

Releasing the potential of FOI - Making the transition from FOI Version 1.0 to Version 2.0

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Inputs into this seminar

- Australian Law Reform Commission Report 1996
- Canadian Access to Information Task Force Report 2002
- Alasdair Roberts *Blacked Out: Government Secrecy in the Information Age*, 2006
- Nicola White *Free and Frank: Making the Official Information Act 1982 work better* 2007
- My comparative research on FOI in Australia and New Zealand
- Joseph Stiglitz's work on Information Asymmetry
- Feedback from a wide network of FOI experts and policy advisors
- Queensland Independent Review Panel Discussion Paper and Final Report (Solomon Report) 2008

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Key Points

- Need to realign FOI with its surrounding environments. Information, administrative and political environments - have changed and continue to change rapidly.
- Significant opportunities for government to use FOI version 2.0 to consult, develop policy and make closer connections with the citizens it serves.
- FOI needs to be managed as part of a system where the central focus is supporting a policy environment that shares quality information whilst protecting confidential and sensitive information

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Key Reform Considerations

- Major versus incremental change
- Alignment - culture, legislation
- System Approach
- Serving all stakeholders
 - Users (Personal to Agenda Setters/ information converters)
 - Citizens (non-users but beneficiaries of Agenda setters or information converters)
 - Public Service
 - Government
- Focus on information flows and quality not which delivery system
- Government should reap the dividends from administering access rather than the costs of maintaining unnecessary secrecy

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The Challenge

- Switching from concentrating on the inadequacies to delivering solutions
- Aligning a new FOI system with a different ICT, administrative and political environment
- Swapping from a legalistic to an administrative model that has a strong legal framework
- Moving from Version 1.0 to 2.0

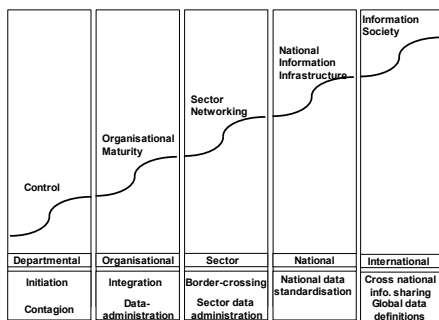
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Understanding the new context

- FOI Acts have not significantly changed over the years but the context in which they operate has.
- The biggest change - Information Technology;
- Public- private sector partnerships are the norm;
- Global, knowledge-based service economy;
- Expectations of citizens about involvement:
 - Culture of service: most government information should be available for free and easily;
 - New generation of users born in electronic age - quick easy access to shared information
- Capacity of citizens to engage
 - Lessons from the Obama campaign
 - Don Tapscott "'Grown Up Digital: How the Net Generation Is Changing Your World.'" Net generation "At a minimum, policy makers should publicize their overall goals and objectives and, for specific issues and decisions, the documents they relied on, the names of the participants in the decision-making process, and their underlying rationales and criteria, and they should provide reasons why alternative policy options have not been pursued."

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Information Sharing for Transformation



Source: e-Government for Better Government, OECD 2005. Figure 5.1

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Information Feeds Demand for Participation

Costs

- Communication & logistics
- Time
- Reimbursements
- Training for officials
- Training for citizens
- Rewards



Benefits

- ✓ Trust
- ✓ Outcomes
- ✓ Compliance
- ✓ Equity
- ✓ Knowledge
- ✓ Innovation

Risks



- Delays
- Hijacking
- Conflicts with politicians
- Higher admin. burdens
- Conflicts btw participants
- Consultation fatigue
- Conflict with existing regulations
- Lower trust

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Reconfiguring Freedom of Information in the 21st Century

- Need a comprehensive approach which will address:
 - the culture of access;
 - the stewardship of the access to information program; and
 - the legislative framework.
- FOI Version 2.0 is a rethinking of the role we allocate to the key players, treating access as a system and harvesting the benefits of higher trust

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“There is no magic solution to the shortcomings of the system. A healthy access to information system needs

- *all its parts functioning well in order to deliver the outcomes intended by Parliament*
 - *the right systems to process requests*
 - *skilled staff*
 - *supportive managers and Ministers*
 - *adequate resources*
 - *good information management*
 - *good understanding of the principles and the rules by all, including third parties*
 - *and effective approaches to oversight.”*

- 2002, Delagrove Report

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A culture of openness

- Reversing the current approach
 - Information continues to be disclosed primarily through a formal legalistic process;
 - Information is mostly disclosed on a *need to know* basis or *only when asked* for basis;
- Requires a change of mindset:
 - Access to information as a core public service value;
 - Leadership from the top;
- Encouraging institutions to:
 - Adopt access as their default mode;
 - Treating FOI as part of an information management process
 - Pro-active disclosure;
 - Virtual reading rooms - Mexican access example - information from successful information requests placed on web
- Lessons from Sweden, New Zealand, China and Mexico.
 - Online request and distribution, minimum publication requirements, short time periods

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The “small but necessary zone of secrecy”⁷ Justice Kirby Australian High Court

- Version 2.0 would maximise management resources on protecting confidential or sensitive information:
 - Easier identification, location and management;
 - Greater credibility for protection claims
- Always will be requests for information in this zone:
 - Highly political;
 - contentious;
 - But restricts the ‘political’ application of FOI to this narrow zone
- Allow for better focus and justification
- Allows better protection of raw policy formulation processes
- Allow for a manageable and coherent declassification process as information loses sensitivity over time (short or long term).

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Administrative Reform

- A modern, rigorous and client focused stewardship requires:
 - Use of technology as an enabler in service delivery across the system;
 - Well resourced/dedicated program;
 - Increase capacity to achieve and promote proactive, informal and routine disclosure of information;
 - Full integration of the new duty to assist;
 - Target systemic issues more efficiently;
 - Improve intra-governmental consultations;
 - Appropriate performance measurement;
 - Effective oversight body;
 - Re-engineer the investigative process - including towards pro-disclosure and ensuring information flow

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What would be different between FOI Version 1.0 and 2.0?

- Information Environment
- Policy
- The Users
- ICT
- Attitudes
- Other Design Features
- Role within E-Government

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Information Environment

FOI Version 1.0 1966 - 2008	FOI Version 2.0 2009 - ?
Simplistic Few linkages Storage •Single location - single controller	Complex Multiple linkages Storage •Multiple locations - multiple controllers (including private)
Designed for a limited amount of 'structured' information -Official files -Little information outside files -All the above unlinked and little overlap	Designed for 'liquified' information -Official files plus -Databases -Vast pool of digital 'unstructured' data -All the above having potentially multiple linkages and overlaps
Designed when government information stockpile -Limited range of formats, information types -Incremental growth in volume -Hard copy - limited duplication (explicit reference to copies)	Government information stockpile -Very diverse, multiple formats and types -Exponential growth in volume -Hard and electronic copies (full and partial) widespread - little explicit referencing to copies

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Policy

FOI Version 1.0 1966 - 2008	FOI Version 2.0 2009 - ?
Seen as a simple and isolated legislative reform	Part of a complex information management system
Not administered or funded as an essential policy program	Funded, administered and accounted for as a core policy program
Basic retrospective reporting of generally simple tallies of request numbers, types, duration and outcomes	On-going reporting used to gather intelligence to improve quality of information flows and exchanges
Administered as a 'burden' or a threat	Administered as a key tool to build trust and improve governance

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The Users

FOI Version 1.0 1966 - 2008	FOI Version 2.0 2009 - ?
Single user Slight but increasing problem of vexatious or excessive users	Multiple users and types More effective controls and filters to manage heavy use
Distribution to applicant - applicant's resources, inclination, purposes, skills and connections determine if any wider dissemination	Distribution to public at large and onus on agency to disseminate highest quality information
User blindness Fishing expeditions or wide sweeps for information a rational but rarely effective option	User able to target Fishing expeditions or wide sweeps for information generally not required or based on more effective intelligence if deployed
Low trust in the administrators	Increased trust a key objective

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ICT

FOI Version 1.0 1966 - 2008	FOI Version 2.0 2009 - ?
Not utilised efficiently	Properly utilised
Large scale investment in sophisticated internal information management systems (TRIMS etc)	Systems designed and implemented to allow external users 'equal' access
ICT experts not involved in design or administration of FOI. Largely ignored	ICT experts central role in design, administration and improvements
Separate information fiefdoms/domains •Steps towards internal interconnectivity	Whole of government strategic information policy •Data sharing between agencies and with external stakeholders including citizens

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Attitudes

FOI Version 1.0 1966 - 2008	FOI Version 2.0 2009 - ?
Default setting - confidential	Default setting - open access
Reactive	Proactive - routine disclosure and active dissemination
Making FOI request - an early option – One of a limited number of mechanisms – Overloaded – Applied to unsuitable new areas	Making FOI request - last resort – One of many mechanisms – Limited use – New areas designed with access in mind

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Other design features

FOI Version 1.0 1966 - 2008	FOI Version 2.0 2009 - ?
Designed for an old era of government-owned copyright, where government would give value away or prevent others from gaining value	Designed for a new era of rights to re-use government data, either for public interest benefits or to generate commercial value (with a follow-on tax revenue stream)
Designed when FOI was a tool to assist accountability of agencies and ministers to the public – and gave a nod to participation if you were lucky.	Designed so that government gets the value of FOI too, through improved internal information flows contributing to achievement of other policy goals/outcomes.
Taxpayer money spent on processing the FOI request is treated as a 'sunk cost'	Designed so different parts of the public get the value of the information disclosed in response to a request, even if the original requester doesn't appear to act on it. Taxpayer money spent on improving information flows seen as an investment.

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Role within E-Government

FOI Version 1.0 1966 - 2008	FOI Version 2.0 2009 - ?
None or limited	Integral
	Reconfiguration of agency websites Better home page designs Better navigation A 'google capacity' to access the '80%' of accessible information

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Three possible elements of an FOI 2.0 strategy

1. Anticipate disclosure policies while designing electronic record and document management systems (ERDMS). Tag and structure records with possible disclosure in mind, and build publicly accessible search interfaces into ERDMS systems. (Alasdair Roberts)
2. Require that there be "access impact assessments" (just as there are privacy impact assessments) before new databases are constructed by governments. Eg, will the database be configured to allow reasonable access to data fields? Especially important with contractor-supplied database programs. Does the procured software anticipate public access as one of the "business needs" for the database? (Alasdair Roberts)
2. Working documents exemption should (NSW Ombudsman Discussion Paper)
 - Be narrowed to policy formulation - not coverage of consultations and deliberations
 - If an exemption claimed government should provide a summary of the policy under development
 - Limited application of exemption ceases when
 - Final position reached
 - Decision made
 - No longer any ongoing consideration

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A Postscript

- A summary of the Australian and New Zealand experiences
- Similar time period but different legislative and administrative approaches
- The NZ elements which are superior resemble an FOI Version 2.0 approach

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Different FOI Outcomes

	Australia	New Zealand
Outcome	Managing Secrecy	Moving to open government
Change process	Attempt to achieve overnight	evolutionary
Approach	legalistic	administrative
Public interest	Partial and limited role	Central and instrumental

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Key Differences

	Australia	New Zealand
Target of Access	Documents	Information
Interpretation	Narrow	Pro-disclosure
Exemptions	Categorical	Consequential
Administering Act	Ad hoc and internal	Systematic and external

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Outcomes

	Australia	New Zealand
Compliance	Variable and often poor	Uniform and generally high
Fees	Significant problem for key users	Minor problem
Access to key documents - policy information	Rare	Frequent Including Cabinet and high level policy documents
Information flow	Trickle and irregular Government determined	Strong and regular Two way flow

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Different versions of the same approach

	Australia Version 1.0	New Zealand Version 1.5
Ease of use	Difficult and frustrating	Easy to use
Outcomes	Uncertain and unfavourable	Predictable and favourable
Ability to respond to changing environments	Poor and deteriorating	Better but still slowly deteriorating
Reaction from within Government	Hostile or indifference	Acceptance and accommodation

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FOI Reforms

	Australia	New Zealand
Reform prior to 2008	<ul style="list-style-type: none"> •Focus on incremental changes •Demand external to government •Ignored by government 	<ul style="list-style-type: none"> •Incremental changes •Accepted by Government
2008	<ul style="list-style-type: none"> •Top levels of government •Radical and comprehensive reform 	Minor reform to be investigated
	Move towards FOI Version 2.0	No major change

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