be fought every day.

²⁰ *The Solomon report*, p. 2.

New technology, the rise of data and the role of media

I want to now move to comment on the importance of information transparency in the broader context of how governments decide what information they share with citizens.

We can't have that discussion without recognising the huge changes in technology and the way we produce and share data.

More than half of the data developed by humanity, has been produced since the start of 2017. The challenge is that much of this data isn't of use—it doesn't have an evidentiary base.

And yet, from a commercial perspective data is seen as the new oil—the core of the business model of some of the most profitable global companies like Facebook and Google.

Governments collect and store huge amounts of data—both through initiatives like the Census and also as part of their routine activities of service delivery.

So what do we do with that data? How do governments use it to create public value?

The release of government information has always involved a calculation of costs versus benefits.

Under FOI regimes the costs, in terms of time and resources and potential loss of reputation if damaging information is released, are largely borne by governments.

The benefits are largely borne by the general public, through greater transparency, and quicker exposure of government failures.

Despite some pockets of fine reporting, media organisations do not have the capacity to join the dots and run sustained campaigns against systemic failure, unethical or corrupt conduct.

In Australia, as in any developed liberal democracy the media is an important part of the checks and balances that keep the system accountable and as some have positioned themselves to 'keep the bastards honest'

The current fragmentation and concentration (ironically at the same time) of the media landscape, the collapse of advertising support for the business model of mainstream private media companies and the relentless campaigns against public broadcasting, both internationally and here, should disturb anyone

concerned about the quality of government and independent critique to ensure we can collectively speak truth to power.

There is, however, some light on the horizon as new funding models are seeing a resurgence of quality mastheads and journalism.

See for example the resurgence of *The New York Times*, *The Washington Post* in the US and *The Guardian* here. Attempts at nobbling public broadcasters have also met with significant resistance, particularly in the UK and here. Hopefully we will reach a tipping point where there will be a reaction to so-called journalists more interested in being political players (you all know who I mean, across every media form) than in independently pursuing the truth to support broader rather than narrower sectional interests.

The response of governments should be to make it easier for players in the new media landscape to get accurate, relevant and timely information, not to obfuscate for their own partisan interests.

This asymmetry between cost and benefit means that as well as strong RTI laws, we need a culture within governments that understands the bigger picture—that the flow of information to the public is essential for scrutiny, accountability and the maintenance of trust in government.

Once we make that cultural shift—away from secrecy and towards transparency—another question arises.

Why limit our provision of information to access request regimes? What are the other opportunities to give taxpayers fuller access to the information they have paid for?

The rapid changes in technology mean that data can be collated, stored, reproduced and shared far more quickly, cheaply and easily than in the analogue era.

I think we all understand that the costs involved in sharing information are lower. What we find harder to imagine are the huge potential benefits that can flow from data sharing while protecting the privacy of individuals and households. This is particularly a challenge in our disjointed Federation.

Open data in action

New York University academic, and previous Obama administration advisor on open government, Professor Beth Noveck writes about the value of 'open data' as a counterpoint and complement to FOI legislation.

She says that:

“FOIA is an inherently adversarial tactic focused on prying secrets out of government. Open data is not... [It] instead attracts collaboration by knowledgeable and passionate members of the public, who augment the manpower and skills often lacking in under-resourced public institutions.

FOIA tends to highlight the worst of government by demonstrating how public officials have tried to hide misdeeds. It emphasises malfeasance, invariably shaping public perception of government... by contrast, the open data legal framework may be advancing participatory democracy.”

²¹

What does she mean by open data? Here are four examples of open data in action, two involving government and two the private sector.

In the USA, several states have begun collecting information about doctors' patterns of prescribing opioid pain medication, in an effort to tackle the prescription drug epidemic.

This information is now made public and, by transparently showing doctors their own practices in comparison to those of their peers, open data has changed the way that less responsible prescribers act. In Arizona, a pilot program has seen participating counties cut prescription rates by 10 per cent and overdoses by 4 per cent.

In Oakland, a pilot program has given citizens with first aid skills access to real time data and alerts on heart attacks or medical emergencies in their area, so they can act as first responders while paramedics arrive.

Collaborative use of open data, of course, is not limited to government.

During the Jakarta floods, Twitter donated its data to the University of Wollongong which used it to create real time map of flood conditions allowing residents to develop their own escape plans.

In the Ivory Coast and in Senegal, Orange Telecom anonymised customer call data and handed it to researchers who used the data to predict how waterborne parasites and diseases travel.

²¹ Beth Noveck, “Rights-Based and Tech-Driven: Open Data, Freedom of Information, and the Future of Government Transparency”, *Yale Human Rights and Development Journal*, vol. XIX, 2017, <https://digitalcommons.law.yale.edu/yhrdlj/vol19/iss1/1/>, pp. 4-5.

Both are great examples of potential public private data partnerships. Noveck also outlines how private data assisted governments in Europe in tracking refugees real time, rather than reliance on border checks and controls alone.

Of course, private companies are not going to hand over all their data, because it is not in their commercial interest.

But governments which are acting in the public interest need to consider how they might regulate private companies accessing huge amounts of valuable private data which can be used for a valid public purpose. Governments similarly need to unleash the data sets they hold for the broader public purpose and the private sectors.

We need to combine the innovation and flexibility of private data holders, with the traditional emphasis on public value of the public sector.

Technology has given us a new avenue to deliver major increases in public value.

In the Australian federal system, state and local governments and the communities they serve will benefit from data collected by federal departments and vice versa.

Innovative use of data may allow governments to compete and give us better insights into which levels of government are best placed to perform specific functions.

Any supporter of true federalism, and I am definitely one of them, would applaud this.

In Australia, we have been latecomers to open data – but this is changing.

Some of the key recommendations of the Productivity Commission's final report on *Availability and Use of Data*,²² released in March last year have already been implemented. As well, *Australia's First Open Government National Action Plan 2016-18* which "commits" to the international initiative for reforms that "promote transparency, empower citizens, fight corruption and harness new technologies to strengthen governance" could be a key catalyst too.²³

We have national legislation to remove barriers to data sharing and integration across major public interest data sets and create trusted user access, as well as

²² Productivity Commission, *Availability and Use of Data*, Productivity Commission Inquiry Report, no. 82, 2017.

²³ Australian Government, *Australia's First Open Government National Action Plan 2016-18*, Canberra, Commonwealth of Australia, 2016, pp. 3, 5.

a complementary legislated concept of a new general Right for Consumers to exercise joint control in the sharing and use of their data.

The Chair of the Productivity Commission Peter Harris said at an ANZSOG/AIHW Conference on Big Data, that these recommendations were some of the most important he had been involved with.

He said that not only had the federal government fallen behind the private sector in its use of data, it was being outrun by the states.

While privacy is important, he describes it as “just one facet of the diamond called data”, and that “polishing only that one facet will not reveal the full value of the 21st century’s great new renewable resource.”²⁴

We need to take into account individual privacy concerns, and balance those with public benefits.

But shifting our focus to the opportunities provided by big data and treating government data as a national asset which should be managed in the interest of all Australians, should help us strike that balance.

Open data, public value and public wealth

Why is it important that governments find this balance?

Anyone who has been associated with ANZSOG will be aware of the concept of ‘public value’, a driving force for the public sector compared with the private sector’s focus on shareholder value.

Professor Mark Moore of Harvard’s Kennedy School has written extensively on the concept.²⁵ It is the unifying idea which is the ‘why’—or public purpose—of government, as it is linked to the other two parts of the public administration trilogy, the how—the authorising environment and organisational capability.

Governments create public value through policies and programs which deliver benefits to the entire community. Benefits which are consumed collectively rather than individually.

²⁴ Peter Harris, “Data, the GDPR and Australia’s new consumer right”, *The Mandarin*, 5 July 2018, <https://www.themandarin.com.au/95351-data-the-gdpr-and-australias-new-consumer-right/> [14 September 2018]

²⁵ Mark Moore, *Creating public value: Strategic management in government*, Cambridge, MA, USA, Harvard University Press, 1995; Mark Moore, *Recognizing Public Value*, Cambridge, MA, USA, Harvard University Press, 2013.

University College London academic Professor Mariana Mazzucato has been doing some new and influential work to extend our definition of public value, to show how effective, entrepreneurial action by governments can create public wealth.²⁶

She defines public value as a process by which public wealth is created. Public wealth is regarded as a cumulative stock of the public value already created. Therefore, public investment in policy would create value and cumulatively create public wealth.

This understanding moves beyond false and simplistic dichotomies of the innovative free market versus the meddling and inefficient regulatory state. It challenges the notion in economic orthodoxy that value can only be created by the private sector, and that the public sector is simply a consumption part of the economy and a barrier to economic growth and prosperity.

If you want examples: think of the huge advancements in aviation technology, the Internet, space travel and satellite technology, Wi-Fi, most of the components in your iPhone, breakthroughs in big pharma, green tech or nanotech.

In these cases, the government programs where they started have generally not become rich from the proceeds of the invention. Nor has the public good been recognised and benefits provided back to the taxpayer in line with the investments made by them.

Instead, these technologies were subsequently exploited in the private sector and produced enormous improvements in GDP, profits for shareholders, and a better standard of living for millions of citizens.

We need to maintain trust in government because, as Mazzucato states, the public sector must continue to create substantial value for the public and for those private organisations that reap benefits from the trail blazed by earlier public programs.

Data is a perfect example of this: where accurate, high-quality datasets collected by government are used by non-government actors to deliver both public and private value.

Governments must take the lead on making data open—without political will, it won't happen.

Doing so, will help us move towards a version of democracy more suitable for the 21st century—where government and citizens have access to the same

²⁶ Mariana Mazzucato, *The Value of Everything: Making and Taking in the Global Economy*, London, UK, Allen Lane, 2018.

information and work together to solve problems and set priorities for their society.

The future: Concluding remarks

Public trust and the public interest

I would like to conclude by bringing this lecture back to the question of public trust and the fundamental importance of RTI to pursuing the public interest. As the Solomon et al. 2008 report states: “The public interest is the central, unifying feature of freedom of information.”²⁷

In a speech delivered in 2014, David Solomon laid out the risks to public trust of nepotism and patronage in public office. David’s speech stressed the paramount importance of the maintenance of public trust to a well-functioning and enduring democracy.²⁸

There are two quotes in Solomon’s speech that have stayed with me.

He quotes Professor Paul Finn, who elegantly argued: “[t]he institutions of government, the officers and agencies of government exist for the people, to serve the interests of the people and, as such, are accountable to the people.”²⁹

He also drew on former Australian High Court Chief Justice Sir Gerard Brennan, who articulated a fundamental principle for the maintenance of public trust: “public interest is the paramount consideration in the exercise of all public powers”.³⁰

So, where *any* intended use of executive power risks undermining public trust, it is vital to prize public trust above all else. This can in some circumstances mean disregarding ministerial directives in favour of the *public* interest. This is clearly a difficult concept for public servants who are appointed by executive government and accountable to Ministers.

This is enshrined in our own Public Sector Ethics Act in Queensland as: “public service entities, public sector agencies and public officials... acknowledge the

²⁷ *The Solomon Report*, p. 1.

²⁸ David Solomon, “Nepotism, patronage and the public trust”, in Ann Scott (ed), *The Newman Years: rise, decline and fall*, T.J. Ryan Foundation, 2016, pp. 16-26.

²⁹ Paul Finn, “The Forgotten “Trust”: The People and the State”, in Malcolm Cope (ed), *Equity Issues and Trends*, 1995, p. 3, fn. 6, quoted in Solomon 2016, p. 20.

³⁰ Gerard Brennan, ‘Presentation of Accountability Round Table Integrity Award’, Canberra, <http://www.accountabilityrt.org/integrity-awards/sir-gerard-brennan-presentation-of-accountability-round-table-integrity-awardsdec-2013/>, 11 December 2013, pp. 4-5, quoted in Solomon 2016, p. 20.

primacy of the public interest and undertake that any conflict of interest issue will be resolved or appropriately managed in favour of the public interest.”³¹

Again, returning to the original Fitzgerald report for inspiration:

“The outcome of the Inquiry and report must be determined by the political process, as should be the case in a democracy... the public interest can easily be subordinated to other considerations, and the consequences hidden or disguised in a defective political process.”³²

This is a fundamental and enduring theme, from the time of Fitzgerald to today. Bret Walker SC, in the delivery of this year’s Whitlam Oration, notes:

“In all such cases, the legitimate public interest is manifest: there is nothing merely prurient in our curiosity. The government has no private interests—it is an emanation of us, the governed people.”³³

This is why the RTI Reforms and their implementation are so important to reversing the massive declines in trust. We must do our utmost to ensure engaged, participatory and deliberative democracy

A willingness to listen and deliberate is not something that comes easily. It is easier if it is supported by information rather than simply opinion.

I particularly like this quote from Anthony King and Ivor Crewe’s book on 30 years of missteps in British government. They write that:

“‘Deliberation’ is not a word one hears very often in connection with British politics – for the good reason that very little deliberation actually takes place. British politicians meet, discuss, debate, manoeuvre, read submissions, read the newspapers, make speeches, answer questions, visit their constituencies, chair meetings and frequently give interviews, but they seldom deliberate.”³⁴

Our politicians and might I say public servants, often through no fault of their own, are far better at providing the perception of engagement than offering the real thing.

We often lack the ability to confer, to take counsel, and then carefully weigh up options. We are busy doing and delivering, but often not spending enough time

³¹ *Public Sector Ethics Act 1994*, Qld, div. 2, 6 (d), pp. 6-7.

³² *The Fitzgerald report*, p. 7.

³³ Bret Walker, *The information that democracy needs*, Whitlam Oration 2018, published by *The Mandarin*, 16 June 2018, <https://www.themandarin.com.au/94131-the-information-that-democracy-needs/> [18 September 2018]

³⁴ Anthony King and Ivor Crewe, *The blunders of our governments*, Oneworld, London, 2013, p. 386.

reflecting and deliberating. We might be producing a lot of widgets, but we need to have the capability to step back and see whether they are the right widgets for the time and place we inhabit.

Time and circumstance no doubt play some role in this. We are all busy people, serving busy institutions, but in the end we must primarily serve the community or public interest.

Without the ability to talk more openly about our shared problems, and to have those representing the public interest hear these conversations, we will not be able to solve them.

So, a change of approach—focusing on transparency in the way we go about our business and continuing to open up government, and of course access to the information which supports our evidentiary basis for decision making—will bring huge benefits to the community and importantly build rather than continue to erode trust in our democratic institutions.

It is important to put the Queensland reforms in context and celebrate these great achievements whilst being vigilant to protect and enhance the RTI legislation and institutional framework, implement its intent and provide the institutional authority required to guard against complacency, because as the U.S. engineer and industrial pioneer, W. Edwards Deming, states:

“A bad system will beat a good person every time.”³⁵

³⁵ W. Edwards Deming, *Deming Four-Day Seminar*, Phoenix, Arizona, 1993, in James Williams, *Stand out of our light: freedom and resistance in the attention economy*, Cambridge, UK, Cambridge University Press, 2018, p. 102.

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