

Freedom of Information

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Review

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Comment

Economically rational people, the economists tell us, need lots of information. However, it is remarkable how wedded to confidentiality free marketeers can be when they come to assess the information needs of government and the public as regards privatisation, the operation of privatised utilities, and outsourcing. Asset valuation details are secret at the time of most privatisations, and remain secret thereafter. Regulatory control over privatised utilities encounters difficulties at the most basic level when, as in the early years of British Telecom's private sector existence, the regulator is reduced to cajoling the utility to compile vital information about compliance with performance standards. In the area of outsourcing, basic contractual details such as performance standards and price are frequently kept secret, for fear of prejudicing the contractor's competitive position.

Mark Aronson 'A Public Lawyer's Responses to Privatisation and Outsourcing' paper delivered at a Canadian conference in 1996.

Professor Aronson then goes on to urge those interested in Fol to rethink the paradigms within which Fol operates. Should we deliberately incorporate into our access legislation sensitivities over privatisation or outsourcing agreements allowing non-disclosure for a period after the final process but then allowing release after a set time? The release would assist assessment and evaluation by citizens, future contractors, etc. about the benefits, windfalls or hurdles of such processes. Given the eventual release of several volumes of the Intergraph Contract by the Victorian Government maybe the Kennett regime is leading the way to a new era of open government.

Currently there are several major responses being developed to information and accountability issues arising out of contracting out and outsourcing. The Australian Privacy Commissioner has released a discussion paper titled '*Information Privacy in Australia: A National Scheme for Fair Information Practices in the Private Sector*' (for a copy see <http://www.hreoc.gov.au/>). The Administrative Review Council has released a discussion paper on '*Contracting Out*'. The Victorian Public Accounts and Estimates Committee will be holding hearings in September in relation to issues of commercial confidentiality and some aspects of administrative law and accountability.

In relation to the ARC discussion paper, the Privacy Commissioner has recommended that the Commonwealth *Privacy Act* be amended to make contractors to Commonwealth agencies directly liable for observance of the Information Privacy Principles set out in s.14 of the Act (see <http://www.hreoc.gov.au/privacy/submis/sub21.htm>).

I would urge readers to gain access to these various discussion papers and to take up Professor Aronson's call to reshape our accountability mechanisms like freedom of information.

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