Opening up the mindset is key to change

The rhetoric and intent of Prime Minister Kevin Rudd and Senator John Faulkner on FoI have been clear and seems receptive to FoI Version 2.0. Yet the lack of any urgency to adopt change has been puzzling and unsettling. In retrospect serious change needed to have started from day one. Momentum and, I suspect, the commitment to reform has waned with each passing month. Apart from a couple of speeches by Faulkner and Rudd no clear and detailed message has been sent to public servants on how and in what way they are expected to do things differently. The same government guidelines and practices that were used by the Howard government remain in place and the elite of the public service seems fixated on the view that FoI at its heart is not able to work in our Westminster system.

Information is the oil that lubricates our democracy and policy processes but we have been surviving on very small quantities of an old outdated brand. The resultant sclerotic information system was denounced by the ALP in opposition, and Rudd was quick to recommit to the reform of FoI in the very first days of his government. Yet this commitment has failed to materialise either in concrete legislative change or, far more importantly, in any shift across the bureaucracy to promote a pro-disclosure culture of the type that was flagged by Senator Joe Ludwig last year.

The Rudd Government’s commitment to reform is a once in a generation opportunity for the public service leadership (including the next generation of leaders waiting in the wings) to transform and significantly improve the system by improving the quality, timeline and flow of information within government and more importantly with those outside.

Can the public service elite still be ad hoc, often occurring in intensive unexpected surges for particular departments or targeting sensitive documents in volatile circumstances. This makes Australian FoI vulnerable to gumming up or restricting information flow.

Wherever possible conflicting views are expressed in advance through these various processes continue but most, and certainly the best, policy advisers now start thinking at any early stage how to consult interest groups and the public. A classic feature of policy development in New Zealand is a discussion document or public consultation round sometimes involving nation-wide meetings and hearings . . . Very few major policies now come as a surprise to the public as they will have been signalled well in advance through these various means. Ministers expect to be told as a matter of course about the views of interest groups on major new policies .

Wherever possible conflicting views will be exposed, opponents on both sides brought together so that they understand each other’s point of view, and bureaucrats will diagnose and report on potentially unpleasant reactions to government policy. Operational risks and failures are quickly reported to ministers before they break publicly.”

**Information is the oil that lubricates our democracy and policy processes but we have been surviving on very small quantities of an old outdated brand.**

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**Opening up the mindset is key to change**

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**November, 2008**
Officials in Australian public service have long been exhorted to involve the public in policy making processes and no doubt have. The Public Service Commission in 2001 was recommending service charters for departments concerning public consultation. “Developing policy that takes into account the needs of ministers, the community and resourcing issues will sometimes be a fine balancing act. A service charter will help ensure that there is reasonable input from relevant members of the public into the policy process and should reassure the community that consultation with it is regarded seriously.”

In 2003, the Commission even more explicitly recognised the benefits of citizen input to policy making. “In policy development and policy implementation public services in Australia have begun to more systematically involve citizens and stakeholders in the planning processes. This recognises the expertise, and the differing values and perspectives, of community members and the increasing expectation of members of the public, clients, and industry members to influence the services they receive and the policies that affect them. “

“Agencies and ministers are using a range of techniques, including focus groups, consultative committees, open inquiries, ad hoc panels and even negotiation processes. This involvement results in better policy and service delivery and better advice to ministers about community perspectives. Good policy making is increasingly involving proactive communications, listening to community views, understanding the fears and sensitivities of those affected, providing feedback, and explaining government policy. The effectiveness of a program or policy initiative can be greatly influenced by the quality of the communications strategy.”

But in contrast to Shroff’s exposition of the New Zealand experience – where the FoI law mandates agency consideration of the ability of people to effectively participate in the “making and administration of laws and policies” – the current system of Australian FoI tends to freeze up information flows or severely limit the flow of information within government let alone to those outside government. It is not designed or managed to enable people to get the information they need to make a valuable contribution to public discourse on policy issues.

Australia was one of the early adopters of FoI. In those pioneering days any degree of openness was a major revolutionary step greeted with howls of dismay about the demise of Westminster government. Yet there are now 70-plus countries that have embraced FoI and many have learnt from our humble and faltering early development of FoI. Many of these countries have embraced FoI and many have learnt from our humble and faltering early steps. Many of these countries have extensive publication schemes, including China, some use the internet to disseminate successful requests to the public at large, Mexico, and even Britain, home of the Westminster system of government, now regularly releases information under FoI.

The pioneering Solomon Report, already endorsed by the Queensland cabinet, has provided a useful blueprint for FoI reform at state level. Tasmania’s Premier and Deputy Premier have committed that state to using the Solomon recommendations as a foundation for a new version of FoI in that state. Meanwhile the NSW Premier has declared that, “The days of NSW acting like some kind of secret society have ended. It is time to change the culture of information exchange between the Government and the public.”

Australia is at a critical juncture. Governments are committing to significant FoI reform. The dividends from more openness by way of effective governance, better internal information management and policy development are waiting to be harvested. The first generation of FoI was mistreated, diluted and consigned to a marginal role. The hope is that a new generation of public service leadership will see the need for better information flows and sharing and that they will contribute constructively to the design and development of FoI Version 2.0.

Yet the political economy of information flows and the vested interest the public service has in being a monopoly provider, especially in the later stages of policy formulation, of data and advice to ministers has to be taken into account.

FoI 2.0 will ensure advice is more contestable and it will reduce the power of existing officials as alternative and informed sources of advice develop external to the public service. The gain from losing this monopoly for public servants is dealing with better informed stakeholders and the capacity to demand that the media lift their performance to match the quality of information they can access.

**Before we go to 261 million places overseas we come to you.**

**Rick Snell is a senior law lecturer at the University of Tasmania. The contributions of Andrew Eccleston, honorary senior research fellow at the Constitution Unit, University College London and a number of others who prefer to remain anonymous are acknowledged.**