RTKDay address
The sky didn't fall in
David Solomon
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I am very honoured that you have thought to put my name to an annual address to mark Right To Know Day and to have been asked to deliver the inaugural speech. I am somewhat embarrassed by the occasion. My embarrassment is compounded by the irony that in my new role as Queensland Integrity Commissioner, most of what I do is actually exempt from RTI.

I first want to acknowledge the tremendous contribution of my co-panelists on the FOI Review, Simone Webbe and Dominic McGann. Simone, before becoming a consultant, had been Deputy Director-General in the Department of the Premier and Cabinet. Dominic, a partner now in McCullough Robertson, at one time worked on FOI in the Department of Attorney-General and Justice. The fact that all three of us had at various stages in the early 1990s been involved with the Electoral and Administrative Review Commission, probably helped us fashion a system for researching our working paper and then developing the recommendations in our final report. While I was full-time and they were part-time, the fact is that the recommendations we made were the decisions of all three of us. Another important contributor to what we produced was our executive officer, Cathy O'Malley, who was not only our principal researcher but also participated fully in our regular meetings.

I propose to say something about the way our inquiry came about and its consequences. Then I will explore the way in which the Queensland experiment has been taken up elsewhere in Australia – so far. I then want to say something about what the Right to Information laws can deliver, and what the obstacles are to them producing the results that government and parliament would have wanted. And finally I will say something about another project in which I am involved at the moment that may well help produce the interactions between government and the people that RTI is intended to enable.

The current round of reforms of FOI in Queensland and elsewhere in Australia had its beginnings with the decision of Anna Bligh to establish our inquiry. It was the first item on the agenda of her first Cabinet meeting as Premier. What is remarkable is that at that time neither she nor the Panel members she selected had any real idea what shape the reforms would take. We all knew that the notorious Cabinet exemption – that allowed Ministers to hide anything they wished by simply wheeling it into the Cabinet room – that that exemption had to be fixed. Our terms of reference made it clear we had to improve and modernise the law to take account of the technological revolution in information and communications. But we were given the widest possible brief – an open-ended brief in fact - to propose reforms to FOI and the protection of privacy. Very early in the process we decided that we were not going to be involved in a line-by-line examination of the FOI Act – had that been wanted the Premier could have given the project to a parliamentary committee, as had been done once before. We decided we would be looking at the big picture, starting from first principles and that, if necessary we would be prepared to question the accepted wisdom about FOI – here and internationally.

After eight months we produced a report containing more than 140 recommendations, most of which were accepted by the Government and were then incorporated into the new Right to Information Act and the Information Privacy Act.

These laws came into force on 1 July this year. It came as a surprise to some sceptics but … the sky didn't fall in. That this was so must have been very reassuring not just to our lawmakers and administrators but also to a number of other governments around Australia that are currently engaged in introducing reforms similar to, and in some cases specifically modelled on, those adopted by Queensland.

Shortly after we began our review in Queensland the Federal Labor Opposition unveiled its policy proposals for the 2007 elections in which it promised significant reforms to the federal FOI laws, including the abolition of conclusive certificates, appointment of a statutory Freedom of Information Commissioner and rationalisation of the exemption provisions so that information was only withheld where this was in the public interest.

When elected the Rudd Government signalled its genuine commitment to FOI reform by giving responsibility for its implementation to one of its most senior Ministers, Senator John Faulkner, who was appointed as Cabinet Secretary.

The Federal Government's bill to abolish conclusive certificates was introduced into Parliament quite quickly, but took a long time to clear the Senate. It was only finally passed in recent weeks. The legislation to bring about the major reforms to FOI and establish the new office of the Information Commissioner – very much along the lines of the Queensland office – is progressing. And as in Queensland, the Commonwealth's Information Commissioner will have a significant role in the development of information policy generally across government, and that is actually going to be specified in the Commonwealth legislation.

In New South Wales the prospects for FOI reform had appeared grim – so much so that the Ombudsman took it upon himself to conduct an own-motion review of FOI in NSW in April 2008, and in September last year published a discussion paper that took up many of the issues that were raised in Queensland. Shortly afterwards there was a change in the leadership of the Labor Party and the new Premier, Nathan Rees, made it clear he would support a new FOI law based on the Queensland model. That legislation went through the NSW Parliament in June this year and is due to be proclaimed early next year. A new Information Commissioner's office is being established with a significant budget guaranteed for this year and next.

The third state that had a change of Premier in 2007-2008 is also reforming FOI. Tasmania's David Bartlett took office with a plan to strengthen trust in democracy and political processes, and the first item in his 10-point plan was reform of FOI. As it happens I was asked to be one of two external people appointed as advisors – the other is Rick Snell of the University of Tasmania, whom we had consulted during our review in Queensland. Draft legislation was made public just over a week ago and the government hopes to have the legislation in the Parliament next month. Tasmania is also calling its draft law the Right to Information Act and its reform are along the lines of those in Queensland, though the Ombudsman will be their Information Commissioner.

I should point out that all these jurisdictions have adopted the public interest test we formulated for Queensland, providing a right of access to information unless, on balance, it is contrary to the public interest to provide the information. Some of them also spell out the factors that may or may not be taken into account in weighing that balance.

For the past month or so I have been caught up as Integrity Commissioner in the Government's green paper on Integrity and Accountability in Queensland, as a member of what is officially called the Round Table. Most of us took part in a number of public meetings in Brisbane and regional areas across the State. We are about to begin helping in the evaluation of more than 200 formal responses to it.

This main issues that were canvassed in the paper were
. codes of conduct
. pecuniary interest registers and managing conflicts of interest
. gifts and hospitality
. political donations, fundraising and campaigning
. lobbying
. procurement processes
. transparency; and
. prevention mechanisms.

Under these headings there were some 35 questions posed on matters ranging from codes of conduct through to whistleblowing. The very last of the 35 questions opened the whole agenda for comment – "Are there any other ways Queensland's integrity and accountability framework can be strengthened and improved?"

The relatively small section on transparency, as you would expect, picked up the Right to Information reforms.

It pointed out that the Right to Information reforms had implemented a fundamental shift in the government's approach to the management of information based on the

over-riding principle that the community has a right to access information held by the government.

It said, in part –

> The Act clearly provides that information should be released unless it is contrary to the public interest to do so. This is a reversal of the previous presumption towards non-disclosure unless there was a public interest in release, as found in the FOI Act.
> …
> Beyond the legislative framework, the Right to Information reforms signal a move towards a "push" model of information release, whereby the government regularly and proactively publishes information, with formal application for access to information under the Act becoming a last resort. All agencies are required to have publication schemes which clearly set out the information they hold and the way that information may be accessed. In addition, disclosure logs of non-personal information previously released to applicants will be published, to facilitate broader community access to information previously released under the Act.

It is hardly unsurprising that the questions that were posed in this section of the paper did not deal specifically with the RTI Act, Instead they were in very general terms -

> Is information about the decision making processes of government sufficiently available? and
> How else could this information be made available to the public?

That these were actually very <u>good</u> questions was not really obvious to me until after I had attended several of the meetings to discuss the green paper in regional areas.

I will explain why that is so.

As you probably know the green paper begins by comparing the accountability regime in Queensland with those elsewhere in Australia, giving Queensland a tick in every

box. Some of those items listed in the table include an anti-corruption body, the CMC; a register of lobbyists; a lobbyists code; political donation disclosure; codes of conduct or ethics for the public service and ministers; restrictions on post-separation employment; a register of MPs' interests; and a direct ban of ministers holding shares.

What was interesting about the meetings I mentioned is how little community awareness there was of most of these integrity and accountability measures. Everyone of course knows about the CMC, but the range of institutional and other measures in place did seem to surprise most people. And these were people who were generally well-informed and had well-developed views about many of the issues that were raised in the paper.

So there is a real challenge for government in increasing awareness of government decision-making processes, structures and policies.

The Right to Information reforms are an essential and indeed central contribution to meeting that challenge.

Looking back at our report from June last year, the first 10 recommendations made by the Panel concerned whole-of-government information policies, and the shift from the then "pull" model that was the core of FOI to a "push" model where government routinely and proactively releases government information without the need for a person to make a request under Right to Information. Those recommendations were all supported by the government and are in the process of being implemented. It didn't all happen on July 1 – it will take time to develop the various whole-of-government information policies. But it is my understanding that the government is pressing ahead with these processes, in keeping with its announced decision

> That a comprehensive whole-of-government strategic information policy essential if we are to achieve the best possible outcomes for an open, accountable and participatory government, where recourse to legislative rights becomes a matter of last resort in the context of increased proactively released government information.

Of course the fact that agencies proactively make more information available to people, that they adopt publication schemes that enable people to better understand what the agency is doing and how it works, that they develop websites that are easily accessible and searchable, that they release information administratively rather than forcing everyone making an inquiry to use the RTI processes – all these aspects of the "push" model won't necessarily mean that people are better informed about how the government works, what processes and institutions it has developed to try to ensure integrity and accountability.

People have to want to know, they need to be motivated to seek information whether from websites or other forms of publication. Establishing transparency is one thing – persuading people to look through the portal and read what is there may be another.

That motivational task is probably a matter for government, particularly if the high ideals of the Right to Information legislation are to be met, and it will probably need to begin in the education system. Ensuring a better flow and availability of government information is not just a good in its own right. It has an important purpose in the scheme of government.

To explain why that challenge must be met, it is necessary only to revisit the reasons included at the beginning of the Right to Information Act for its enactment.

It says –

> Parliament's reasons for enacting this Act are—
> 1 Parliament recognises that in a free and democratic society—
> (a) there should be open discussion of public affairs; and
> (b) information in the government's possession or under the government's control is a public resource; and
> (c) the community should be kept informed of government's operations, including, in particular, the rules and practice followed by government in its dealings with members of the community; and
> (d) openness in government enhances the accountability of government; and

(e) openness in government increases the participation of members of the community in democratic processes leading to better informed decision-making; and
(f) right to information legislation contributes to a healthier representative, democratic government and enhances its practice; and
(g) right to information legislation improves public administration and the quality of government decision-making; and
(h) right to information legislation is only 1 of a number of measures that should be adopted by government to increase the flow of information in the government's possession or under the government's control to the community.

The Premier succinctly summed these up when she launched the green paper and said, "Accountability and transparency in public administration is at the heart of robust democracy".

Since the middle of the year I have been a member of a taskforce established by the Commonwealth Government to explore what it refers to as Government 2.0. What this means is the interaction between government and the latest emanation of the web 2.0. For those like me, who have not been active in this field I quote (in part) what Wikepedia says –

> **Web 2.0**" is commonly associated with web development and web design that facilitates interactive information sharing, interoperability, user-centered design[1] and collaboration on the World Wide Web. Examples of Web 2.0 include web-based communities, hosted services, web applications, social-networking sites, video-sharing sites, wikis, blogs, mashups and folksonomies. A Web 2.0 site allows its users to interact with other users or to change website content, in contrast to non-interactive websites where users are limited to the passive viewing of information that is provided to them.

Governments have decided they cannot ignore, and indeed may benefit from, these developments. During the green paper exercise, for example, we had two sessions in Brisbane that were accessible over the web, and that allowed people to send in

questions. Interaction was limited, but the possibilities were evident to all. The Premier said later she might consider regular contact with people using the web in this way.

The Federal Government's exercise involves many experts and I anticipate will result in recommendations that will encourage all governments in Australia to expand their contacts with their citizens through Web 2.0 techniques. This may provide one of the answers to the conundrum I referred to earlier, where its all very well for agencies to provide information but it all seems somewhat wasted if it disappears into the ether and there is no response from those with whom interaction is desired.

The message is that RTI is the beginning. It provides a framework for more developments, for better communication between the government, its agencies and the people. Ultimately its success will be judged by the extent to which Parliament's aims in passing the legislation are satisfied.

A final word about our new RTI Act. What is does is create a framework for the evolution of a better-informed community, where the government is more open and responsive. In our report we stressed the importance of cultural change and political leadership in driving that change. There can be no doubt that the Premier is anxious to ensure that RTI succeeds. It is to be hoped that the most recent message she sent to all government agencies on RTI principles, gets through to everyone involved in its administration. The Premier said

> At the heart of these reforms will be a public service that conducts itself in the most open and transparent way possible, because that openness and transparency are fundamental to good government.
> The processes of government should operate on a presumption of disclosure, with a clear regard for the public interest in accessing government information.
> The Queensland public service should act promptly and in a spirit of cooperation to carry out their work based on this presumption.

That is the challenge.