

# **‘WHO NEEDS FOI WHEN MARKET MECHANISMS WILL DELIVER ACCOUNTABILITY ON DEMAND? A CRITICAL EVALUATION OF THE RELATIONSHIP BETWEEN FREEDOM OF INFORMATION AND GOVERNMENT BUSINESS ENTERPRISES’**

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The relationship between Freedom of Information (FOI) and Government Business Enterprises (GBEs) in Australia reflects the changing relationship between administrative law and public administration.<sup>1</sup> Creyke has argued that ‘this is a period of profound change to the system of Commonwealth administrative law.’<sup>2</sup> There is a sea change which, at close quarters, is revealing contradictory results. On the one hand we have decisions like *Teoh*,<sup>3</sup> which at first glance represents new heights of administrative law imperialism, on the other we have treasury officials reinventing government for the year 2010 within which there is no need for administrative law;<sup>4</sup> somewhat like a modern version of More’s Utopia for the public service. In this new corporate Utopia smooth client service delivery and modified market mechanisms will serve the citizen consumer much better than awkward and uncertain recourse to judicial review and the whimsy of procedural fairness. Some, like Justice Kirby, are tempted to accede to the proposition that ‘if the very purpose of corporatisation and privatisation is to take the government out of the marketplace, can courts really be blamed for giving

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1 See Margaret Allars, ‘Private Law But Public Power: Removing Administrative Law Review From Government Business Enterprises’ (1995) 6 *Public Law Review* 44–76.

2 Robin Creyke, ‘Sunset for the Administrative Law Industry? Reflections on Developments Under a Coalition Government’ in John McMillan (ed), *Administrative Law Under the Coalition Government* (1997) 20, 20.

3 *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273.

4 See David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (1992).