LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

MEMBERS: **Mr G. B. FENLON** (Chairman)
Mr D. E. BEANLAND
Ms D. BOYLE
Mrs J. M. GAMIN
Mr F. W. PITT
Dr P. R. PRENZLER

FREEDOM OF INFORMATION

TRANSCRIPT OF PROCEEDINGS

Friday, 12 May 2000
Brisbane

WITNESSES

The Committee resumed at 9.09 a.m.

The CHAIRMAN: Good morning, ladies and gentlemen, and welcome to the second day of the Legal, Constitutional and Administrative Review Committee's public hearing in relation to the Freedom of Information Act 1992. The Committee's hearing will now resume. For the benefit of those people who were not here yesterday, I will introduce Committee members and reiterate some of the points I made in my opening statement yesterday. The members of the Committee are: Judy Gamin, the honourable member for Burleigh and Deputy Chair of the Committee; Denver Beanland sends his apologies this morning—he will arrive later in the morning; Desley Boyle, the honourable member for Cairns; Warren Pitt, the honourable member for Mulgrave; and Peter Prenzler, the honourable member for Lockyer.

On 11 March 1999 the Queensland Parliament referred the Freedom of Information Act 1992 to the Committee for review. The broad terms of reference for the inquiry have been distributed. The purpose of this public hearing is to provide the Committee with an opportunity to question a number of people who have particularly relevant experience or expertise in relation to the current freedom of information regime. Further, the public nature of the hearing provides an opportunity for members of the community to observe the evidence given by the witnesses. I welcome members of the public who are in attendance today.

In the event that those attending today are not aware, I should point out that the proceedings are similar to the Parliament to the extent that the public cannot participate in the debate. In this regard, I remind members of the public that in accordance with Standing Order 195 adopted by the Legislative Assembly any person admitted to a public hearing of a Committee may be excluded at my discretion, as Chairman, or by the whole Committee. I trust that those present will permit all witnesses to give their presentations to the Committee without interruption.

The Committee will be hearing from a number of witnesses during the hearing. I understand that copies of the program detailing the witnesses have been distributed. By hearing from interested people who represent a variety of views, the Committee hopes to canvass a broad range of issues relating to the freedom of information regime in Queensland. Although the Committee does not require witnesses to give evidence on oath, witnesses should be aware that this does not alter the importance of the hearing. The deliberate misleading of the Committee may be reported to the Legislative Assembly. I will ask each witness to come forward and present their submissions in turn to the Committee. After hearing from each person, the Committee will have further questions of each individual. The first witness I welcome is Dr Bill De Maria, from the Centre for Public Administration, University of Queensland.

WILLIAM DE MARIA, examined:

The CHAIRMAN: We are very grateful for your attendance and your time today. I believe you have a short statement that you would like to make?

Dr De Maria: Yes.

The CHAIRMAN: Could you keep that to a limited time, because the Committee would like to ask questions.

Dr De Maria: How long do I have?

The CHAIRMAN: Is 10 minutes all right?

Dr De Maria: I will do my best. I thank the Committee for the invitation it has extended today to assist in this first real review of the Queensland Freedom of Information Act. I am sure members of the Committee fully recognise the gravity of the task at hand. Today you are on the people's business to consider whether the current FOI scheme aids and abets the hallowed processes of democracy. That has to be your only question. It is a difficult question for Government to ask. Woodrow Wilson, the 28th President of the United States, said that freedom has never come from government, freedom has always come from the subjects of government. You have received 110 submissions in the first round. The majority of these are from organised interests in the community—stakeholders, if you like. Without taking anything away from these organisational presentations, it is absolutely imperative that the voice of ordinary Queenslanders, the subjects of government, remain firm and heard in this process. People more than ever need, seek and, indeed, demand accountable, responsive and transparent government. You could be a part of that or you could conduct yourself in such a way that you let the people down.

By that I mean this: your discussion paper No. 1 is a very good document. It is a carefully researched and clearly presented summary of the most important issues facing modern Governments when they review or enact FOI statutes. I would like to acknowledge the highly professional work of your research director, Kerryn Newton, and her secretariat staff in this important project, but I have a feeling that this is as good as it is going to get. To respond to some of the far-reaching calls for FOI reform you, as a Committee, will have to make some pretty courageous recommendations and be there to argue, explain, support and above all protect those positions from the opponents of openness as your proposals take the rocky road to legislative reform. I say this because the Queensland FOI Act, in my view, is a mediocre statute. Unlike some of the organisational submissions received by your Committee which proclaim that the Act is working okay or that it perhaps may just need some redialling, I believe the Act needs a major realignment. If I am right about this, the Committee has a long road to walk.

To briefly summarise my review of the Act I would make these points: one of the many negative inheritances from our British history has been the obsession with official secrecy. Through the generations that obsession has poisoned the wells of democracy. That fixation is still very much part of public life in Australia and some would say particularly in Queensland. When you take the long historical view of official secrecy, the Queensland FOI Act is an important but small step on the road to openness. The question now, of course, is: what is the next step?

The Act has a 1980s feel to it. It was conceived in the latter part of that decade as a response to an unusual level of mobilised dissatisfaction about the way that Government does business. Now in 2000 we have Government doing very different business. A Government of service deliverers is now mutating into a Government of traders. The FOI Act has not kept up with this development. Conceived in the late 1980s and born in the early 1990s, the Queensland FOI Act reflected the profile of official power present at the time. In the deliberative process managed by the Electoral and Administrative Review Commission in the lead-up to the Act, a quiet yet Herculean battle took place between vested bureaucratic, judicial and political interests and people about the extent and the nature of the freedoms to be put into that Act. Some would say the Act is a compromise between these interests. I am not one of these people. The Act has the influence of officials all over it.

I have been asked to specifically address the Committee on five matters: commercial in confidence, oversight of administration of the FOI Act, the Information Commissioner model, proactive FOI and the parallel issue of techno access and the general approach to exemptions. Before I move to the major part of my evidence, I would like to mention some innovations occurring overseas as an example of what can be done when Governments have a passion for freedom of information.

On 26 April this year the Welsh Cabinet minutes were published and posted on the Internet six weeks after the Cabinet meeting took place. Compare this to the disgraceful behaviour of the Queensland Government in November 1993 and March 1995, when it turned the section 36 Cabinet documents exemption into a capacious vacuum cleaner immorally sucking documents out of the public arena. A large number of briefing papers to Ministers are regularly published in New Zealand under its world beater FOI legislation, the Official Information Act. Compare this to the 7,800 deliberative processes exemptions claimed under the Queensland Freedom of Information Act in 1996-97. Under Ireland's Freedom of Information Act, factual and statistical material as well as scientific and technical advice and performance and efficiency studies that form part of the determinative Government policy cannot be withheld under the deliberative processes exemption. The Governor of Florida announced in March 1999 new rules which require the Governor's office to give notice of and to open the meetings between the Governor and the House Speaker, the Senate President or between the Governor and at least three legislators—all meetings. A Bill will go before the Florida Legislature this year that would make public corruption investigation records available after three years. Compare this with the Queensland Act, where class exemptions exist with respect to parliamentary judges commissions of inquiry, the Fitzgerald commission and commissions of inquiry.

I turn to commercial in confidence. Senator John Hogg, ALP Queensland, on the Senate estimates committee wants information on accommodation for AusAID funded overseas students. The forthcoming 2000 Olympics is costing the Australian taxpayer heaps. What is the host city contract? Eleven people died in privatised prisons in Victoria in 1997. How did they die? The Beattie Government cuts a deal with Virgin Airlines. What was in the deal? The water

privatisation contract in South Australia runs for 20 years. What is in it? The Federal Government's Jobs Network involves one of the largest Government outsourcing contracts in the world. What is in the contract? In 1993 the Kennett Government announced that it would outsource all non-emergency ambulance services in Victoria. What was the nature of that arrangement? These examples—and there are many more to be had—had one thing in common in that all attempts to answer these questions have been blocked by a single excuse: commercial in confidence. These matters have been put beyond the reach of the public with the Orwellian excuse that it is not in our interest to know these things.

The CIC blockade in FOI Acts in Australia represents the third hit that FOI Acts have had to sustain over their separate histories. The first was the overusage of the deliberative processes exemption. The second—and Queensland and Victoria are famous for this one—was the abuse of the Cabinet papers exemption. Unless amendments unglove commercial in confidence, this third hit could be the king hit that finally destroys diminishing public confidence in the Act. Why? I think there are three reasons for this.

Firstly, the exemption is used excessively. We are not talking about a rarely used blockade here. In 1997 the CIC exemption was used by FOI administrators in Queensland 21,242 times. In the same period, Victorian FOI administrators used the CIC exemption 242 times. What we have in Queensland at present is an administrative practice that has been allowed to get to plague proportions. Secondly, the exemption, because of its nature, can disrupt the democratic process more so than the embargo on release of, say, public information to second parties, because the CIC exemption blocks our fundamental right to know Government—our—business. Thirdly, it has now been demonstrated that the administration of CIC exemptions is usually accompanied by some pretty gross ethical conduct. Two examples come to mind, and I will give you only one.

The first concerns the tendered out Victorian Ambulance Service that I spoke of earlier. The tendering process is now the subject of a royal commission. My point goes back to earlier attempts to put the tender process on public record. The Victorian Government refused, saying it wanted to have individual negotiations with each company and thereby come to separate agreements. Publicising these agreements, it argued, would give the parties knowledge of their competitors' tenders. However, when the Victorian Civil and Administrative Tribunal ordered the release of the tender documents, it was found that all of the companies got exactly the same contract and were paid the same amount. Official lying for the sake of a deal!

As to commercial in confidence and the Government owned corporations exemption—this is a very important mix and it is all about trying to locate the public interest. I am happy to field questions from the Committee on this. We have an irony here. The Freedom of Information Act should have as its hub the concept of the public interest. The trouble with that is that it is beyond justice or it is not a justiciably defined concept. It can only be defined subjectively, which makes it very, very difficult. In the absence of a definition of the "public interest", it becomes assumable. So people on our behalf—people in power—assume the public interest. That creates all sorts of problems.

But let me get on to the Virgin Airlines case, because that is our most modern example of the use of the CIC blockade in Queensland. On 15 March this year the Premier made a ministerial statement in the Legislative Assembly about the Government's success in securing Brisbane as an Australian base for the British airline company Virgin. On that day he referred in broad detail to the deal that was done, but he refused to give explicit details of that five-year contract. Because no-one outside the contract has asked for it, been refused and then appealed, we do not know whether the Premier's refusal to release the details of the deal was legal or not. A recent decision of the Western Australian Information Commissioner involving the model Elle Macpherson would indicate that the Premier's refusal to publicise the Virgin contract may have been wrong at law and a challenge to the decision, had it occurred, may well have been successful. The Queensland Information Commissioner has decided a number of CIC appeals in last few years in which he, too, like his Western Australian colleague, has recognised that the CIC exemption claim should not be made lightly. In 1995 he refused an application from the well-known north Queensland developer Keith Williams to keep secret correspondence between the company Cardwell Properties and Ministers of the Crown.

It seems that the wording of the CIC exemption in the Queensland FOI Act, along with a string of CIC cases from the Information Commissioner, do provide mechanisms strong enough to stop Governments avoiding their accountability obligations. If that is the case, why is the exemption invoked so frequently? As the Government as trader emerges, it will place more emphasis on CIC to keep its dealings out of the public arena. The growth in CIC exemptions is also to do with the fact that the appeal process is slow and overlegalistic. So when the Premier says to the Courier-Mail that they cannot have the Virgin contract, the newspaper then must decide whether an appeal fight that could take years is consistent with their brief to provide contemporary news. So they go away. There are very few of what could be called freedom of information public policy appeals to the Information Commissioner. Only four journalists got as far as the Information Commissioner last year. Similarly, only six citizen lobby groups went that far.

My recommendation on CIC would be this: when public officials in, for example, an answer to a parliamentary question or in official correspondence state that Government information is to be withheld and cite the CIC exemption, the requester, that is, the interested party or the media, may apply to the Information Commissioner for a non-enforceable short advice on whether there is a prima facie case for withholding the information. That advice must be tendered by the Information Commissioner within three days of receiving the request to do so. If this recommendation ever gets beyond the hail of predictable process and works, it could be expanded to all other access disputes.

A second recommendation is that all Government contracts should contain a standard clause which states that the contents of the contracts are subject to legal requirements concerning legal disclosure and are prima facie public. A third recommendation is that all documents generated for the purpose of winning Government contracts, including official advices and technical assessments, are also subject to legal requirements concerning legal disclosure and are prima facie public. This recommendation extends to unsuccessful and withdrawn tenders.

Another recommendation is that Government contracts that include confidentiality clauses should be submitted to the Information Commissioner for review. The Information Commissioner is only empowered to consider submissions from the private contractor, who has the onus of proving that disclosure would substantially affect economic interest. Another recommendation, recommendation E, is that, where information is approved by the Information Commissioner to be kept confidential, a minimum time shall be set after which the information is made public.

One of the difficulties that we have at the moment with respect to CIC is that Governments tell us that we do not need to be too worried about the absence of accountability as a result of not flowing these contracts into the public arena because the private sector is well regulated, anyway. The difficulty with that is that we have now got a decision out of the High Court—the Hughes decision—of 3 May this year which follows the Wakim decision last year which has cast serious doubts on the enforcement of Corporations Law in Australia. It is so serious now that the Attorney-General is seeking urgent legislative reform to that. So the often used excuse that the accountability is there in the private regulatory mechanisms is a difficult one to sustain given that possibility.

If the CIC exemption craze was not bad enough, we now have to deal with this class CIC exemption as a result of a 1994 amendment to the FOI Act. Listed Government owned corporations have always had their commercial information beyond the reach of the FOI Act. The 1994 amendment puts all their information—commercial or otherwise—beyond the Act. Unless the Government does a radical policy change, we can expect more GOCs to be spawned and quickly scurried to the shelter of section 11A. So a recommendation there would be that the Information Commissioner's submission to the FOI review makes a strong case against this practice of blanket commercial exemptions as he has done in previous annual reports. I commend his arguments to the Committee with the recommendation that all class CIC exemptions be repealed.

Let me just quickly talk about the oversight of the FOI Act. The Parliamentary Committee—your predecessor Committee—said that the decision to use an Information Commissioner rather than a tribunal for hearing of appeals is a matter which requires the closest scrutiny. That was said back in 1991. That, to my knowledge, has never been considered. There are three questions I want to highlight that very briefly. Should the debate on an administrative appeals tribunal for Queensland be reopened? Secondly, I want to talk about parliamentary

oversight of the FOI Act and, thirdly, I want to talk about improvements to the Information Commissioner model.

I will just briefly cut here and say that not much has been said about this AAT concept for Queensland since it was considered by the Electoral and Administrative Review Commission in the early 1990s. Given the major structuring of Commonwealth administrative appeal mechanisms which come into force in February next year, the time may be right for another look at this model for reviewing administrative decisions, which includes FOI decisions.

With respect to parliamentary oversight of the FOI Act, it seems obvious that Parliament's scrutiny of the FOI Act is virtually non-existent in practice. The present situation is that the Information Commissioner presents his annual report to the Speaker. In this way the House receives the report. This is usually the end of the matter. Parliament has an unquestioned power to take more of a supervisory role with respect to FOI. My recommendation there would be that your Committee seek from the Legislative Assembly a five-year standing brief to develop a higher level of parliamentary oversight of the Office of the Information Commissioner. Can I say that this assumes that a section 61 appointment is made next time cutting the Ombudsman away from the Information Commissioner? It is further recommended that, in developing a model of accountability for the Information Commissioner, the Committee take into account developments in the relationship between the CJC and its parliamentary supervisor.

The Information Commissioner model exists in Ireland, Canada—there are non-binding rulings there—Western Australia and the United Kingdom. The Data Protection Commissioner is soon to be known as the Information Commissioner. You may well have been advised that the UK Freedom of Information Bill is now in the House of Lords and has gone to a House of Lords committee. So its enactment and royal assent is imminent. There is also an Information Commissioner in Hungary, although I am not too sure about what appeal functions that body has.

The Queensland model is the only one of those I have cited that combines the role of Ombudsman and Information Commissioner. I think there are major problems because of this. I am on record for being critical of the Office of the Ombudsman. Part of my concern is to do with the tradition of conservatism that I believe operates in the work culture there. Other commentators have picked up and been critical of the Ombudsman's shyness about proactive action and the limited use of own-motion investigations. I suspect the current review of the office will have to respond to additional problems about authoritarianism and low morale. The fact that, legally speaking, the Ombudsman is the Information Commissioner but, practically speaking, he is not gives us these weird animal-like Siamese twins with a single head. This must produce a great deal of confusion. For example, Ombudsmen in other States and the Commonwealth have from time to time conducted special reports into the administration of FOI Acts. Under the current Siamese arrangements we have in Queensland, this would be impossible, for it would be the Ombudsman reporting on himself. If I am right about this, my criticism of the Office of the Ombudsman must then flow on to a criticism of the Office of the Information Commissioner.

One detects the same culture of conservatism in the administrative spirit of the Information Commissioner. His Western Australian colleague seems to be a far more proactive animal. She has, for example, started information audits on selected departments. She has only about 12 equivalent FTE staff in Perth, and that is pretty similar to what we have up here. My recommendation for you there would be that the Committee gives serious consideration to the separation of the Ombudsman and the Information Commissioner. The Office of the Information Commissioner should maintain its independence but be part of the Attorney-General's portfolio; the Information Commissioner should be given responsibility to oversight the Act, conduct audits similar to those carried out in Western Australia, be responsible for ongoing training, do information research and report to your Committee. I am trying to get to the end of this as quickly as I can.

However, there are other models that you could look at. The model that I prefer is the model that is going to be in place in the United Kingdom now: an Information Commissioner backed up by an information tribunal. I would seriously think this is a good model for Queensland, but I would add the cessation of all internal reviews in departments. FOI internal reviews would go straight to the Information Commissioner. The Information Commissioner's non-binding decisions

would be reviewable by an information tribunal that would answer to Parliament via your Committee.

It seems to me that there is too much internal reviewing going on across the Queensland public sector. This model is clearly management's choice. It is cheap and, above all, controllable. To my mind, this is a model of decision review that is essentially flawed. The internal reviewer is a player in the same organisation milieu as the FOI officer who made the primary decision. One can understand, without condoning, an FOI officer getting the public interest test on allegedly exempt material mixed up with what is in the interest of the organisation. But the situation becomes intolerable when the internal reviewer follows the same path. The internal reviewer is more senior in the agency than the FOI officer. It stands to reason that he or she should have an even keener understanding of the concept of organisational interest. To put it squarely, many people simply do not trust internal review. I would be asking the Committee to seriously consider that.

Another model is an internal review and then up to the Information Commissioner. So we maintain internal review and give the Information Commissioner separation from the Ombudsman. The Information Commissioner reports and takes broad policy directions from your Committee.

The third one would be an internal review and then straight to the District Court. The massive United States freedom of information system runs on this model. So do the FOI systems in France and the Netherlands. It could not be any more legalistic than the current practices of the Information Commissioner in Queensland. So I would recommend that the Committee look very seriously at these models, noting my preference for model A as such.

I want to quickly talk about proactive FOI. There is something profoundly undemocratic about citizens having to ask for official information, more so when the asking involves drawn out, formal and complicated processes. At present, agencies can release information outside the Act. It is a discretionary power and, as one would expect given the culture of secrecy, rarely used with respect to policy material. We need outside the Act mandatory release of official information.

The discussion paper mentions the compulsory release provisions in the British Columbia Freedom Of Information Protection of Privacy Act with respect to material that informs the public of significant environmental and safety issues. The news that a toxic leak has polluted parts of Kakadu National Park came to us last week, one month after it happened. That is the sort of thing I am talking about. This is the sort of disclosure that would have been made instantly had mandatory public reporting provisions been in place.

Some examples from the United Kingdom briefly are that the Department of Trade and Industry published the economic analysis behind its competition white paper. Unbelievably, the Ministry of Defence has published information on UK holdings of fissile material and has clarified the scale of the UK's operation and nuclear stockpile—all on the public record—the number of weapons deployed on Trident submarines and the cost of the nuclear program. It is all on the public record. The same Ministry of Defence has published information on British operations in Kosovo and Iraq. Reports of the Inspector of Prisons on individual prisons are published within six weeks of receipt by the Home Secretary.

Under the mid 1990 provisions for the UK Freedom of Information Bill, mandatory disclosure was to be extended to include such things as schools being forced to explain how they apply their admission criteria; police forces to give out information about the conduct of inquiries, provided this does not compromise ongoing investigations; health authorities to provide details about how they allocate resources between different areas; and hospitals to publicise how they prioritise waiting lists—all on the public record.

These very important and open Government policies, it should be noted, are coming out of Britain, the home of official secrecy. With the Internet and other communication technologies, the technicalities of making agency material available has been solved. The only thing that stands in the way is Government policy. So I would recommend the Committee give serious consideration to the introduction of mandatory disclosure into the FOI Act.

I draw the distinction between mandatory disclosure and requested disclosure. For both, we would need data banks. Our web and emailed based mandatory disclosure program would radically reduce the scope of the FOI Act. The Act would be the statutory gate through which contentious material would be released if it passed the public interest test. Either way, the people

would need more information as to what is held by agencies. I envisage an official information centre similar to but an expanded version of the American Federal Information Centre.

The official information centre would hold electronic and paper based document banks showing agency holdings in detail—not gross data but in detailed data. Each document would show whether it could be obtained under the mandatory reporting disclosure program or the requested disclosure program. If access is under the former, the person simply puts in an electronic order and should get the information within an hour. If access is under the latter, the application for the material would be made electronically. Electronic search and order facilities would be available at the official information centre and municipal and shire libraries. The official information centre would be a subprogram of the Office of the Information Commissioner.

I am now on the home stretch. I have about two minutes to go. I now turn to my general approach to exemptions. The last recommendation is probably the most radical of all. I am advocating the deletion of all exemptions and all exclusions within the Act. These would be replaced by a single public harm test. If the release of a requested document as opposed to an ordered document under the recommended mandatory disclosure program would, in the agency's view, cause social harm, then the application is simply refused. The agency does not need to attempt to justify how refusal is consistent with an existing exemption. What it must do, however, is precisely state what social harm the release of the document would cause, how real the possibility is of the harm, to whom or to what the envisaged harm would occur and what factors it took into account in determining the above three. The applicant would then have the same choice as they have now—accept the ruling or appeal it.

The current practice of justifying non-disclosure by applying the definition of exemptions to the material in question is, I submit, wrong on a number of scores. The specific codification of exemptions in the Act, the mere listing of them, gives them an a priori legitimacy. For example, section 38 allows non-disclosure if requested material contains details of Government to Government dealings. Before the fact, that is, before the decision to non-disclose is made and subsequently tested on appeal, a presumption is alive that Government to Government dealings ought not to be disclosed—no debate, no analysis. It is simply embraced as a presumption. If that is a strong presumption, then it is relatively easy to block the material from release. Some FOI Acts—New South Wales, Western Australia and South Australia—locate their exemptions at the back of their Acts. This gives some symbolic support to the idea that the purpose of the Act is access, not access/exemption. This does not go far enough as far as I am concerned.

FOI administrators will tend to hedge their bets by citing as many exemptions as possible. I came across this a lot when I heard Commonwealth FOI appeals while I was a member of the Commonwealth Administrative Appeals Tribunal. The Information Commissioner has also expressed his criticism of this practice. He calls it the scattergun approach. It can be quite intimidating for an FOI applicant to receive a rejection citing numerous exemption provisions in the Act. FOI administrators supplant the concept of public interest with inappropriate criteria that masquerades as legitimate considerations. It is common for the following excuses for non-disclosure to be made: disclosure would embarrass the Government, disclosure would cause a loss of confidence in the Government, disclosure would confuse the public, disclosure would cause unnecessary concern and panic. If enacted, this suggestion would replace articulated exemptions with a single harm test, hence returning public interest to the centre of the FOI.

My last point—I was not asked to comment on this, but I will do it very briefly in 30 seconds—is that I think that you should be considering connecting the FOI Act to the concept of public purpose. In other words, any organisation that has a public purpose should come in under the Act. I fully recognise how controversial that recommendation is, so I am offering an interim measure, that is, that any organisation that receives public funding of any kind should come in under the Act. That is the bottom line. If we can get through that process okay and open up those systems—we are talking about the private sector here; we are talking about the Church of England Grammar School; we are talking about those sorts of things—then we can move toward capturing within the Act all organisations that have a public purpose. Thank you very much.

The CHAIRMAN: Thank you. I would like to start off with a question before my colleagues. I take you to the issue of Government owned enterprises and the general area of commerciality. It is an area which has not been commented upon much by the academic area or public commentators. What we have seen is a major transformation in accountability. I think you might

agree that accountability is one of the central purposes in terms of seeking information from these organisations.

I refer to a move in accountability from the old line accounting approach that we had not long ago in areas such as Queensland Rail—it is only a decade ago—to a mode of accounting and accountability which is very much on a corporate model and which is regulated by the Federal corporations legislation and subject to commercial and managerial auditing processes and provisions. Could you comment on how effective that is now in providing that accountability and where that leaves the community in terms of seeking further information when the community has very clear reports to Parliament in terms of corporate objectives and bottom line satisfaction of performance in terms of profitability, achievement of corporate goals and audit standards and management standards with which they have complied.

Dr De Maria: I will do my best. You could have the best in-house accountability system in the world and you would still not reach the public with respect to the higher level of accountability that they expect. What is happening at the moment is that we think that Government is getting smaller, but it is not. It is mutating into commercial faces. The Government is still there, but it has different signs attached to it. The argument that we are having with business at the moment about not opening up their contracts and their dealings with Government is a replay of an argument we had 10 years ago with respect to businesses who said, "Don't expect us to go green, because if you ask us to involve ourselves with the new environmental protocols we'll go bankrupt."

The thing is that business has not gone bankrupt and business is now beating a path to the door of green business. I think we can do the same thing here. We are talking about a culture change. We say to people who want to do business with the Queensland Government, "We are an open Government here. If you want to do business with us, everything's open from the beginning." That means that all the competitors are open from the beginning.

The CHAIRMAN: I am not sure that I follow you. If you are talking about some sort of green agenda, surely that is a policy issue that can be spelt out in corporate objectives.

Dr De Maria: Back then, business was dragged screaming to that concept. It was saying then what business is saying now. Business is saying now, "Do not expect us to declare sensitive commercial material when we are dealing with Government." They were saying exactly the same thing back then with respect to being pushed into conservation and ecologically sensitive material. Business has done that. It was a cultural change. I think we can lead here by encouraging business to understand that we do business openly up here. I suspect that Armageddon is not there with business going bankrupt once they open up for commercial sensitivity.

The CHAIRMAN: What about information that is going to affect their competitiveness? Are you saying that any information that might affect the competitiveness of a private enterprise establishment or a Government enterprise should be released, even if it affects their competitiveness? Is that your submission?

Dr De Maria: I am. I am pretty inflexible about that. The Government is on the people's business. It might be doing it through a Government owned corporation, but at the end of the day we need to know what is going on.

The CHAIRMAN: Thank you.

Mrs GAMIN: I would like to go back into some of the recommendations you made earlier in your presentation. You said that the appeal process is slow and legalistic. Certainly, it can be quite expensive, too, for applicants or would-be applicants. For a variety of reasons, you recommended that there is a case for some other model of external review under freedom of information in Queensland. I do not think you recommended significant variation, which is the way we mentioned it in the discussion paper, but a significant change. In the discussion paper we also asked whether the same person should hold the office of Queensland Ombudsman and Queensland Information Commissioner. You were pretty categorical in your recommendation separating the two roles. Would you like to expand on that, particularly on the proposal you put forward of the Information Commissioner and the information tribunal?

Dr De Maria: Yes, I am only too happy to do that. It is a fairly radical proposal. It has a couple of elements in it. First of all, it does involve the separation of the Information

Commissioner and the Ombudsman. We understand at the moment that, in all practical terms, it is separated. But, at the end of the day, we need a legal separation so we would have an Office of the Information Commissioner over here and then someone over there called the Ombudsman. It involves stopping all internal appeals—all internal reviews—cutting out the second of a three-level appeal structure. Say the information is refused at the agency level by the FOI administrator. Then the person goes to the Information Commissioner. To de-legalise his office—in other words, to make his office far less complicated—he would not be required to follow the rule of law. In other words, he would not be required to write legal, ponderous judgments on appeals.

Mrs GAMIN: Some sort of mediation process?

Dr De Maria: Getting close to that. He would, at the end of a short period of time, issue a non-binding ruling. In other words, he would not have the force of law. It is keeping everything informal. If we can keep things informal we can reduce those times and people can feel far more powerful in those processes. So people can go to the Information Commissioner and sit across from him or her like you and I are today and try to argue why they should have the information. The Information Commissioner makes a decision on the day or even in that session. From there it goes to the information tribunal, which would have the force of law.

Mrs GAMIN: Automatically?

Dr De Maria: No, only on appeal. Either party could appeal. So it is a non-binding ruling. I have thought about it as non-binding because we do not want the Information Commissioner to disappear for four weeks to write a 20-page decision. We want him to disappear over lunch and write a half page decision and come back and re-mediate the whole process so it is all done very quickly. Then it goes to the information tribunal. The fourth part of that model would be that you people take more of an interest in that, more of a supervisory interest, a bit like how the Parliamentary CJC Committee is struggling with the CJC to develop much better accountability there.

Mrs GAMIN: Are you suggesting the Committee's involvement be right down to the level of individual matters?

Dr De Maria: No, probably not. That is getting a bit too detailed. I think you should have the power to request information from the Information Commissioner. You should have the power to design information research programs that the Information Commissioner would carry out and issue him or her with broad policy guidelines and perhaps be the place where people go when they are unhappy about him. Maybe you could handle those sorts of things.

Mrs GAMIN: Individual matters again, at that level?

Dr De Maria: Yes, I understand what you are saying there. I would not want to foist that sort of case-by-case responsibility on a Committee like this. That is a negotiable for me.

Mrs GAMIN: Thank you.

The CHAIRMAN: I want to follow up that line of questioning, which is a very valuable one, in relation to the point raised in the discussion paper which you might like to comment on in respect of this matter. The discussion paper raised at point 38 whether internal review should necessarily be a prerequisite to external review. In responding to that, can you also comment on whether you have any evidence to suggest that internal review is not working in any way in that it is not providing a good filter.

Dr De Maria: I endorse the point made in your discussion paper. It was not a recommendation but canvassed a possibility. I endorse that possibility of eradicating the internal review from the scheme of things.

The CHAIRMAN: As a prerequisite?

Dr De Maria: Yes. It is out altogether.

The CHAIRMAN: You are suggesting out altogether?

Dr De Maria: Yes, just rubbed out. For all practical purposes, we only have a two-level process—FOI officer, primary decision; Information Commissioner, non-binding mediation based appeal—and then the really hot stuff and legally complex stuff goes through to the information tribunal. I have made the point in the submission, which you will read, that I do have information

about the efficacy of the internal review model. I have cited some documents which you could have a look at. I do not have any information about the internal review mechanism of the Queensland Freedom of Information Act.

Ms BOYLE: Yours is an absolutely riveting submission. I was a little disappointed, however, that the tremendous successes that there have been with the FOI Act in Queensland, maybe not at the level that preoccupies you—Cabinet exemptions, CJC and commercial in confidence, but within ordinary run-of-the-mill departments in terms of leading to automatic, open publishing of much greater levels of information than was so 10 years ago—did not even receive one line, because I do have the perspective that there have been some very significant cultural changes in the provision of routine information by lots of departments.

The particular thing I would like to talk to you about, however, is the interface, if you like, with the demands of the people in the democratic context. They are of course our first responsibility as members of Parliament but they are not, if we were to be brutally honest, always practical in their expectations. I will give you a particular example where I think, to use your phrase, the influence of officials is all over it in terms of the implementation. It is, of course, because the officials are the ones who have to implement it. I am not there every day to do that. The demands of people in the community who do not understand how information is stored in Government necessarily require some interface.

The example I would like to give you is really from the police situation. There are very many Queenslanders who believe that the police have files on each of us, that therefore you can apply for your file and that there really is a shelf somewhere in Queensland where "Boyle, Desley" is listed and all of the police information they have about me can be accessed and forwarded to me, if they are willing. In fact, there are not such files on all of us in Queensland. People do not trust that that is not so, but for them to request the details of every matter on which they have had any interaction with the police over the last 10 years, including the notes taken by each police person involved in every inquiry, from parking infringements to singular matters, requires a trace all over Queensland—a trace of personnel as well as a trawling through lots of different offices associated with the police business. It is really a very time-consuming task.

Maybe in the years to come we as the Queensland Government will get better information systems that will cut some of that time. What I am really putting to you is that, while democracy and the demands of the people of Queensland are primary, they are not sufficient if we are to bring in a Stage 2 FOI Act that is actually going to work. For all of us to set some ideals knowing that they could not be met in practice would not really be such a clever thing five years on. How do we manage that practical interface between demand and what in fact can be accomplished reasonably?

Dr De Maria: I admit to not being as concerned as you are about some sort of deluge of requests burdening these agencies. I have two points quickly to make about that. First of all, the Act as it is is pre-Internet and pre-email and I think there is the technology now to put a great deal of mundane information which would be of interest to only you—when you are asking for your police file or whether it exists—on the Internet, just like that.

Secondly, this Act, once and if reformed, will not be known as an Act for the people if it simply stands on a record of allowing personal records to be accessed through it. This Act will stand because it allows people to peer in to Government practice. I draw the distinction between personal records, which I think the Act is probably handling okay—I have made no critique about that; I have not been asked to—and the severe blockages in the Act which disallow citizens from understanding what the Government has done, is doing and intends to do. That is my major worry.

Ms BOYLE: I am interested in your suggestion that we just get rid of all the exemptions and instead work on a social/public harm test. Along with many of the others who have presented to us in writing as well as verbally, you have berated us for not having well defined the public interest. Nobody has yet offered us a good definition, mind you. I am hoping that you might be the man.

Dr De Maria: Don't hold your breath. In fact, to me it is a non-issue. The concept of the public interest is now indefinable. It is beyond definition. It just makes a nonsense every time judges sit around and try to define it. I do not think we should be trying to get there. I think we can get to the same situation by looking at a social harm test. In other words, not: is it in the

public interest to disclose the information, but: what harm would be committed if it were? I think we can be far more objective and precise about agencies articulating exactly what harm the release of your police file would create. They have to be pushed to making a written defence about what harm would be caused.

Ms BOYLE: Following that further, what if there is simply embarrassment to me and my family in my little circle in my little life in Queensland, as distinct from social harm? We know that there would be no social harm in the rest of Queensland seeing my file. How would we manage that interface?

Dr De Maria: You would interface that either with a new Privacy Act or just by ensuring that part of the social harm test that you would put into the legislation embraces the breach of privacy so that we would not all get your police report. There would be strict privacy provisions about that.

Mr PITT: Many of the witnesses who have appeared before us have talked in terms of something that you have not canvassed. You have undergone radical surgery for the whole process, but they have talked in terms of amending the process as it exists now to establish a central office as a first port of call for information requirements. In that way they hope to get some sort of early intervention so that people can sort out what they are really after, where to go to, how to do it and what the limitations upon them are. I know that you have not addressed that in your submission to us, but I am interested in your opinion.

Dr De Maria: Well, I think I have addressed it. I have talked about the official information centre. I have also talked about the concept of mandatory disclosure and requested disclosure. We could have gross savings by sacking all of these internal reviewers anyway, so we could use that money. I think the technology is there to get agency information of a detailed nature in paper form and on the Internet right now. That would be available at an official information centre. So I would tap into the Department of Justice, I would tap into a program that I think the information is available in and I would just keep tapping and tapping until I found the information. If it has a little star next to it, it means that it is subject to mandatory disclosure and I just press the mandatory disclosure button and I get it in half an hour. That means that we keep the Freedom of Information Act for the requested "contentious" material, as such. That would be my response to you there.

Dr PRENZLER: You obviously believe in total and open information availability to everybody. One of the things that has been raised with us on a number of occasions with different agencies is what we have described as the vexatious applicant who, for whatever reason—maybe it is mischievous or malicious—keeps on bombarding agencies with applications for information often on a very broad scale and for no reason except for some personal ambition or whatever. How do you think we should be addressing those people?

Dr De Maria: Well, they are a pain in the arse, but people do not need reasons to get information from the Government. People should not have to justify. We could have an obsessive person who is simply after information every day of the week and driving agencies mad. That is the downside of openness.

Dr PRENZLER: Do you think we should have some mechanism there to—

Dr De Maria: No, because then you would have to test the content and motivation. What they do at the moment is that they do it informally. The agencies simply stop writing to these people or become uncooperative. Agencies will tell you that they are facing a swarm of these people, but I can say to you that the opposite is that agencies are very good at handling vexatious applicants.

Dr PRENZLER: How would that stand under your model?

Dr De Maria: I am not interested in it. In other words, I make the point I made before. That is, there is no such thing as a vexatious applicant under FOI. It is a citizen looking for information.

Dr PRENZLER: If that citizen is given the information that he requires in the first instance, openly as you suggest, and then comes back and asks for it again in a different way because he thinks something may be hidden from him or whatever and continues to do so, what do you think—

Dr De Maria: The agency simply says in their second letter to him, "We gave you this information three weeks ago. Is it the same information? Can you confirm that?" If it is confirmed, then the agency says, "We have nothing else to give you."

Dr PRENZLER: In other words, you believe there should be some cut-off mechanism—just like that.

Dr De Maria: That to me is just commonsense. The other situation which I thought you were getting at is that of an applicant who is doing a trawling exercise through the whole of the Public Service looking for material to chase up a compensation claim or something like that. What you are talking about here is a person who makes repeated applications for the same material. That is commonsense. You could block that quite easily by the agency simply saying, "We gave it to you. What else can we get? We can't physically reproduce the material again." If it does go on appeal or if it gets to the Information Commissioner, then hopefully that could be sorted out in mediation, but if it is not sorted out then you have got yourself a dissatisfied and vexatious applicant who is going to be putting in more applications but getting blocked.

Dr PRENZLER: Another point you have just raised is the trawling applicant. What is your attitude towards those people, because that does happen as well?

Dr De Maria: A kindly attitude that we cannot question their rights to the information. That to me is the basic principle. Opposition parties do it all the time.

The CHAIRMAN: Thank you very much for your evidence. You have been of great assistance to the Committee. I am sure we would like to go further, but we are on a tight schedule today.

ALAN RANDLE, examined:

The CHAIRMAN: Good morning, Mr Randle. Welcome to the Committee. Thank you for your time today to assist the Committee in its inquiry. Would you like to make a brief statement?

Mr Randle: In the material I received from your office, I was asked to address myself to a few specific points—the sufficiency of information available to the public to facilitate its understanding of the FOI process, whether the FOI application process and review processes are easy to use, personal difficulties I have encountered with the FOI process and suggestions about how to make the process simpler. I will attempt to contain my comments within those guidelines.

In respect of public awareness of the FOI process, my view is that the public is not adequately aware of exemption provisions and the degree to which these provisions can be manipulated. Applicants, if they are lay people, seem to be expected to be able to research the legislation to familiarise themselves with exemption provisions contained in the FOI Act 1992 but, even given some knowledge of exemption provisions, the onslaught of interpretation and case precedents from Queensland and other jurisdictions which appear in the determinative process is frustrating and discouraging.

As a further example of the complexity, journalists say—and I am quoting from an article in the Australian in September last year—that "Governments and bureaucrats have become more obstructive over the years. It is becoming very expensive to use FOI. It has become a full-blown legal process". In my experience as a seeker of personal and non-personal information, there are two determinative factors that have a bearing on the outcome of an application. In reality, neither of these should be of account. I see them as, number one, the agency receiving the application: the non-personal FOI application I made to a shire council was handled quickly and efficiently whereas a personal and a non-personal application made to two city-based State Government agencies were protracted, difficult and, in my view, thoroughly mismanaged. Secondly, where there is a degree to which negligence or incompetence can be seen in subject matter to reflect upon staff and/or departmental heads—for example, where within a department it is observed that the subject matter could compromise the department or departmental staff—the application is hijacked, as it were. In what should be a straightforward process, the applicant can be led into a minefield. In two of the three instances where I have made an FOI application, I have struck bureaucratic interference and outcomes which are plainly suggestive of the pre-FOI regimen.

At this point, I wish to explain that my three applications were all related. I do not consider them to be frivolous at all. They involve my search for moneys misappropriated from the financial assets of my late mother in whose estate I was a beneficiary. It is my conviction that repayment was made through a land sale at Cooroy by means of an unregistered and bogus power of attorney, that moneys were distributed outside the estate administration proper, and to certain beneficiaries, myself excluded.

With my initial submission to LCARC 12 months ago, I provided chronological summaries of each application I have made. I asked that these be kept confidential but, at this time, I would just like to highlight and summarise to the Committee what I consider to be serious deficiencies in the way two of my three applications were handled. I made application to the Queensland Police Service for access to file material relating to the complaint I had made. The FOI decision maker in this instance attempted to frustrate my efforts to see the complete file. Through persistence on my part, I was eventually provided a copy file. I subsequently determined that 11 of 72 folios were duplicated within the file but not numbered as such. I had no difficulty in identifying the missing documents and believe they were removed because they were central to my complaint about moneys misappropriated. It cannot be without interest that police-generated documentation within the released material referred to certain of the folios removed.

I brought the matter of the missing pages to the attention of the superintendent of the FOI unit without achieving a satisfactory answer. A week later, possibly by way of deflection, I received an internal review decision, even though I had not asked for one. In view of the foregoing I decided that my chances of obtaining a favourable external review were remote.

The CHAIRMAN: Mr Randle, can I just perhaps ask you to keep your submission a little more general. It might be of greater assistance to the Committee, rather than us getting buried in the particulars and merits of your case. That would be of greater assistance to us. Also, if I can remind you that we need to be careful about mentioning any individuals or entities who might—

Mr Randle: I thought that it would be okay to mention agencies. I will not mention individuals.

The CHAIRMAN: Sorry, certainly agencies, but I am more so referring to private entities—individuals or private entities. So if you could perhaps keep your submission a little more general without us getting buried in the merits or otherwise of your case.

Mr Randle: Okay. I will attempt to do it, but really, the story is pretty critical to the way the system can be hijacked. I would ask you to forbear with me just a little longer, please, sir.

The CHAIRMAN: Thank you.

Mr Randle: My third application was made in July 1998 to the Department of Equity and Fair Trading, specifically in respect of two files held by Auctioneers and Agents. I had found that the purchaser of the Cooroy land, a developer operating through a family trust, had sold on two proposed subdivisions before title was transferred to the trust. In order to do so, the developer had to apply for and obtain an exemption from compliance with Part 2 of the Land Sales Act. I sought to determine how Auctioneers and Agents had processed such applications and whether the bogus power of attorney had been used.

Prior to deciding to make an FOI application, I phoned Auctioneers and Agents and I had a talk with a staff member. He advised me that, yes, there was certain material on file that could be of interest to me and then I decided to go ahead. So he advised me that it would be perhaps in order to make an FOI application. What happened next was that, in order to facilitate timely postage of my application, I asked my wife to sign the letter of application per pro for me, which she did, and she marked it "pp". Approximately three weeks later, when in the Department of Fair Trading office on other business, I met the FOI decision maker and she gave me the following advice: that my application appeared straightforward and it should be processed within 10 days. She also volunteered that an applicant was under no obligation to divulge reasons for making an FOI application, and Dr De Maria just made the same comment a little while ago. I provided no reasons for making my application, so they could not determine whether it is personal or non-personal.

At about 10.30 a.m. on 4 September, two or three weeks after I had met the FOI decision maker, she phoned my home number and asked for me. My wife replied that I was not available and the decision maker was invited to leave a message. The latter then identified herself and asked if she was speaking to Mrs Randle. When answered in the affirmative, she quickly said that she could speak to my wife because my wife had signed my application. The decision maker proceeded to question my wife and seemed bent on finding out about the extent of my verbal communication with the A and A staffer and with any family links to those mentioned in the files.

Over the following two to three weeks, I made prompt and extensive protest of the decision maker to the Director-General of the Department of Fair Trading and the responsible Minister, but the actions of the decision maker were upheld. In late September, I received the Department of Equity and Fair Trading letter of decision together with the schedule of documents and detail as to access. I was astonished to observe that my wife's name was mentioned six times and dismayed to find that she was purported to have made comments she could not sensibly have made. It was also apparent from detail on the attached schedule of content of the two files that information in respect of execution of certain documentation was denied me. At least four documents were undated or partly dated. I was aware of correct dates from material that I already held in my possession and obtained elsewhere.

I sought an internal review of the decision, but the agency did not provide one within the prescribed time. I agreed to the first request for an extension but declined the second and applied for an external review. I attached copies of nine letters to and from the Department of Equity and Fair Trading over a period illustrating my concerns as to the validity of the letter of decision. Over a period of seven months to May 1999, I had a number of written exchanges with the Information Commissioner. The Information Commissioner provided me with a copy of his decision re Stewart v. The Department of Transport, which goes into the minutiae of personal affairs of a person, section 44(1) of the Act. He did not acknowledge that the two exemptions from compliance with the Land Sales Act 1984 had been sought by a family trust rather than the individual and for reasons of profit or gain. This meant that the file material could not totally be censored under section 44(1) as it had been.

Because of material I already had in my possession, the agency agreed to the release of corresponding file material but was not prepared to withdraw its claim for exemption in respect of any of the matter remaining in issue. The Information Commissioner's office was then to contact five third parties to seek their views on whether or not they objected to disclosure. In effect, a power of veto was presented to the very person who was bound to use it—the party who used the bogus power of attorney on the contract of sale and who was signatory to the exemption application.

So we had a situation there where they called in third parties who were bound to stop my seeing the material. File material sent to me through the post from Auctioneers and Agents showed a false contract dated 5 August 1996 on their first application form for exemption. The Information Commissioner advised by letter that copies of contracts which the agency had in his possession were copies which I had already inspected in which the execution dates were obscured. This meant, therefore, that top right-hand corners had been folded back so that the year of execution could not be seen when copies were made to send in with applications for exemption to the agency. The significance of the false dating on the first application form was not apparent to me until the shire council advised that approval of the proposed subdivision went through council on 5 September 1996. In reality, one subdivision had been sold on without the required exemption. In his letter of decision, the Information Commissioner upheld the processes utilised and affirmed the exemption in respect of my access to file material containing other than true and correct information. Not only were names of registered owners of land denied to me but also dates and other information easily obtainable elsewhere on the public record. Because no issue related to my wife's personal affairs, she was not in a position to seek to have the decision document changed through the FOI process. In all the circumstances, she or I were—and are—left with the unsatisfactory sole option of applying to the Ombudsman for his assessment of the procedures and standards applying to two specific issues: one, the Ombudsman's findings in respect of the agency's action in drawing a third party into an application purely on the basis of a per pro signature on the letter of application and my disquiet in respect of the poor form displayed by the agency's decision maker and the Information Commissioner in having my rights as an FOI applicant transferred to a third party.

So you can see what happened there, Mr Chairman. I was the applicant. The letter of decision that came out from the agency mentioned my wife and things that she had purportedly said on half a dozen occasions and my application consequently was hijacked by another. In respect of point one above, my wife has had three or four exchanges of correspondence with the Ombudsman. He has asked her to explain by reference to some specific provision or standard why she believes the agency FOI decision maker's conduct in phoning and speaking to her was either illegal or otherwise inappropriate. The Ombudsman's office also wrote that, on their understanding of the FOI Act and other relevant research undertaken, they were unaware of any State or Commonwealth law which could characterise the FOI decision maker's behaviour as inappropriate. But in this regard, it is surely of some significance that in an appeal heard in the Federal Court of Australia on 12 October 1998, No. VG 137, the transcript shows at paragraph 15—

> "At common law, where a person authorises another to sign for him, the signature of the person so signing is the signature of the person authorising it."

Why is it up to the applicant to furnish such material to the Information Commissioner? In this instance, it would appear that it suited the Information Commissioner's objectives and procedures to take no account of common law. Given my experiences, I now find that I have no confidence in the Information Commissioner and certainly expect that the Ombudsman will not identify maladministration despite evidence to the contrary.

Finally, with regard to making the FOI process simpler and more user friendly, I would propose the following, which, hopefully would engender improved public confidence: as stated by other speakers to this Committee, the officers and appointees of Ombudsman and Information Commissioner should be totally separate and independent of one another; a name change to access to information would better describe the overall objectives of the legislation; the exemption provisions may be too broad in scope and some refining of the legislation would be desirable in this regard; ideally, at State Government level, FOI coordinators should not be staffers within departments receiving FOI applications, rather, consideration could be given to the establishment of a pool of independent coordinators who randomly process FOI applications and who are not

aligned professionally or personally with departments. Such action would improve independence and impartiality.

All formal decisions made by the Information Commissioner should be published. Decisions by way of a letter to the participants in an external review have the same legal status as published decisions, but the public is denied knowledge of the circumstances, principles and reasoning behind the decision. It could further be alleged that decisions by way of a letter to participants can cover convenient decisions and impropriety.

FOI is all about accountability of Government and the public sector. Departmental forms from Auctioneers and Agents, to which I was allowed only partial access, were accepted by the department with incorrect information as content. The agency, as part of its submission to the Information Commissioner, stated that the legislation did not require that it had to check names and addresses of registered proprietors of land. It is surely incongruous, therefore, that the department should seek to deny me access to this information and that a power of veto be given to those who put forward false information—something upheld at external review.

You wanted some detail of the experiences that I have had as a layperson. That was what I set about to provide. I made application for documentation. The applications that go in to Auctioneers and Agents have names and addresses of the proprietors of land deleted—exempted—yet these are available on the public record. I was also told by a staffer of Auctioneers and Agents on the telephone that the person who had previously signed a contract of sale as power of attorney was shown on these documents as registered owner. There was a cover-up, in effect, and it would appear to me that the Information Commissioner would have to be complicit in the cover-up.

The CHAIRMAN: Thank you very much for your submission. Do members have any further questions? Thank you for your time.

The Committee adjourned at 10.28 a.m.

The Committee resumed at 10.51 a.m.

STEVE AUSTIN, examined:

The CHAIRMAN: We welcome Steve Austin from ABC Radio as our next witness before the Committee. We are very grateful for your time today and we look forward to your evidence. During your evidence you might wish to refer to particular FOI applications by way of example. Whilst we would find this useful if it is relevant to our review, we remind you that this is a public hearing. Therefore, we ask that you avoid making statements which reflect adversely on any identifiable person or entity.

Mr Austin: Does that include persons already named in the House?

The CHAIRMAN: We would certainly include that simply because, in terms of procedural fairness, if there is any variation to any previous statements or because this is a different forum at a different time, those people should be afforded opportunities to respond. This is not a process of trying to find right or wrong in relation to those particular matters. The Committee is simply trying to inform itself at a relatively general level in terms of improving this particular piece of legislation. If you could avoid that—

Mr Austin: I am mindful of your remarks. In relation to the one situation I may wish to raise which is relevant to the Committee, I will ask for your guidance through the process to ensure that the Committee is happy and feels it has all of the information at hand.

The CHAIRMAN: For the purposes of Hansard, could you indicate your name, status and title within ABC Radio.

Mr Austin: My name is Steve Austin. I am the Program Director of ABC Radio in Brisbane. I represent the ABC at a management level. The opinions that I offer to the Committee are strictly my own opinions gathered from other journalists with whom I work.

The CHAIRMAN: We have had some very long statements from other witnesses. I think your friends from the Courier-Mail were terrible offenders. But you will not follow their example, I am sure.

Mr Austin: I will try to be brief and straight to the point. I offer you the same advice that I offer journalism students: feel free to interject at any time. I prefer it that way.

The CHAIRMAN: Please proceed.

Mr Austin: I have a brief submission to make in which I will be addressing certain points to the Committee. I will be pleased to have a cross-table chat after that. Firstly, I applaud the work of the Committee in reviewing the health of one of the most important Acts of Parliament passed in Queensland since the Fitzgerald inquiry. I also applaud the Committee's consideration of the interrelationship between the Act and public records legislation. I also note the Committee's comments about the lack of media submissions to this review. There are a number of reasons for this, I believe, most relating to what is happening to the media in Australia and, in my case, the ABC's ever-increasing cost cutting, which actually translates, in many cases, to staff and resources cutting. For what it is worth, in the last 14 years that I have been with the ABC I have not known a time when there was not downsizing and a complete ban on overtime. There are significant resourcing issues at least in relation to the ABC that may give an indication as to why it has not been more forthcoming in making submissions to this review.

Looking at discussion point 1—of concern to me is that the current FOI Act does not seem to take special note of the lack of a house of review in Queensland, the Legislative Council. I believe it would warrant a study by the Australasian Study of Parliament Group, although I admit I am unable to cite any evidence of how the operation of the Act is affected by having no house of review. But I think it is important and is something which, perhaps for the sake of the exercise, could be studied without any great expense by the Australasian Study of Parliament Group.

I believe in the brief report of the Committee's study tour of New Zealand in May and June of last year—I have read that report—the Committee observed that the New Zealand Act operates on the principle that official information is to be made available unless there is good reason for withholding it. I applaud that principle. As to the focus of the New Zealand Act placing emphasis on information rather than documents per se, from my point of view there is simply nothing like a piece of paper with an official Government stamp, letterhead or date stamp to get the attention of a person who has something to hide. In fact, it can be used in court when I have

to defend a defamation action. The shredding by Cabinet, for instance, of the Heiner documents shows just how much people can fear evidence of their activities when written on paper and held by Government.

Discussion point 7 is headed, "Is there a culture of secrecy in Queensland?" I believe the answer is: yes, and more so than in other States, even post Fitzgerald. The discussion paper notes that the administrative review council raised the idea of a disclosure regime making Government contracts public documents, allowing access to them without having to go through the FOI process. I think this is a good idea and one that the courts in other States have taken even a bit further.

On ABC Radio's Background Briefing program a couple of years ago, the then New South Wales Auditor-General, Tony Harris, expressed concern about what he described as the growing trend to secret government in Australia. I will quote him. He said he had been approached by two very large financial institutions in Australia, which operate in all States of the country and internationally, which are now complaining to him that Governments are requiring confidentiality provisions that even they in the private sector believe are so restrictive as to be massively inappropriate. He stated—

> "Now it appears to me that Governments just don't want to be accountable and are using private sector participation and so are reducing the amount of information that's available. It's really outrageous."

Similarly, the South Australian Auditor-General expressed serious concerns about Government secrecy about his State's finances. His annual report warned that "denial of information about Government contracting out strikes at the roots of democratic Government". You would be aware that contracting out services is something that is increasing and growing rapidly in all States and federally. Professor of Law at Flinders University Susan Corchoran told ABC Radio that—

> "... it is not just the substance of a contract that might in fact involve a core Government type of activity which is being kept confidential, the decision-making process, which we have in place in order to ensure that Government is accountable to the people and that the Executive branch of the Government is accountable to Parliament, cannot function properly if too much information is kept confidential."

I would have thought one of the big risks is that Oppositions cannot get access to documents. That is certainly the experience of other States and I believe to a certain extent the experience of the Opposition here, although I am not sure how much the Opposition has actively pursued matters under FOI, particularly in relation to contracting out of Government services.

The South Australian Auditor-General quoted a judgment of Sir Anthony Mason, a former Chief Justice of the High Court—

> "It is unacceptable in a democratic society that there should be a restraint on the publication of information relating to Government when the only advice of that information is that it enables the public to discuss, review and criticise Government action."

If there is such concern in other States, I can see no reason why Queensland is any different. Indeed, it is my experience that Queensland is more obsessive about secrecy in a number of areas. In other States the claim of commercial in confidence is used as much as in Queensland, and in fact in a number of recent cases courts and tribunals have set aside commercial confidentiality in the public interest—cases like the Victorian Ambulance Service, when the Kennett Government contracted out non-emergency ambulance services to the private sector. In that case it was not a journalist who was denied access to the information, but the Opposition. Victoria's overriding public interest test was used to override any claim to commercial in confidence. It was revealed that the public was paying more for the contracted services than they had when they were publicly supplied. A similar thing occurred with the privatisation of the Latrobe Valley Hospital in Victoria and there have been other similar examples in New South Wales.

In my opinion, the whole saga of what is generally known as the destruction of the Heiner documents gives clear evidence that the Government is, in that matter at least, prepared to go to extraordinary lengths to stop members of the public obtaining access to documents involving events surrounding the John Oxley Youth Detention Centre. Documents obtained under the FOI Act revealed actions very damaging to the Government and to public servants alike. The DPP refused to act after a long period of time had passed, citing the length of time that had passed

since the original complaints were made. In my opinion—and trying to find someone who is an expert on that matter is very difficult; there are perhaps one or two—that sort of action by the State breeds contempt and a mistrust of public institutions. I believe that Governments are mistaking their interest for that of the public, and they are not necessarily one and the same. The FOI Act should remove the possibility of Governments assuming their interests are also those of the general public.

As to discussion point 14—should any current exemption be removed from the FOI Act in Queensland? In my opinion, the answer is: yes. Section 39, matters relating to investigations by the Auditor-General and the Ombudsman, and section 41, matters relating to the deliberative process, how Governments arrive at decisions, are vital to healthy public administration. The Ombudsman and the Auditor-General are officers of the Parliament. To have a healthy Opposition you need strong access to the work that these officers of the Parliament undertake. I note the discussion paper admits on page 19 that many decision makers are seeking more guidance as to what "the public interest" means. It is a very serious matter when your decision makers do not know what "the public interest" means. That is of concern.

Let me offer some examples that have been explored in other States as to how to test that. There is a very prominent legal opinion, and I will cite it in a moment. In more recent years, the High Court has developed a stream of constitutional law which says that the Constitution entrenches the rights of Australians as electors to know what is going on within Government. And so it is the joining of two streams which now raises the question of whether the courts will say not only does the Government not operate as an ordinary commercial body when it comes to protecting information but also that Government cannot operate as a normal commercial body in protecting information. That is according to Tom Brennan, corporate lawyer with Corrs Chambers Westgarth, who told ABC radio recently that the fall-out of a defamation action involving the ABC and former New Zealand Prime Minister, David Longe, resulted in the High Court stressing and entrenching the public's right to know as a fundamental right. I will continue on with what he said—

> "The Government can enter into an obligation of confidence, but if ever it comes to an issue of someone wanting that information, that person will be able to obtain the information unless it can be proved in particular cases in the particular circumstances that it would be contrary to the public interest to disclose that information."

I think that perhaps mirrors in some ways the direction that New Zealand is headed.

Let me just raise something about point 11 in relation to specific examples that I have dealt with and some other journalists with whom I have dealt. There is a range of them in terms of getting access to Government documents. You ask in your discussion paper in point 11, "Was there scope for performance agreements?" I guess you are talking about performance benchmarks, which we at the ABC have and most other large organisations have as a good administration management practice. There is a range of reasons. First of all, I think, yes, you should, and I would be surprised if Government departments did not have performance benchmarks, anyhow. In fact, I am sure most of them do.

I have had a number of different experiences with FOI applications over the last couple of years. One was in relation to obtaining a domestic violence report from the police department, a report that apparently highlighted the police's inability to act quickly enough and a certain reluctance to act in relation to domestic violence matters. It took me nearly four months to get access to that document which had been released to a number of other people. In that case it was a clear embarrassing blunder on behalf of the police department, and they rang up very apologetically. So human error always occurs. Perhaps the police department was going through a particularly busy time. I did not pursue any matters in relation to that because they handed me the report. I think it was a matter of saying, "For God's sake, don't tell anyone that it took us so long." I am not suggesting they were covering anything up, just merely that they were embarrassed that my application took so long.

A journalistic companion of mine, Phil Dickie, is currently going through an FOI process to obtain under the FOI Act access to documents surrounding a computer program that has been purchased by the Department of Natural Resources. This computer program is rather unusual because it advises the department on how to treat public activists who work in the environmental activism area. It advises departmental heads and Ministers on how to treat matters of public

interest. So Phil Dickie, in conjunction with another journalist, sought access to all relevant documents surrounding this computer program, which cost the department around $30,000.

They received notification from the department that they had identified 80 documents in relation to this computer program, its purchase, the reasons for which it was purchased and its use, and they smelt that something was perhaps not quite right. They asked the department in very polite terms to go back and have a look again because that was clearly not enough. The department, lo and behold, was able to come up with another 2,051 documents. So perhaps there was a reshuffle in the office that day and the filing cabinet was in disarray.

Nevertheless, there are a number of humorous examples. I do not know a journalist who has not had that happen, where a journalist feels or believes that they are not getting the full range of documents from Government departments. For whatever reasons Government departments always manage to go back and find a great deal more, and that has certainly been the example in that case. You might be reading about that story in the Courier-Mail in the very near future, by the way.

Another example was when I sought documents held by gaming authorities in the State of Queensland. I had received information from a person who had a vested interest and who, I would have to say, was an opposition company tendering for a contract. They made certain allegations about their successful competitor. I applied under the FOI Act to obtain some documents about the tender process and was unable to get useful documents in that matter. We still went ahead with the story claiming certain things and it was shown that there were certain irregularities. I do not want to overstate the case. We sought legal advice about the benefit to the ABC of pursuing the matter through administrative review and into the Supreme Court, and our legal advice was that, given the fact that we were concerned about the fact that it was a competitor making the claims about the successful tenderer, it may not be the best action to test in the Supreme Court. So in that case we pulled back for various reasons, not the least of which was for financial reasons.

Discussion point 31: do the current commercial exemptions in the FOI Act in Queensland, principally sections 45 and 46, require amendment to ensure that an appropriate balance is struck between the disclosure of information in the public interest and the protection of legitimate business interests? This is an area which the Committee may find that a number of FOI applications are increasingly made as Governments all around the country contract out Government services for a range of reasons. Commercial-in-confidence provisions are being abused by Governments in other States. You heard already the comments I have relayed by the New South Wales Auditor-General, Tony Harris, and the South Australian Auditor-General. Surprisingly, it is not business that is hiding behind claims to commercial in confidence; it is Governments, particularly in this State. I have prepared a brief list. This is a little superficial list which I think will highlight the point.

When journalists tried to find out how much money was at risk in the Chevron gas pipeline, they were told, "We can't tell you. Commercial in confidence." When the South Bank Corporation was asked how much public land had been placed under their control and what its value was, the company claimed commercial-in-confidence provisions. When the State Government decided to charge the Brisbane Cricket Ground Trust for airspace rent because its grandstand overhangs public roads, journalists sought to find out how much Government was seeking. "Sorry, we won't tell you. Commercial in confidence." When the State Government bailed out a Dalby rural machinery company, journalists tried to find out how much public money was given to them. "Sorry, we can't tell you. Commercial in confidence."

When the State Government offered money to the producers of Baywatch to entice them to bring their domestic consumption titillation here, "Sorry, we can't tell you. Commercial in confidence." It was the same with Virgin Airlines, "Can't tell you. Commercial in confidence." When the State Government gave a package of financial incentives to Citibank to set up a call centre here in Brisbane and journalists asked how much we are giving them, "Sorry. Commercial in confidence." For goodness' sake, they are one of the largest financial organisations in the world and we are giving them a subsidy. Serious questions must be asked.

When journalists asked how and when an academic had applied to keep radioactive material at his Boondall home, Dr Diane Lange from the Health Department cited commercial in confidence. I do know of one time when the Government broke its own commercial-in-confidence

provisions that it demanded. NORQEB breached its commercial-in-confidence agreement with Aboriginal people in the Gulf of Carpentaria on what financial arrangements had been struck with the indigenous inhabitants of the area. I would rather not comment on why I think that may have been.

If you want to know why journalists become jaded and cynical, surely these examples give you pause for thought. As to what amendments need to be made, I am not a lawyer but I think courts are already showing the way and are way ahead of you. It is public money. Show them fully what you are doing with it and how you decide what to do with it. Courts recognise the need for confidentiality in the lead-up to a company tendering for a Government contract. However, once the deal is signed, they are ruling that the public has a right to know how that decision was arrived at. It is an important distinction. I am not arguing, and courts certainly have not ruled, that in the lead-up to the issuing of a tender for a Government contract documents were successfully obtained. But once the deal was signed, in other States and federally courts are ruling the public has a right to know how the decision was arrived at.

It is probably worth while mentioning a point at that level. Not having FOI access to some of those matters restricts the operation of Parliament, let alone journalists. A good healthy Opposition needs to be vigorous in its pursuance of this matter and, as you know, it is constitutionally enshrined. There was a funny case in the Commonwealth Parliament involving the Department of Finance and Administration, which has been dubbed by bureaucrats the "department of KPMG". There was a Senate estimates committee hearing in which a number of details were sought about consultancies being given out and Government contracts. Senators in their lawful and proper role as members of the Senate estimates committee sought information about how decisions were arrived at but found that, because consultancies were issued to private companies, even members of a Senate estimates committee could not be told how decisions were arrived at. It is a matter that is still before the Federal Senate and I think one they are pursuing with vigour, but you are seeing smaller versions of that happening in the States, I believe.

Discussion point No. 40—and, Mr Chairman, I should point out that this is where I might be drawing on your advice or guidance here—should the same person hold the offices of Queensland Ombudsman and the Queensland Information Commissioner? I note from a policy document put out by the Beattie Government before Mr Beattie was in power called Good Government that he made some observations about poor administration in the Ombudsman's Office, underfunding and difficulties in the interpretations of their Act. So I would be interested to see how that translates in the operations of the Ombudsman from this Committee. But in my opinion, the role should be split—currently it is not—and in the opinion of the Whistleblowers Action Group, the Wildlife Preservation Society and three other submissions to this Committee listed in the submissions index.

The Information Commissioner has failed in his big test as far as I can see. Bear in mind I am not a lawyer, but as far as I can see his big test is as follows: while the FOI Act in Queensland allows for the appointment of a separate Information Commissioner, it has not occurred. The Ombudsman shares the budget of the Information Commissioner. EARC recommended they may be separate, but the parliamentary Committee were concerned about what they termed "excessive legalism" and whether the Information Commissioner model proved capable of maintaining its independence.

I note from the discussion paper that the Ombudsman does not believe there has been a problem. The paper also says the Committee is not aware of any problems with the Information Commissioner and his independence. I would have thought that recent revelations that the Premier of Queensland and the Attorney-General overriding this very Committee in the appointment of The Consultancy Bureau to review the management practices of the Ombudsman's Office raised legitimate questions of impartiality and independence.

Mr Chairman, you wrote back to the Premier on behalf of this Committee expressing your disappointment with his actions. You told him that The Consultancy Bureau was this Committee's least favoured candidate. Surely this raises legitimate questions about the independence of the office in the minds of Committee members. I am quoting, by the way, from documents that were released by the Premier's Office—documents that would not normally be available to journalists. Normally we would have to apply for them under FOI, but because the Premier heard the matter

on ABC radio, his office was very, very quick to fax them through to us. That is something that happens quite a great deal when it is in the interests of the Government concerned. It goes to both sides of the political spectrum, I might point out.

Further questions on the point arise from the Morris/Howard report tabled in Parliament on 10 October 1996. You will recall that Morris and Howard were investigating the shredding of the Heiner documents and other associated matters. The Morris/Howard report states on page 216 and 217 that the FOI Act is not operating as it was intended to. When Mr Kevin Lindeberg was seeking documents and notes that were withheld from him under the Act, Morris and Howard found that "it does not appear to us that there could have been any possible justification for withholding the handwritten notes made by a public servant". This is where I wanted to name the public servant, because he is named in that report.

The CHAIRMAN: I would ask you to desist.

Mr Austin: I will defer from naming the public servant.

The CHAIRMAN: I also ask you to wrap up your submission.

Mr Austin: I am concluding right now.

The CHAIRMAN: Great. The Committee would love to ask you some questions.

Mr Austin: Certainly. Morris and Howard went on—

> "It's open to conclude that"—

the public servant concerned and others—

> "should be charged with a criminal offence."

Under the Criminal Justice Act, the Information Commissioner, in areas of suspected official misconduct under section 37(2)(b), is required to report all matters to the Official Misconduct Division of the CJC. It is fairly straightforward, yet in this case it was not done. Why not? It is a question you guys have to ask. This example shows in my opinion that when a matter reaches this level a certain amount of legalism is to be expected and indeed may be necessary. In this matter, the Information Commissioner appears to have failed to carry out the responsibilities of his office. I urge you to accept EARC's original model in line with the submission of the Whistleblowers Action Group and others.

It seems that the Information Commissioner knew as far back as December 1994 of certain public servants mentioned in the Morris/ Howard report being in a conflict of interest situation, yet he did not refer the matter to the CJC. In fact, the question arises: how many matters has the Information Commissioner actually referred? If he needs a clarification or to obtain a ruling, it is open to the Information Commissioner to take the matter to the Supreme Court to obtain one. I do not think he has ever done that. I note the Department of Justice and Attorney-General's freedom of information annual report states—

> "The Information Commissioner held that"—

in this certain matter—

> "the greater public interest lies in ensuring that individuals receive fair treatment in accordance with the law in their dealings with Government."

I agree. In the parameters of this review of the Act, it is open to conclude that the same fair treatment was not given to Mr Kevin Lindeberg. By the way, it is also open to this Committee to refer suspected misconduct to the CJC under section 31 of the FOI Act. I am also aware that Mr Lindeberg has made a submission to this Committee looking at the FOI Act, yet it is not listed in the submissions tabled index. I am surprised. Why not? I always thought that if a properly prepared submission was submitted to a parliamentary Committee it is proper to list it in the index of tabled submissions. Yet it has not been done. I would be fascinated to hear why it was not done.

Finally, I tested the FOI process recently only to find that, even though this Committee has not ruled or delivered any findings yet, costs of lodging FOI applications have already risen. In fact, a memo was put out, as I understand it, on 1 May ordering that FOI applicants now pay $31 instead of $30 to lodge an application. It seems that, in spite of what this Committee decides, a decision has already been made for you. The courts in Australia are way ahead of our

legislation. They are doing, particularly in common law States, what Governments are reluctant to do—entrenching the public's right to know and ruling in favour of openness.

Mrs GAMIN: Mr Austin, according to the general public, they are not sufficiently aware of exemption provisions and believe that there is a high level of complexity in making FOI applications and obstruction by Government and bureaucrats and that sort of thing. The appeals process is slow and over legalistic. I notice that you recommend that the offices of the Queensland Ombudsman and Information Commissioner should not be held by the same person. What sort of model would you suggest? What other model would you suggest for external review under FOI? What would you suggest as being a suitable avenue?

Mr Austin: I am not a lawyer. Quite clearly, when the High Court and other courts and tribunals are ruling that the right of access is important and when the Constitution comes into play and when an officer of the Parliament like the Auditor-General or the Ombudsman look at matters, it is important for healthy democracy that members of the Opposition and Committees have full and free access to assess those matters. The irony of it is, as I understand it, more so than journalists, it is members of the Opposition who find themselves restricted. That is not good for open government. I do not have a particular model in mind, but the Auditor-General and the Ombudsman are officers of the Parliament.

Say a Government contract has been tendered and the deal has been done and signed, it is bizarre for it to be exempted, no matter what company or private organisation is involved. The deal has been done. If for any reason the subsequent revelation of how the decision was arrived at may jeopardise the contract, then it is open to court processes to sue for loss of income. That happens regularly. It is entirely appropriate. Companies are in a position to be able to do it. You rarely find that companies are not vigorous in pursuing their own interests. They are very vigorous and very good at it. They have, in many cases, the best lawyers, sometimes better than the Government's lawyers. Is that a useful opinion? It is only an opinion.

Mrs GAMIN: Yes, thank you.

Ms BOYLE: I have two questions I would like you to address, one of which you have not addressed directly yet. I refer to the issue of GOCs and the extension of FOI into the private sector. Do you have a view about how far we should go?

Mr Austin: Government owned corporations, by proxy, are corporations owned by the electorate or the people. In principle, I fully support complete openness, as much openness as possible. I highlight to you the comments by the South Australian Auditor-General and the New South Wales Auditor-General. I know the Queensland Auditor-General has been a lot more subdued and a lot more diplomatic in his observations about what is occurring in Queensland. But it is quite clear that Government owned corporations, from my one or two experiences of lodging FOI applications, are being restricted in what they can release. I tend to find that usually the more sensitive the portfolio area the more difficult it is to get disclosure.

I must point out that, in my experience of dealing with public servants at a grassroots level, they are very diligent. They are very honest and very ethical. The higher they get in the pecking order, if you like—the closer to the Executive level of Government they get—the more restricted things are. Once contracts are signed, companies usually do not mind how that decision was arrived at because it was a decision arrived at by the Government owned corporation or the department concerned. To withhold it merely protects bad decision making, something which the public needs to know about.

Ms BOYLE: That leads me to my second question, not just in relation to GOCs. I also refer to lower levels of the Public Service, not of DGs and assistant DGs. I do expect that you are right. It is very hard to have the proof in day-to-day circumstances that a lot of the difficulties we have with the implementation of FOI are through some public servants who become concerned that their department will be embarrassed. Sometimes some quite minor slips, whether it is a delay in dealing with matters or something not handled well, get out into the public arena and they will be lambasted in the press. That is a culture of resistance that no legislation can change. We can write laws and make brave pronouncements, but it will not change it really, will it?

Mr Austin: I think that if public servants feel that they are truly independent they will act independently, but the higher they get—the closer they get to the Executive level of Government—the more difficult it is for them. My experience of public servants at a basic level

when you make an FOI application is that they are very hardworking. They are usually flooded with applications. They are underfunded and they do not feel particularly supported by their senior management. That is probably not something that is restricted to the Public Service.

Mr BEANLAND: Mr Austin, in relation to the time frames which currently exist for making applications, can you give us some of your views as to whether you think they are sufficient? I refer to the time frames of 45 days, etc.

Mr Austin: I think the 45-day process guarantees that you will get departmental leaks. Journalists who are any good at their job will find alternative methods to get access to documents that Governments do not want released. I know that because I try to get them all the time. Depending on the journalist concerned, we get them. The Fitzgerald report has noted that one thing that Governments of all political colours do is leak material when it is in their benefit, something that Fitzgerald ruled should not happen in spite of the fact that it still goes on every day. Journalists try to find ways of usurping processes because we have very tight deadlines. That tends to make certain journalists very good and very efficient at using their contacts to find out the information they need to know.

If the process of appeal was speeded up, you would actually send very strong signals that Governments do not inherently have something to hide. You would deal with the public cynicism issue. You would deal with your bigger problem of journalists, because they are the people who tend to put greater pressure on elected members of public office. You would help the good administration of Government by, if you like, and I am playing devil's advocate here, seeing that journalists do not usurp the process. But the reason we usurp the process and get away with it—we are helped on different occasions by all sorts of people in and out of public administration at various different levels—is because people are human beings. They get frustrated when they see Government departments doing things that they think are inappropriate. I think they speed it up.

Mr PITT: I know you are from the ABC. It is a non-commercial enterprise that has been downsized and short-changed. Many other media groups are purely commercial and their information seeking is not always in my view just in the public interest; it is also to maintain ratings or whatever it may be. Do you think there is a case for a differential in fees for access to material, given that that material is not being used purely in the public interest by an individual or group in that fashion but by someone who perhaps benefits materially by publishing the information they have gleaned?

Mr Austin: I do not have any objection to that. I think they should be allowed to if they want to.

Mr PITT: The suggestion has been put to the Committee a number of times by witnesses that perhaps having a centralised reference point for first port of call for FOI applications would, in many ways, alert people of exactly where to go, what the exemptions are and what the parameters are regarding their application. Would you support a concept like that?

Mr Austin: I would support it. It would be terrific. It should be put on the net listing FOI officers for each department. You could even put useful information there as to how many applications are current. You do not need to actually identify what is in those applications. It would perhaps even help the department's case management process by showing how far through the process individual cases are and what the balance and mix is. It is very easy to do. The IT ability is out there. Putting it on the web with clear access to FOI officers and contact points and simple explanations would be very beneficial.

Dr PRENZLER: You made reference in your submission to a situation with the Department of Natural Resources regarding a computer network that they were purchasing.

Mr Austin: A software program, yes.

Dr PRENZLER: Software, not hardware. You mentioned the fact that a journalist was seeking information on that and they got about 80 hits in the first application and they questioned that and then got 2,200 or something or other—

Mr Austin: Yes, 2,051.

Dr PRENZLER: I want to ask a question around that. In your opinion, what do you think of the internal review process that is allowed under the FOI Act compared with the external review

process? Do you have any suggestions as to how they could be improved to ensure that people do get the information they are seeking?

Mr Austin: I suspect that public servants inside Government departments are overworked and understaffed. I think that is why it happens. I think the internal review process places a lot of pressure on public servants who, at a lower level, are very well meaning. Your own discussion paper notes that decision makers are asking you, the Committee, to assist them in some cases as to what the public interest is. I think the High Court has given you some very clear directions, if not some lower courts in other States. The internal review process needs to be taken a lot more seriously. What I find happens quite often is that internal reviews are held. They review it up front, but they wait right until the very last day of that process to inform you of how they have ruled. That breeds cynicism and it guarantees that people like me will try to find ways of usurping the process and getting documents by other means. I think you are making a rod for your own back.

The CHAIRMAN: I return to the issue of commercial confidentiality in terms of FOI applications. If I have your submission correct, you are saying that there should not be any restriction on commercial information. I give the example of a large company coming to Australia from overseas which is seeking to set up a head office. It is considering the cities of Brisbane, Sydney and Melbourne. The relevant Premiers in each of those three States are negotiating with that particular company to attract that company for jobs and economic benefit, et cetera. Coming up behind that particular company are two or three others of a similar ilk which we are all in the race for as well, to get them here to set up their head offices and production facilities or whatever. What is your submission in relation to those? Is it that all of those competitors should also know what we here in Queensland are offering the first company?

Mr Austin: In my opinion, once a decision has been made, a deal has been done and it is signed off on, it is appropriate for Governments to then release the information to see how they arrived at that decision, what were the competing interests that they weighed up and what were the mitigating factors involved in arriving at the decision?

The CHAIRMAN: So when company B comes along the following week, they have all of that before them. Does that not put Queensland at a disadvantage compared with New South Wales and Victoria?

Mr Austin: It may well put them at a disadvantage.

The CHAIRMAN: Your submission is that we should cop that in the interests of openness?

Mr Austin: My submission is that courts in other States are getting access to the documents and ruling that it is in the public interest that the public knows how you arrived at your decision. I might point out that a number of companies complained to the New South Wales Auditor-General that it was Governments that were obsessive about secrecy, not them. Once the deal was signed, they were happy.

The CHAIRMAN: I am sure they might be happy, but what I am suggesting—I have an open mind about that; I am looking for your answers—is that the companies who come along next would know the parameters of the negotiations and would be at an advantage compared with the previous company, and the particular State that reveals the most information would be at a disadvantage vis-a-vis the other States.

Mr Austin: When a Government offers a tender, the theory is that it is an equal and balanced tender in the first place anyhow, so that all applicants are applying under the same tender specifications.

The CHAIRMAN: Is your submission that we should indeed consider the option of suffering some loss of business to Queensland in the interests of that openness?

Mr Austin: Yes, because that risk is always there anyhow. What is more important is good public administration. Business is very strategic and they will decide way ahead of time where they want to be. If they can get any additional Government assistance, to them it is cream. They are very effective. They have 5, 10 and 20-year plans and they are very good at using them.

I notice that the Administrative Review Commission has looked at something similar so that once deals have been done there should be some process by which they should be

reviewed, or the decision-making process at least. I think it is a mistake to assume—I assume you are implying for the sake of ensuring job growth in a particular State, or ensuring the healthy financial state—that because a Government does offer a subsidy, support or inducement to a company that is always to the benefit of the people of Queensland.

The CHAIRMAN: Do you see yourself having a very powerful position in Queensland society as program director of the ABC?

Mr Austin: Being program director of the ABC has been a real education. You get to realise just how powerless you are in a large organisation as you creep up.

The CHAIRMAN: Relatively speaking, in comparison with the average backbencher along the table here, you hold a lot of power in terms of setting the public agenda, revealing issues, questioning issues, etc.

Mr Austin: Mr Chairman, if you have ever dealt with ABC journalists you would know that it is very difficult from a management point of view to require them to do any particular task asked by management. It is a very challenging position, one that is perceived as being powerful but may not be as powerful as you think.

The CHAIRMAN: What I am getting at here, I suppose, is the issue of the public interest and the power of the fourth estate and what extent you might also be subject to freedom of information type applications.

Mr Austin: The ABC is subject to freedom of information applications.

The CHAIRMAN: I suppose I am speaking broadly about journalists across-the-board. Do you have any views on that in terms of creating your own pecuniary interest declarations and revealing other information that you might hold?

Mr Austin: The ABC has some very strict and very tight code of conduct and code of ethics procedures—very strict and very tight. They take a very dim view of anyone breaching them. I will give you a case in point. I give lectures occasionally at different universities. One of those universities is kind enough to pay me a token amount of money. Before I do that I have to fill out in triplicate and wait 14 days to get a response from management as to whether I am allowed to do it, even though it obviously benefits my work as a journalist in the ABC.

The CHAIRMAN: What about your colleagues in the private sector? Do you have any views on whether they should be subject to further regulation in that sense?

Mr Austin: You mean people working in the private sector for the ABC?

The CHAIRMAN: No, in the private media sector—the Courier-Mail, private radio stations, etc.

Mr Austin: I have a love/hate relationship with my friends at the Courier-Mail at times. I think I will let them answer for themselves. I do have one question. That is the matter I raised at the end of my submission about the submission of Mr Kevin Lindeberg being offered to this Committee yet not being listed on the index of submissions. Is there a reason for that? Why was it not listed?

The CHAIRMAN: I will not comment on any particular submission, but the Committee, in making decisions in relation to the tabling of any submission, is guided by considerations of procedural fairness in whether a submission names particular parties and also whether the person has listed the submission as confidential. Sometimes those submissions do not waive their requirement of confidentiality, so therefore we do not table them.

Mr Austin: So it was a confidential submission?

The CHAIRMAN: I am not commenting on that particular submission. I certainly do not recall the specific details of why we did not table that particular submission. They are the general issues we are guided by in relation to these matters.

Mr Austin: Thank you. I certainly urge the Committee to call Mr Lindeberg if you can if you want to know about the operation of FOI Act in Queensland, because in my experience and in the experience of journalists at the Courier-Mail, and in the experience of journalists elsewhere, he is the most experienced person in dealing with the FOI Act. You would be well advised to speak to him—even if he is difficult, potentially vexatious or even if he is annoying. You need to speak to him and I urge you to do it.

The CHAIRMAN: Thank you very much. There being no further questions, I thank you very much for your time and your contribution this morning.

Mr Austin: I thank the Committee for the opportunity to appear before you. Also, let me compliment you on the professionalism of your staff, whom I found delightful to deal with and very professional.

KAREN FLETCHER, examined:

The CHAIRMAN: Welcome to the Committee. We appreciate your contribution and your time. During your evidence you might wish to refer to particular FOI applications by way of example. While we would find this useful if it is relevant to our review, we remind you that this is a public hearing. Therefore, we ask that you avoid making statements which reflect adversely on any identifiable person or entity. Have you provided us with a written submission at this stage?

Ms Fletcher: No.

The CHAIRMAN: Thank you. There was a little bit of confusion, so thanks for clarifying that. Would you like to provide us with a very brief submission and allow us enough time to ask you some questions?

Ms Fletcher: Certainly. I guess I will address the question of why we have not provided a written submission. We are very grateful for this opportunity and would like to thank the Committee for this opportunity to present verbal evidence. The service has two solicitors and at present services a prison population of more than 5,000 prisoners. We are primarily a case work service and we are absolutely swamped with case work. It is very difficult to find the opportunity to provide written submissions on the volume of inquiries. We do feel that we have experience from our case work which may be of assistance to the Committee and it is really great to be able to come and talk about that.

We are one of 26 community legal centres in Queensland, all of them small organisations operated by management committees, independent of the Legal Aid Commission and the Governments but funded through the Legal Aid Commission by the State and Federal Governments. A lot of the comments I want to make today are relevant not only to the work of the Prisoners Legal Service but also to the 26 community legal centres throughout the State which provide on-the-ground, everyday volume legal service and advice to the community throughout the State.

As I said, our primary clients are prisoners, but we also provide advice, assistance and information to prisoners' families and to people on community corrections orders, such as people on parole, community service and so on. My colleague from Queensland Advocacy is here today. That organisation provides similar sorts of services to people who have disabilities. A lot of the comments I will make are also relevant to mentally ill people who live in hostels, elderly people who live in nursing homes, other institutions for people with disabilities, youth detention centres and a range of other places where decisions are made which affect the very detail of people's lives—what they eat, where they sleep, whether they can see their families and what medication they take. These kinds of everyday decisions are made by representatives of the Government and I think, for those people, freedom of information and other administrative law remedies become incredibly personally important. I wanted to put that in context.

The purpose of appearing here today is to provide that on-the-ground information. We read the discussion paper from the Committee and were impressed to see that there is a move afoot to improve and extend the operation of the Freedom of Information Act. We applaud that.

We at the Prisoners Legal Service to an extent feel a little bit defensive in relation to the use by prisoners and their families of the Freedom of Information Act because of the submissions that have been made. I have not seen submissions by the Department of Corrective Services to this Committee, but submissions have been made and quoted in the Department of Justice and Attorney-General's annual report on freedom of information 1997-98, making comments about the volume of vexatious applications from prisoners and the problems that arise when prisoners seek access to information which may reveal sources, may pose dangers to staff and those sorts of things. So there is a defensive aspect to what we want to say.

Once it becomes clear what kind of amendments the Department of Corrective Services would like to see to the Act, we would like to have the opportunity to answer those proposals. We do not have them in front of us at the moment, so that is a little difficult to do. I did write last year saying that, whilst we did not have the resources to address everything in the discussion paper, we would like to particularly address any proposal to remove or reduce access by prisoners and their families to the Freedom of Information Act.

One thing that makes that quite real to us as a possibility is the proposal that was on the table during the last Government's term of office to remove prisoners from the operation of the

judicial review Act. It seems to us that similar reasons are starting to be put forward around the edges for why prisoners and their families should not have access to the Freedom of Information Act.

I will go through a few examples of the types of things that we use the Freedom of Information Act for on behalf of our clients. Probably the most everyday one—we operate a telephone advice service and prisoners can ring us on two mornings a week and ask us for advice—and probably the single most common query is, "I think they have got my sentence calculation wrong. I believe that I have already served that warrant" or, "I do not believe that warrant was mine", or "The date is wrong for my parole"—that sort of bread and butter query about the length of the sentence. We have a problem there in that we cannot access the sentence calculation documents on how those things are calculated, including the judge's sentencing comments from the files of the prisoners by simply asking the prison to provide those. They will tell us that we have to go through freedom of information, that we cannot be provided with that information.

We think that if there was a simpler and straightforward way of getting that information, then a lot of the frustration that builds up on behalf of prisoners and their families about accessing this information would not be the case. If we just had simple administrative access to that stuff, you probably would not get the kind of applications that do annoy the department, such as, "Since you will not tell me what my sentence calculation is, can you please provide me with my entire file back to 1966 of my time in the corrective services system?" I think that a lot of that can be avoided by just fixing up these information flow processes at the basic prison level.

The second one that is quite common is questions about why somebody has been strip searched, or why some invasive process has been performed on them. That is particularly the case with visitors to prisons at present. We get family members who are searched or strip searched when they attend at a prison to see their family member and they would like to know why—why were they targeted for this? Was the search harassment of their loved one who they have in prison or was it for proper reasons? In one particular case that I have at the moment, the visitor told me that there was a police officer present at the search, who audio taped the search, and that that audio tape would show that comments were being made which indicated that the search was for the purposes of harassing the person she was visiting, not because she had any drug history or there was any indication that she was doing anything improper. We have not been able to obtain that audio tape. I think that is just an indication of the kind of culture of secrecy. I guess that I am not in a position to say whether it pervades the Government, but I certainly believe, from our experience, that it pervades the prisons system.

The third one is the availability of the rules which affect the lives of prisoners in the system. Each prison has a set of general manager's rules, which sets out everything from bedtimes to musters, to meals, to medication procedures, to strip searching procedures, etc. For us to be able to provide advice to prisoners about their legal rights under those rules, we really need copies of them. It is extremely, extremely difficult to obtain any copies of internal rules and regulations. We usually receive an indication that they will be sending them, but then get letters saying that they are under review and, therefore, they cannot be provided, etc., etc. We have been in operation for 12 years. We have tried to set up a process where we could get all the general manager's rules for all the prisons and automatically be on the update list when rules are changed so that we can receive copies of them. That process has not worked. I think at any one time, out of the 10 or so prisons that there are in the State, we would have full, up-to-date general manager's rules for maybe one of them. It is a constant battle to try to get copies of that information. There is a move afoot, I think, to put this sort of information on the Internet, and that would be a massive step forward for openness and accountability in the operation of these systems.

Private prison contracts and audit reports—we have in the past and continue to ask for copies of the contracts and the audit reports performed by the department on the private prison operators for the purposes of ascertaining whether there have been breaches—whether some of the things that prisoners are telling us about early release mechanisms not being used by the private prisons are true, whether the delivery of rehabilitation programs in the private prisons is being carried out—that sort of thing. It has taken two, three, four years to obtain two contracts, which were 1994 contracts, I think, for two of the private prisons. By the time we received them, of course, the contracts were no longer in operation and there were new ones and we would have to

start the procedure all over again. So just the sheer legalistic delay involved in trying to get hold of these documents through freedom of information, once we have a refusal from the department, really renders the documents fairly useless, if and when we do finally get them.

Investigator's reports into deaths in custody, this is another area where we have had enormous problems. I think that I probably have about 10 or 12 open files at the moment regarding deaths in custody, where we have been attempting—some of them right back to the very early 1990s—to get copies of the inspector's reports into the deaths as to why the deaths occurred, how the deaths occurred, what steps have been taken, or could be taken to prevent deaths of that type in the future. We have received one, which was ordered to be released to us by the Information Commissioner after, I think, probably a five-year, six-year process. It is now a leading judgment on the Freedom of Information Act made by the Information Commissioner, but that was eventually ordered to be released to us. Applications that were made around the same time as that application still have not been released.

I just brought along an example for the Committee of a fellow who died through what seems to have been a suicide in April 1994. We made an application for the investigator's report into his death. Investigators' reports are completed very quickly—within 7 to 14 days afterwards. We made an application on 4 May 1994 for that report. We went through a two-year process with, first, the department and then the Information Commissioner in the initial stages of trying to get hold of that report, waiting for the coroner's inquest to be completed, etc., etc. Eventually, the department agreed with the Information Commissioner that they would make public certain aspects of the report, particularly the recommendations about what should be done to prevent future deaths of this type. As I said, the department agreed to that in 1997. We have now written to the department in April 1998, June 1998, September 1998 and now again most recently on 27 March 2000 and still have not received a single reply to that, them having agreed at the board level to release those aspects of the report and now ignoring it, and we have no choice now but to go back to the Information Commissioner. So that is now seven years after the death of this person.

The CHAIRMAN: You might like to pause there if you do have a lot more detail. I am sure that the Committee would like to ask you some more questions. Firstly, if I can start off, the Committee is very interested, as you might see from the discussion paper, in any prospect of making inquiries and applications routine. Certainly, the corrective services area is one which is noted for its very high level of activity in the FOI area. You have mentioned the prospect of putting things on the Internet and I think that you have also mentioned administrative processes. I suppose that really requires a good feedback mechanism within FOI units within the departments to ensure that there is a proactive approach to making sure that that happens, because it is a very dynamic process, obviously, in terms of the sorts of inquiries, new issues, or whatever, coming through. Can you give us some of your thoughts on whether you see that feedback process operating or how it might operate better and whether that might need some legislative foundation to ensure that that operates?

Ms Fletcher: I really like the suggestion, and I think that it would really work well in this area, of removing that first internal review and going straight, relatively quickly—perhaps within 20 or 30 days—to a mediation where the Information Commissioner or a representative of the Information Commissioner was able to sit down at a table with the applicant or the applicant's representatives and the department and have a look at the issue. I think if that started to happen on a regular basis, then the volume of material that the department now has to deal with would vanish almost.

The CHAIRMAN: So you are saying that you think that there is already a lot more scope for administrative release of material rather than going through formal processes?

Ms Fletcher: Absolutely. Incredibly so. There is an absolute logjam at that level. The employees, due to no fault of their own, are under the impression that they can cannot release any information. That culture of secrecy within prisons is not just in Queensland; it is, as far as I can see through my reading, part of the prison culture throughout the world, I suppose, particularly the Western World. Section 61 of the Corrective Services Administration Act actually makes it an offence to release information in the course of your duties as a Corrective Services employee, and they point to that all the time. They just will not release the information to the prisoners or the prisoners' representatives. To turn that around will take, I think, a much more

interventionist or more positive approach from the Information Commissioner's Office on a regular basis on particular decisions until the confidence is built up that this can be released without negative implications for the staff member involved.

The CHAIRMAN: You mentioned the Information Commissioner's Office. Do you think that is the best place from which that initiative might come?

Ms Fletcher: One thing that I can say is that it has to come from outside the Department of Corrective Services. Whether it is from the Information Commissioner's Office as the best place, I am not sure, but it seems to me that that is as good a place as any to start with at the moment. If we could just have that, that would be an enormous step forward.

The CHAIRMAN: You mentioned the prospect of Internet provision of information as well. Could you give us some examples of some information that might be useful to be placed on the Internet from Corrective Services that is not readily available now from that source?

Ms Fletcher: Arguably, everything that governs the rights and responsibilities of prisoners and their visitors. The Act is on the Internet because of the Queensland Parliamentary Counsel web site, but the rules, the department's rules—

The CHAIRMAN: Procedures? Administrative instructions?

Ms Fletcher: Policies and procedures, administrative instructions, administrative guidelines—all the general manager's rules which govern the operation of the prisons themselves; none of that stuff is available either to the public or to the prisoners. Without intense work—we are a full-time office with two solicitors on full time—we still cannot get this information in large part.

The CHAIRMAN: Thank you? Mrs Gamin?

Mrs GAMIN: Karen, following on from that, although this is an inquiry into freedom of information, the Office of the Queensland Ombudsman also has a very large role to play in services to prisoners. Do you think that the same person should hold the offices of Queensland Ombudsman and Information Commissioner?

Ms Fletcher: That question is not something that we have really applied our minds to as an organisation.

Mrs GAMIN: Give it some thought, anyway.

Ms BOYLE: Thank you for your important submission and, in asking this little question, I am not at all arguing the big issues that you have put on the table for us this morning. However, I am concerned that for an individual or an organisation petitioning for FOI, their purpose in requiring that information should not be relevant and yet it does have to be, so I am told, with some of the purposes that some prisoners have in seeking information, possibly with the intention of causing direct physical harm to some people in a revenge context. Do you have any information to assist us with managing those kinds of applications as distinct from the important ones that you are generally following?

Ms Fletcher: We do think that there may be situations where harm could be caused to somebody through the release of information, and those do need to be filtered out. What we think is that it is sufficient for them to be filtered out at that part of the process where the public interest test is applied and the harm test is applied. What we feel is being put forward and has been put forward in some media articles last year, and some of the comments in this report, is that this is something which is a wide net which should prevent access to information for all prisoners on all manner of things. In Queensland, the average sentence that a man serves is four months; the average sentence for a woman is two months. A large number of the people who we service do not actually serve a prison term at all; they are on some form of the community supervision, but it still affects where they live, who they can mix with, whether they can drink alcohol—these sorts of things. The issue of information to them about the decisions made about their lives needs to be addressed and then where there are extreme cases where the release of information may cause harm to somebody, that is the case that should go to the Information Commissioner and be filtered out at that stage. It is right at the end of the process.

Mr BEANLAND: I take it from what you have just indicated that you see a need for some changes and also for greater access to what one would consider to be administrative matters as

distinct from personal material that could be used against a victim? I presume that is what you were saying?

Ms Fletcher: Yes.

Mr BEANLAND: You mentioned the issue of outsourcing through private prisons and the whole area of Government owned corporations. Do you believe they should come under the full ambit of the operation of FOI? I presume at the moment that they largely do not?

Ms Fletcher: At this stage, the main argument in corrections is about the private prison operators. We did see the State prisons corporatised and operated by a GOC for a period. That has now been reversed and it is back with a Government department. Who is to say that it may not go back to being a corporation again? We certainly believe that, where a private institution is providing a public service with public money, where there are extremely important public issues at stake quite separate and apart from issues of profitability and commerciality, they should be subject to exactly the same freedom of information and other administrative law remedies as the Government. This is really important in corrections, because running a profitable prison is a very different matter from running a humane, effective and rehabilitative prison.

A more profitable prison may do things such as putting two prisoners in a cell, not providing rehabilitation programs and proper visiting facilities for families. It may not do all of the sorts of things which do not add to the bottom line profit. But what sorts of people are those prisons turning out into the community at the end of the day? Some 15,000 people are going through prisons in Queensland each year. If we put the emphasis on the profitability and commerciality of the enterprise, all of the aspects of corrections which result in greater rehabilitation of people are devalued. If we cannot have a look at the records of those institutions to see what sort of money they are putting into rehabilitation programs, how do we know whether they are moving people through on the dates they are eligible to be moved through? Are they hanging onto them as profit producing units? If we cannot get that sort of information, we may create some very dangerous institutions.

Mr PITT: You partly answered the question that I was going to ask about the difference between private operations and publicly maintained prisons. Excluding the information on the prisoners themselves, which you have just indicated there are some difficulties with in the private institutions, would a prisoner incarcerated in a private prison have any more difficulties in obtaining material under FOI from Corrective Services than, say, someone in a public prison?

Ms Fletcher: It is difficult to say, because a lot of the answer to that question is in the terms of the contracts between the Government and the private prisons, which we cannot see. We understand that there are some contractual obligations to provide information, but we are not exactly sure of the extent of that. In Queensland, information which relates to a person's sentence management is, I think, deemed to be the property of the department rather than of the private prison operator, but there is always a very fine line about what is information related to a person's sentence management. One very common issue we have is property going missing. A prisoner claims that they had a watch when they came in. They put it into the property area and now it has gone. That sort of information, which is very internal to the prison, is extremely difficult to obtain for a person in a private prison in comparison with a person in a public prison.

Dr PRENZLER: You have made a few comments about a review process, which is still going on. I would like to hear some comments from you on what you think should happen with internal and external reviews of decisions that have not gone in favour of the applicants or about which the applicants were not happy. In doing so, I would like you to refer to some of the restraints created by the time limits placed on FOI applications and how that affects prisoners?

Ms Fletcher: I am sorry, I did not follow that.

Dr PRENZLER: Could you comment on the external and internal review processes that take place if prisoners are not happy with the response they have to their application; in other words, the information they have been given is not what they require? In doing so, could you make some comments on the time limits put on FOI applications? For example, you have to respond in 14 days and give a decision in 45 days, if possible. How does that affect prisoners and their complaints?

Ms Fletcher: The most extreme example, which is not uncommon, is that, because of the long periods that are given for responses to prisoners' inquiries, they may well be out of the

system before their inquiry is answered. For example, if they ask for a copy of their property card to see whether they can prove something came into the prison with them, it takes 45 days initially, and another couple of weeks while they have a look at it. There is an internal review for another month. It then goes off to the Information Commissioner, where there is no time limit. By that stage, a lot of people would be well and truly out of prison and the issue may well be moot. It does cause big problems.

Dr PRENZLER: Do you think there should be some sort of mediation process that could speed up the whole system in these instances?

Ms Fletcher: Yes. As I indicated, the idea of not having that first internal review and going straight to a mediation meeting with, say, the Information Commissioner's Office would be extremely helpful. At least you have somebody external to the department looking at it in a timely fashion.

The CHAIRMAN: Thank you very much for your time and your valuable contribution to the Committee.

The Committee adjourned at 12.06 p.m.

The Committee resumed at 1.23 p.m.

SUSAN HARRIS, examined:

SUSAN KATHRYN HEAL, examined:

The CHAIRMAN: The next witnesses are from Queensland Health. I welcome both officers from Queensland Health. Could I ask you both to identify yourselves and your full titles for the purposes of Hansard?

Ms Harris: My name is Sue Harris. I am the manager of Corporate Support Services, Queensland Health.

Ms Heal: I am Sue Heal. I am the acting principal policy officer in the Legal and Administrative Law Unit of Queensland Health.

The CHAIRMAN: Thank you for your time this afternoon. The Committee would like to hear any particular statement that you would like to make before we ask questions of you. Would you like to provide us with a brief statement?

Ms Harris: Queensland Health is divided into Corporate Office and 38 health service districts. It exists to service the Queensland community by providing public health services. It has 188 public hospitals, including psychiatric hospitals, 25 residential aged care facilities, 12 other residential care facilities, three dental hospitals and 437 community health centres. It has 48,504 staff positions throughout the State. The Health portfolio also includes 12 hospital foundations, 12 professional registration boards, five patient review tribunals, a professional conduct committee, the Medical Assessment Tribunal, the Mental Health Tribunal, other statutory bodies, such as the Health Rights Commission, the Council of Queensland Institute of Medical Research, the Queensland Institute of Medical Research Trust and the Radiological Advisory Council of Queensland.

Every day in Queensland 2,032 people are admitted to hospital, 662 people are admitted to hospital through emergency departments, 7,240 people are treated in hospital and 20,344 hospital outpatient services are provided. In the financial year 1998-99 there were 741,868 total hospital episodes of care provided in Queensland Health public health care facilities.

In regard to records, Queensland is required to create and maintain health care records in respect of the delivery of those health care services. These records then become subject to the access regime set out in the FOI Act. In addition to the large number of personal health records which Queensland Health holds, there are also numerous categories of non-personal documents relating to the formulation of policy or decision-making processes within Queensland Health. Records pertaining to those functions, all subject to FOI, include approximately 70,000 files held in corporate office alone, thousands of additional files held in health service districts and a very large volume of older files held in the Queensland State Archives.

As to FOI activity—in other Australian jurisdictions statistics appear to show that FOI applications plateaued after a number of years and then began to decline. Contrary to that trend, Queensland Health has continued to receive a high volume of applications. In fact, the number of applications received by Queensland Health in 1998-99 represented a 12.9% increase over the number of applications received in the previous year. The statistics for access applications received reported to the Department of Justice—the section 108 report in 1997-98—for the Health portfolio, which includes Queensland Health Corporate Office, the health service districts and the statutory authorities, were as follows: in 1996-97, 1,899; in 1997-98, 1,941; and in 1998-99, 2,190—a 12.9% increase.

Access applications finalised in 1996-97 numbered 1,508, in 1997-98, 1,638 and I cannot provide the 1998-99 statistics. The number of documents considered was 1,081,750. In 1997-98 it was 193,221. The percentage of documents released in full or part in 1996-97 was 88.3% and in 1997-98, 85.3%. In addition to that, in 1997-98 we provided 3,300 documents in relation to health records released under the administrative access policy, and in 1998-99 that increased to 3,500. Unfortunately, final statistics for 1998-99 are not available. Data for individual agencies are reported directly to the Department of Justice using the FOIDERS statistical reporting system. Queensland Health is unable to generate totals from data in 1998-99 as the section 108 report is not yet published.

In relation to staff and costings specifically for FOI and admin access to records, there are five staff in Corporate Office. In the health service districts there are 31 decision maker positions plus additional staff to provide administrative support. The amount of work and associated costs both in terms of staff and physical resources which is involved in processing applications both formally under FOI and under Queensland Health's administrative access to health records policy is aptly demonstrated by the following example from just one mid sized health service district. The total costings for 1998-99 were $135,722.20. This includes the decision maker, coordinator, FOI support, admin officers, medical superintendent and the physical resources. Physical resources from just one hospital in the districts include a photocopier at the hospital being in use for approximately 60% of each working day, Monday to Friday, attending solely to FOI and admin access requests. Within a 12-month period this hospital alone has utilised in excess of 180,700 sheets of A4 paper on this photocopier, the majority of which is for FOI and admin access.

Given Queensland Health's finite budget, the increasing demand on its services and the increase in complexity and cost of services provided, all services including FOI have to be managed while maintaining budget integrity. Every endeavour is made to operate within the parameters of the FOI Act and meet the required deadlines. We are the only agency with decentralised decision makers, including Corporate Office, and across the health service districts as well as Queensland Health's statutory authorities. This decentralisation of decision makers is very resource intense. However, the Committee would understand the importance of retaining health records at local health services, particularly with our duty of care to our patients in having health records accessible 24 hours a day every day of the year. While the allocated resources may be inadequate, any additional diversion of staff or resources to improve the FOI service at Queensland Health is very difficult to justify given the increasing demand for clinical service.

If I may just address the questions, the first one is whether the principles and purposes of the FOI Act are appropriate and have been satisfied. The basic purposes and principles of the FOI Act are still sound and relevant and have been largely satisfied, but there are specific aspects of the FOI Act that we believe require modification. Queensland Health has performed well in the area of providing access to personal health records. Each year thousands of applications are handled free of charge throughout Queensland by decision makers in the 38 health service districts.

The section 108 report prepared by the Department of Justice indicates that Queensland Health scores well on disclosure rates in response to FOI applications in comparison with some other agencies. There is a need to recognise that requests for documents on policy formulation or decision making in many cases involve matters which are the subject of deliberations in Cabinet or committees of Cabinet, such as the Cabinet Budget Review Committee. The FOI Act recognises the necessity of ensuring the integrity of those deliberations.

One area of concern for Queensland Health is the systematic or vexatious use of the FOI process by a small number of individuals, which has a substantial impact upon the agency's ability to process other applications in a timely fashion. This in turn inhibits Queensland Health's ability to fully realise its commitment to the principles which underlie the FOI Act. For example, of the 130 FOI applications processed by Corporate Office in 1998-99, 19 of these applications, or approximately 15%, were lodged by one individual. That individual's applications required the location and assessment of many thousands of documents and extensive third-party consultations. One application alone included more than 100 individual bullet point items in relation to which the document was sought.

Question 2 is the suggestion in the discussion paper of reversing the FOI concept to provide for routine release of certain information. Queensland Health has already implemented many of the suggestions made in the LCARC discussion paper, for example, through the routine release of health statistics and other general information via the department's web site. Examples of these are Elective Surgery Waiting List Report as at 1 April 2000—and I would like to submit a copy of that to the Committee—Regulatory Impact Statement: Government's proposals regarding development of the Radiation Safety Regulation 1999; Hospital Funding Model for Queensland Public Hospitals and Policy and Technical Papers; Ministerial Taskforce on Nursing Recruitment and Retention: Final Report; Statewide Health Building Program: Capital Works.

By giving consideration to whether there is scope to deal with FOI applications outside the Act's formal processes, for example media requests for information on the lyssavirus and infection

rates in hospitals, these have been dealt with by arranging a meeting with the key stakeholders in lieu of providing access to the voluminous technical documentation. Another resource within Queensland Health which is utilised as an alternative to processing requests for information through the formal FOI process is the Health Information Centre, a centralised data collection and retrieval service which is able to provide statistical reports and data sets to the public on a fee-for-service basis.

One observation I would like to make about the suggestion to the Committee's discussion paper that all Government contracts should be routinely released is that it has been Queensland Health's experience that what is more often sought is not the contract itself but the documentation about the tendering process, which will contain much information of commercial value to the organisation submitting tenders, including the unsuccessful tenderers. Queensland Health agrees with the point made in the Committee's discussion paper about the need to examine the issue of statutory protection available for officers against liability to actions for defamation or breach of confidence as a result of the release of information outside the FOI process. Such protection should be analogous to the protection currently afforded under the FOI Act.

Question 3 relates to administrative access systems in place in Queensland Health. Queensland Health has implemented several highly successful mechanisms for providing access to personal records outside the formal FOI process. I alluded before to the administrative access for health records policy which has been in place since 1994 and provides individuals with access to a copy of their health records free of charge. I submit that for the Committee. Administrative access to human resource management documents for current employees and other specific procedures have been established to deal with high volume categories of request for access to records outside FOI such as the Motor Vehicle Accident Insurance Act, response to subpoenas and non-party disclosure.

Question 4 relates to whether Queensland Health has had any difficulties processing applications for access to health records. Queensland Health is not aware of any major problems in this regard but acknowledges that changes in technology may create future difficulties in accessing records from obsolete systems. A specific example of such a situation encountered by Queensland Health involved an application for an individual's pathology test results. Inquiries disclosed that all results for the relevant time period had been archived to a backup tape and that the archive data did not necessarily include the specific data sought. In addition, the only computer remaining within Queensland Health which was capable of retrieving the archived data after the creation of a computer program to permit its extraction was in use in the neo-natal intensive care unit of a major metropolitan hospital. The diversion of that computer to attempt to extract the data sought was considered by Queensland Health to be unwarranted in all the circumstances.

As part of its FOI processing protocol, Queensland Health has adopted specific procedures to ensure that documents located and dealt with in response to FOI applications include all relevant documents held in electronic form. These procedures include formal notification of staff responsible for identifying relevant documents of the expansive definition of "document" in the Acts Interpretation Act 1954 and requiring those officers to certify in writing that all relevant documents have been provided to the FOI unit.

Question 6 relates to whether difficulties arise in processing applications for information relating to deceased people. This is one of the most problematic areas for Queensland Health in the administration of the FOI Act. There are numerous relevant issues. There are problems with the imposition of mandatory fees and charges for personal applications with no mechanism authorising waiver in appropriate circumstances. This issue is relevant not only in the context of applications for deceased patient records but also to applications from parents for records concerning their children. There is inconsistency in terminology in the FOI Act. "Next of kin" is employed in Part 4 relating to amendment and "closest relative" is used in Part 3 relating to access.

There are also practical problems with the section 51 consultation mechanism. The FOI Act does not provide any guidance in terms of determining the appropriate closest relative to consult, the purpose of the consultation and whether such consultation can take place without disclosing the documents in issue to which they themselves may not be entitled to access under

the FOI Act. There is also difficulty in applying the public interest balancing test, particularly in applications by relatives of the deceased who feel they have a right of access to the records in question. In this regard, we need to emphasise Queensland Health's strong commitment to protecting the privacy rights of individuals with regard to health information, even after death. There is a lack of specific provision in the FOI Act regarding applications made under purported legal authorities such as executor of estate, power of attorney or parents and guardians of deceased minors.

Question 7 relates to particular issues which arise from applications for information relating to employees. In its written submissions to LCARC, Queensland Health has addressed the following relevant issues: the need to amend the section 42(1)(c) exemption relating to endanger life or physical safety to protect staff against extreme harassment, intimidation, stalking, etc; problems with the Information Commissioner's interpretation of the section 44(1) exemption relating to personal affairs as not extending to personnel related information of staff; problems with the Information Commissioner's interpretation of the section 46(1) exemption relating to matters communicated in confidence so as to preclude from exemption statements provided by staff in the course of internal investigations such as those relating to sexual harassment, grievances and internal audit reports; and problems arising from vexatious applications for staff personnel files and voluminous applications for job competition documents.

Lastly, I would like to address the question canvassed in the discussion paper relating to "information" versus "document". Changing the definition to include non-recorded information would have resource implications for agencies. This information sought may not be required for any governmental purpose, yet the agency would be required to extract it in documentary form upon request. In this technological age, there would be problems in defining the scope of an application due to the constantly changing nature of information stored electronically in databases.

For example, suppose an applicant who has received health care services in a public hospital wants to know what information was available and considered at the time a decision was made regarding the applicant's clinical care. With respect to information held electronically, conducting a query on a database at the time the decision was made may give very different results than the same query conducted at the time the access application is processed. In addition, there may be problems as a result of different levels of user rights. The information available to one departmental officer such as a doctor may be different from the information available to another officer, say, a physiotherapist.

If information includes non-recorded knowledge, this raises practical questions such as how to respond to a sufficiency of search issues. A document is finite in the sense that agencies have record retention and disposal schedules. If documents cannot be found, the retention/disposal schedules can provide support for a conclusion that the document is no longer held. Arguably, this would not be the case for non-recorded information. This also raises the questions of how an amendment of such information could be done and custody and control issues. For example, if the information has not been documented but is known by only one person, would agencies be required to ask the individual for the information even if the individual no longer works for the organisation, for example, they retired 20 years ago? Thank you.

The CHAIRMAN: Thank you very much. I first of all pick up on the point you mentioned relating to vexatious applicants. Without mentioning any names obviously to identify people, could you give the Committee some sense of what you were talking about there? Can you give us the frequency and the scale of those applicants and what they mean in terms of the workload of the organisation? Indeed, sometimes there may be a danger of deleteriously affecting a third party by virtue of some of those applicants when they are not only malicious but vexatious as well.

Ms Harris: One applicant, as I cited, asked for 15 applications. There was no suggestion that it was going to be deleterious to anyone that we were aware of. However, it had a major impact on the unit processing that application. There was an enormous workload, as I have identified, because there were thousands of documents that had to be gone through by the staff. In relation to our strategies to deal with this applicant, as the applications increased we let them go through to external review to try to get the matter dealt with at external review. That was not accepted. We have a very large number of applications. It does not look as large in number as it

is for Corporate Office, but we sometimes have to go through hundreds of files looking for documents. That particular applicant pulled all of Corporate Office resources for weeks. That meant that all the other applicants had to wait. That put this applicant ahead of all those applicants who had been waiting in line for some time.

In a recent application for job competition documents for seven positions at SES level, one officer in the FOI unit spent four weeks processing that application which involved page-by-page analysis of each application, curriculum vitae and selection criteria statement to remove all identifying matter. Identifying the documents culminated in some 4,200 pages and every page required significant deletions.

Another example relates to a shotgun approach. We received a recent application for everything Queensland Health holds about passive smoking. A search of Queensland Health's records index system, that is, our RECFIND system, resulted in a print-out of file titles alone that was approximately two to three inches thick. A representative of the applicant was asked to come in to review the index and identify the files likely to hold relevant documents. Each file was then tagged. Those files then had to be located, retrieved by an action officer within the department and reviewed on a page-by-page basis.

Another example related to all documents about infection rates at two major metropolitan hospitals. This was a massive volume of documents and made the application unmanageable. We ended up dealing with it outside the FOI Act by making arrangements for the applicant to meet with a specialist in the area of infection control on the proviso that the application could be reactivated if the meeting was not productive. There were other parts to your question. I am sorry; I have lost them.

The CHAIRMAN: I understand that there are particular issues that arise with some psychiatric patients repeating applications.

Ms Harris: Yes. Another example is that, because there is no limit to the number of applications an applicant can make and because obviously all of our health records are free of charge, we have had a number of occasions where applicants have come back time and again in one 12-month period. They lose the files or reapply because they do not trust the system and they think that they will catch the department out if they make a number of applications. We cannot refuse any number of applications, so they just come back again and again to get the same documents.

The CHAIRMAN: Can you think of other circumstances where a third party might be affected by some of these applications, where there is an a malicious intent?

Ms Harris: In the mental health area we have had staff stalked. Some of the staff have been harassed and stalked by patients because the patients believe that the staff have misrepresented their views. I can remember that one lady felt that the information recorded was absolutely incorrect. As you would be aware, when some of our patients are really sick they can exhibit behaviour that they may not recognise when they are treated and functioning properly again.

The CHAIRMAN: What about the costs of some of these applications? Can you give us a sense of the scale of the costs? Also, when an application is made, to what extent is it possible for you to arrive at an early estimate of what the cost will be to provide that information, even it if it is within a certain range?

Ms Harris: Until you know what files are involved, it is very difficult to make an estimate. You need to have a bit of a look through the files to try to get an estimate of what it involves. Then you would be able to, if the Act permitted, allow for it.

I will tell you about another application we have dealt with in the last 12 months. One of our patients has four or five enormous files and she wants to get a copy for each of her children so that when she dies they have a copy of her health record. As soon as it is processed she comes back to have it done again. In terms of photocopying and paper, it is very substantial. These people are usually out in the districts where we are diverting people to do all of the photocopying. There would be no change to the decision, of course, but it is very resource intensive.

In terms of malicious applications, a number of staff personnel files have been sought by a person other than the individual staff member. The third parties are sometimes people who

have no involvement with the individual. They are seeking personnel records for purposes we do not know about. We have had one particular one which has been very difficult to deal with.

The CHAIRMAN: What about price range? Can you think of some examples in terms of your actual costing?

Ms Harris: For these large voluminous vexatious applications? We did have one that we finished up having to cost because it was a request for a whole lot of budget documents. This is some while ago. It involved districts and Corporate Office. We finished up spending over $17,000 on that one application alone. The individual concerned did not even come and look at the documents. I think we were all off line trying to deal with that one, to meet the deadline. It was very disappointing.

Mrs GAMIN: The general public is frequently insufficiently aware of exemption provisions and there is a high level of complexity with the whole FOI process. The appeal process can be slow and legalistic. Do you think there is a case for abandoning the system of internal review, certainly as a prerequisite for external review? Is there a case for some other model of external review under FOI, or a significant variation in the existing model? As a follow-on from that, do you think the same person should be holding the offices of Queensland Ombudsman and Queensland Information Commissioner?

Ms Harris: We always tell applicants of their appeal rights. Because it is free, a lot of applicants will automatically appeal. If we do not hold any records and we are unable to locate them, we still tell individuals that they have an appeal right for internal and external review. Invariably they go through that process. I remember one lady who was looking for her birth records in a hospital that was not even under the public health system and it was some 40 or 50 years ago. When we explained this—we even rang the lady to explain to her—she still sought review of the decision.

I believe that we do FOI very well at the first level of right of request. I would have no problem in it going then to external review. That would certainly relieve some of the workload, because it requires the internal review officer to actually review all of the documents again. It is just impractical. These are people at a very senior level and their workload just precludes the time required.

Mrs GAMIN: You would have no problem abandoning internal review and going straight to external review?

Ms Harris: No. I do not have a great preference about whether external review should be under the umbrella of the Ombudsman's Office. I would have no problem with it coming out. At some time previously there was a proposal for a review process similar to the Administrative Appeals Tribunal. I think that was what we supported at the time, but I do not have a strong preference.

Ms BOYLE: I am interested to notice that in 1998-99 roughly a quarter of your original decisions were varied through internal review. So even though it is the same person going through the same stuff, a quarter of the time what happens? Do they find more or add a bit more in?

Ms Harris: To be very honest, I think if the same people go back to some of the large decisions that we have to make in a very limited time frame—45 days is not very long when you are looking at 40 or 50 files that you have to go through—they may make a different decision. To be very honest, I have gone back to some of the decisions and thought, "If I had had another go and more time, I would have made a different decision."

Ms BOYLE: I would like you to comment on the admin access policy, which has been passed around this afternoon. In fact, I would like a few copies of that. The news is not about, in the Cairns electorate at least, that this even exists. I am wondering how new it is and how much deliberate publicity you are giving to it. Do you think that will lead to a decrease in your FOI requests over the next year or so?

Ms Harris: Certainly we can republish it. We have patient information circulars out in the hospital. That may have slipped over time. We need to review that and go back to them. Every year its use is increasing. One of the problems with that document is that there are a number of people who are very reluctant to use the admin access policy because there is no protection for the decision maker, which exists under the FOI Act. So if someone wants to sue for defamation,

the decision maker has no protection. That is a real problem for us under the Act. Currently we process almost twice the number of applications for health records under the administrative access policy as we do under the FOI Act.

Mr BEANLAND: Earlier you touched on the issue of information relating to deceased people. Obviously there are quite a number of problems in that area. Perhaps we can go back and revisit that in some more detail. I understand that contacting next of kin can be a problem. Can you expand on that a little? I think that is a terribly important area.

Ms Harris: There are some very genuine reasons why people apply for a deceased's records. In many cases release is justifiable; for example, if a member of the family believes that the health service has been negligent and they want to check the records for that purpose. We would release them with one proviso. If there was something in that record that was so personal to the individual—for example, if they had a sexually transmitted disease—unless it was relevant to that period of the hospitalisation we would delete that. If the family members did not know that, there would be no point in telling them now, unless there is some obvious reason. Generally we do not release them. We only release them if there is a strong public interest. People do not have to write that. We can ring them and talk to them and try to elicit that from them.

Mr BEANLAND: How do you distinguish next of kin, which is always a difficult issue? What criteria do you use?

Ms Harris: They have to be very close family members. It becomes very difficult for us when we get down to the children. If the wife has died, the next step would be the children. We have had many difficulties with children. If one does not want it released and another one does, you can have a lot of family conflict between the children. That is very difficult to resolve. We have had some very hard negotiations to try and work out what the issues are for one against the other.

Mr BEANLAND: What do you do in those situations? Do you start with the eldest or do you treat them all equally?

Ms Harris: That is complicated. We had one where a son applied for a parent's records. We have to contact the other siblings. One sister, who was thought to be senior next of kin, objected strongly and the other child came back and said, "She's not the senior. The senior's in Canada." You get into all of these sorts of arguments. Generally we try to ensure that the children are all consulted so that we have a full perspective.

Mr BEANLAND: Do you see that there is a need to amend the legislation to tidy up this area or do you think the legislation in its current form meets the requirements?

Ms Harris: I think it needs to be reconsidered. In terms of next of kin, as I understand it there has been legal dissent over whether a wife is the next of kin. There is a lot of dispute about that. To have that resolved would be very helpful.

Mr PITT: Our health institutions and health facilities are very complex affairs and they have a range of people using them, not just as clients but also as practitioners, many of whom are private individuals. Do you have difficulties in implementing the FOI legislation ethos when you have people within the system who may have a right not to disclose information to you—say, doctors' records or something like that? Does that cause a problem for you?

Ms Harris: Any record that is held in the hospital in the medical records area would be subject to FOI. My understanding is that the only documents within a hospital that would not be are those where doctors have—no, they have even got to be outside—anyway, where doctors who have the right of private practice retain their own records in an area quite separate to the medical records holding area and no hospital staff has access to them, or manages them, or anything; it is all managed as part of their private business.

Mr PITT: So what you are saying is that individuals can be treated in our public system and on an FOI application cannot get full information on their records, even though the treatment occurred inside a public hospital?

Ms Harris: Yes, but if the records are held quite separate to our normal record area, they are, I understand, no different than a private GP out in the general community.

Mr PITT: Many witnesses have talked about automatic disclosure—things that are so standard that you could post them up on the Net. Where is the dividing line within Queensland Health on that? Is that an easy thing to ascertain or do you have difficulty doing that?

Ms Harris: No, it is difficult and we are slowly but progressively making much more information available. For example, in our Health Information Centre, anyone who wants statistics related to health, they can just contact that area. There is a fee involved, but they will manipulate the data system to try to provide the data that they want.

Mr PITT: Thank you.

Dr PRENZLER: I have two questions. The first one is: one of the areas that we are canvassing in our review is the establishment of a central monitoring coordination unit for FOI, which would be a central unit where anybody seeking FOI from any agency could go. Firstly, would you support such a concept or do you think that you handle your situation quite well as it is?

Ms Harris: I believe that we handle it a lot better than that idea because it is difficult enough to get the documentation through to the area when you have only a 45-day time frame to process it, and we have all of our correspondence come straight to us. If there is any block to that, and we do not get the documents for some days—and that sometimes happens when they go to the wrong department—you may have used a week to 10 days of your processing time before you have actually got them, particularly if they are being recorded as received in that processing unit.

Dr PRENZLER: The last question that I want to ask you is: how much contact, or how much decision making, or how much thought have you given to the FOI process being extended to the private hospital system? Do you have any requests that come to you that really belong to a private medical centre?

Ms Harris: No, the Health Rights Commission does. As part of an investigation, they often obtain records of private facilities and then they become records of that agency. Over time we have had some really difficult negotiating to do, because the private hospitals do not understand that once the records come into the agency, they are public documents.

Dr PRENZLER: Do you think that the FOI Act should equally apply to the private health system?

Ms Harris: I do. I believe that all Queenslanders should have access to their health records, yes.

The CHAIRMAN: Thank you very much. We are really grateful for your evidence today. It has been very valuable to the Committee. I would also like to extend our appreciation to yourself and your fellow officers for the courtesy that you have extended to the Committee on our visit to your premises yesterday. Thank you again for that. We will release you from the hearing now and we will call the next witness.

Ms Harris: Thank you.

MICHAEL JAMES COPE, examined:

The CHAIRMAN: Thank you very much for joining us this afternoon. The next witness is Michael Cope, Vice-President of the Queensland Council for Civil Liberties. Before you commence your evidence, I just state that during your evidence you might wish to refer to particular FOI applications by way of example. While we would find this useful if it is relevant to our review, we remind that you this is a public hearing. Therefore, we ask you to avoid making statements which reflect adversely on any identifiable person or entity. Thank you very much for that. For the purposes of Hansard, could you place state your full name and your position?

Mr Cope: My name is Michael James Cope and I am one of the vice-presidents of the Queensland Council for Civil Liberties.

The CHAIRMAN: Thank you. We would like to hear any initial statement that you might have for the Committee, but if you could keep it very, very short? We would like to ask you some questions.

Mr Cope: I do not have a great deal by way of opening to make.

The CHAIRMAN: That is great.

Mr Cope: Unless you want me to go through these particular points that you have raised in this letter you sent me?

The CHAIRMAN: If you could touch on those very briefly? Please proceed.

Mr Cope: The council's basic concern is that the freedom of information legislation, as we see it, is fundamental to democratic accountability. I suppose the main point that we want to emphasise from our previous submissions is that we look for the Committee to take into account the submissions that we made, which were designed to reduce the extent or number of exemptions and, in particular, the exemptions relating to Cabinet documents, conclusiveness certificates and the like. We would also like to emphasise that we consider that it would be desirable to give the Information Commissioner an overriding discretion to release otherwise exempt documents. We also are concerned to avoid any developments whereby the process of outsourcing and contracting out results in a reduction in the overall level of accountability of Government.

Just turning to the specific issues that you raised in the letter, I suppose we would say that the Act has so far worked well but, obviously, there is room for improvement in anything in life. We do support, to the extent that it is possible, releasing as much information outside the FOI process as is possible and, particularly, a greater use of section 14 of the Act, and taking up the comment that was made by my predecessor as a witness, that obviously may require an amendment to the Act to give officers the necessary protection. We do think that the level of awareness in the community of FOI is less than it should be and it would be useful to have some centralised agency that promotes that.

We think that the general review process which is in place at the moment for the Information Commissioner is working reasonably well. We see no reason why you would want to replace it with an AAT or similar model. We do support decisions of the Information Commissioner being made available.

The other issue that you have raised here is that deemed access or deemed consent provision. I was just looking at what Mr Biganovsky said in a paper delivered to the Admin Law Institute in 1994 where he raised this issue. He makes the point that his concern was that deemed refusal could be used as a device by departments to avoid review by not having to give reasons. I think that is about what I have to say by opening remarks.

The CHAIRMAN: Thank you. I will start off with following up on your comments about the process of commercialisation and corporatisation being a step away from accountability. Let us take the example of Queensland Rail, which not long ago was an entity that worked on simple line accounting. It subsequently moved to a corporatised entity. Are you saying that the level of accountability afforded with line accounting—where each line was very subjective, not subjected to economic criteria, that was very openly calculated—that that was more accountable than a system we have in place today where you have corporate objectives, the entire organisation subject to stringent economic standards, accountability in terms of international best practice, corporate intent tabled in Parliament, audited management and financial standards and

compliance with the Australian corporate law? Are you saying that that was a better standard of accountability and, if so, tell us how?

Mr Cope: No. The two issues are quite separate. I do not see why you cannot have the two going together. As you will see in the paper, I have somewhat altered the view because in the original submission I basically went along with the ALRC view. Subsequently, I have moved more towards what I understand to be the Information Commissioner's view—that they should be covered except for their commercial activities. I suppose I have gone back to my basic position, which is I am not as enamoured of the infallibility of markets as some people are. You require both—accountability through markets and accountability for Government structures for things which are Government run.

The CHAIRMAN: But would you concede that the level of accountability afforded today by a commercialised entity—

Mr Cope: I do not dispute anything that you have said. I do not see that they are mutually exclusive, though.

The CHAIRMAN: So what further accountabilities are you looking for in terms of, say, a corporatised entity today?

Mr Cope: As I said, their non-commercial activities should remain subject to the FOI Act.

The CHAIRMAN: Thank you.

Mrs GAMIN: We have received indications that some applicants for external review find the review process legalistic and unduly complex and that they find it difficult to respond to requests for information and submissions without legal expertise or without legal assistance. Do you have any suggestions which could help make the process simpler for applicants?

Mr Cope: I am afraid I do not. You seem to have a choice between the Information Commissioner model and the Administrative Appeals Tribunal model. My general understanding has been that the Information Commissioner model would be—or should be—more easily used than the AAT model, which is a very adversarial, court-like model than the Information Commissioner model. Without knowing any more particular problems that people are having, I really cannot say much more than that. It just seems to me that an AAT or something like that is going to be much more overwhelming to people than having to deal with the Information Commissioner. You have the AAT members sitting there like a judge and behaving very much like one, but quite often you have conferences and they can be resolved. I suppose that is my experience in the Commonwealth Government area. But still, it is an intimidating process, I would imagine, more so than the process that we have here.

Mrs GAMIN: Do you think that there is a case for abandoning the system of internal review as a prerequisite for external review?

Mr Cope: My reaction to that question before—having listened to the previous witness—was that, no, and perhaps the statistics that Ms Boyle put up has brought me back to my original view. My experience has been that internal review does give the department the opportunity to fix up things and in a significant number of cases, that is the result. I think we stated in our submission that we would have no problems with, by agreement, skipping the internal review, but I do not see that it should be abolished, because in my experience it does result in improved decisions. Certainly, the statistics that Ms Boyle put up seem to support that view.

Mrs GAMIN: Do you have any views on the holding of the offices of Ombudsman and Information Commissioner by the same person?

Mr Cope: Once again, at the end of our submission we raised the question of the Information Commissioner performing the advocacy/promotion role as well as the decision-making role, without expressing a firm view. Obviously, there are cost issues involved in that. Certainly, if the advocacy role is to be combined with the decision-making role, it would tend to give the appearance of a conflict of interest to people looking on. That might cause a problem in terms of the legitimacy of the system. That is something to be looked at. But I understand that in Western Australia they do combine that role. If it works over there, perhaps it is not so much of a problem.

Ms BOYLE: I was interested in the section on Cabinet matters in your earlier submission. Obviously, it is not an issue that I deal with directly, as a first-term backbencher. Interestingly, you came up with not only the suggestion that we get rid of the section 36 exemptions but also with a way that we might still exempt some matter. Are you looking at page 5 of the original submission?

Mr Cope: Yes.

Ms BOYLE: Could you elaborate on section No. 2 and why you would exempt documents that were prepared by the Minister or on the Minister's behalf at his or her express direction? I would be interested in hearing your view on that. I would also be curious to know whether you have had any direct experience in petitioning for documents that have been blocked at Cabinet level. Could you give us any examples of the sorts of matters involved?

Mr Cope: To answer your second question first: I have no direct experience. That section, as the submission points out, is fairly much borrowed from the Victorian model. It is a question of trying to balance the definite need to protect the secrecy of Cabinet within our system as against allowing the maximum access consistent with that principle. It seems to me that, if you are going to allow access to submissions prepared by the Minister directly for Cabinet, you will violate that principle. Item 2B is really cumulative on item 2A. An issue was raised in some of the material about documents being prepared by someone else effectively being adopted by the Minister and then gaining the exemption. It is designed to limit it to documents actually prepared by the Minister or at his or her direction, rather than picking up documents and suddenly turning them into exempt documents. That is what that is directed at.

Mr BEANLAND: Mr Cope, firstly, you touched on the matter of commercial in confidence in respect of GOCs. Going through your paper briefly, I did not note anything about this. Could you outline your views in relation to outsourcing and the private sector doing work for the Government? Do you believe those matters should be also subject to FOI? Many matters are outsourced these days.

Mr Cope: There are two issues. One is outsourcing, which is where, as I understand it, you have a service which the Government formerly provided for itself in house which it tenders out—for example, human resource management services that are no longer done by public servants and which are outsourced to a private provider. Contracting out is where you have a Government service which is provided to the public which is delegated to some external body. So far as the first category is concerned, I see no reason why the FOI Act should apply to them. But so far as the others are concerned, effectively, a service which was previously being provided internally by public servants is now being provided externally by some other private organisation. I think there is a case for those organisations having to provide, firstly, their clients or whatever you want to call them with access to their personal records, which is perhaps a Privacy Act matter; and, secondly, to ensure access to documents to ensure decision-making processes are being dealt with properly as they would have if the service were still being provided in house, so to speak.

Mr BEANLAND: So you break it up into two sections?

Mr Cope: Yes. If you are outsourcing human resources, presumably to a degree the documents which are created have to come back inside the department and they would get accessed in that way. I am trying to distinguish between the in-house documents of the outsourced organisation versus the in-house documents of the body to which it is contracted out. We are concerned about ensuring accountability for decision making. Contracting out, as I define the term, is where you have the potential for decision making to be made outside which was formerly made in. Outsourcing is a different issue altogether.

Mr BEANLAND: I have one other question. I notice on page 7 you refer to fees and charges—item B6. I take it from briefly reading that submission that you view that the costs of FOI should be met by the taxpayer at large; that the fee should be kept at $30 or as little as possible and that any increased costs to ensure greater access to documentation other than what is already occurring, which is already largely met by the taxpayer, should also likewise be met by the taxpayer. You do not see that there is room for any changes to photocopying or any of those aspects that we currently have?

Mr Cope: I suppose the logic that I am about to use would result in the reverse of the present situation. If you view FOI's primary function as being Government accountability, the general taxpayer should pay for it in the same way that they pay for elections which, as I say, may result in a view that people who are simply accessing their personal records should be ordered to pay for them, which is the reverse of the present situation. Our general view is that it is a cost which should be borne by Government in general and we oppose any increases in fees.

Mr PITT: Obviously, by the very nature of the organisation you represent you believe that people should have access to records, information and so on almost on request. If people are going to take full advantage of that, do you think that the current situation is such that the people of Queensland really do understand what FOI can do for them? If they understand what it can do for them, do they understand how to access and make the most of it?

Mr Cope: No. My experience as a solicitor is that most people really do not understand their FOI access rights whatsoever. That is a point on which we concur with what was said in the discussion paper. Something has to be done to increase the level of education. Perhaps you need some central body to promote it, whether it is the Information Commissioner or somebody else, to the general public at large.

Mr PITT: Could you expand on what way it could be promoted?

Mr Cope: Perhaps you need a public education campaign that is deliberately designed to tell people about their rights. There is an inherent temptation for officers in the Public Service to not want to tell people too much about it. There are obviously obligations and people are presented with documents, but quite often those documents are by nature legalistic and confusing for the average person to read. Perhaps you need a broader sort of campaign to tell people what their rights are.

Mr PITT: On page 3 of your submission you mention public interest. Today a lot of people have said that defining "public interest" is almost impossible. You made a very good attempt to do so in all of those dot points. You have gone into detail and tried to come to grips with that. On pages 8 and 9 of your submission you mention vexatious requests. I put it to you that vexatious requests are probably as difficult to define as "public interest", yet you limit your comments to people who are repeat offenders or those who apply for the same document time and time again. Could you elaborate on how you would come to grips with vexatious requests?

Mr Cope: I probably have a bit more sympathy on the vexatious requests matter than perhaps do other members of the council, having worked for the Commonwealth Department of Health, where we dealt with these sorts of things. The submission suggests three things: firstly, that the provision should be amended so that it is more like the Commonwealth one. As is set out in here, a number of decisions of the AAT, one of which was run by the Commonwealth Health Department, have resulted in an ability to use the voluminous diversion of resources provisions as a way of dealing with vexatious requests. The other one—and I remember an example of this from Health which is rather like the one Sue Harris was talking about, that is, people who repeatedly request the same documents because they do not believe you have given them everything—is that there should be an express power to refuse those requests. As the submission states, we would prefer to go down that track at least initially. If that does not work in terms of trying to deal with that issue, perhaps you have to have a general power in respect of vexatious requests. But as you say, what is "vexatious"? That would no doubt result in multiple applications to the commissioner. That is a difficult concept to deal with. As I said, our position is to try to go down this route that allows departments to use the diversion of resources provisions and also allow specific rules about multiple applications, and see whether that deals with the problem. Perhaps we would have to revisit vexatious requests by giving a general power about vexatious applications.

Mr PITT: The sheer volume of FOI requests has resource implications for departments. I do not think anyone in this room would indicate that we should be curtailing people's access to those things, but there must come a point at which the cost exceeds the benefit. There is a dividing line. In relation to vexatious requests, what sort of mechanism could be put in place to filter those—something that is relatively cheap, without having to go through a legal process?

Mr Cope: It seems to me that allowing that to be dealt with basically on the basis of an unreasonable diversion of resources test in a way allows you to look at that and balance those considerations. "Vexatious" in its normal legal meaning brings in all sorts of considerations. If your

way of dealing with vexatious requests is through the unreasonable diversion of resources test, the balance that you are talking about becomes the central issue. I think it is a pretty good way of dealing with it.

Dr PRENZLER: As a civil libertarian, how important is it to you that the general public can get access to information, both personal and non-personal? There is also the issue of protecting citizens. What is important to you in this?

Mr Cope: This is fundamental to the democratic process. People have to have information in order to make proper decisions, both in terms of general public issues and in terms of their private issues. The Government is the holder of vast amounts of information. It is fundamental to the democratic process that there is access to that information, otherwise it falls down.

Dr PRENZLER: We are canvassing the idea that information held by departments should be made routinely accessible and then put out on the Internet or some other system that people can access. Do you think that would help the general community and do you think it would also decrease the number of FOI applications?

Mr Cope: You would hope so. As I said in my second submission—once again, this is speaking about the Commonwealth—my experience was that people routinely put together the equivalent of the index of policy documents. It just goes nowhere. I do not think very many people in the department recognised what use might be able to be made of it. The ability to release information other than through the FOI Act was also something which was routinely ignored, although I understand the concern that some people have; as officers in the department, they might get sued for defamation if they release information. I do not know how real that concern is. But it is a concern that should be addressed. Yes, I think that beefing up that sort of informal process is important.

Dr PRENZLER: The other aspect I want to canvass with you is the fact that we are also looking at the possibility of a reintroduction of some sort of central monitoring and coordination unit for FOIs. Would you agree with such a system?

Mr Cope: I am not quite sure what you mean by "central monitoring", because I got the impression when I was sitting back there that that was some sort of centralisation of a decision-making process.

Dr PRENZLER: It would be a unit that people could access to see what their rights are in relation to FOI, where to go and what information they could get—that sort of thing.

Mr Cope: We agree with that. As I was saying, we do raise the question about whether it is appropriate at the end of the day that both functions are performed by the one person in terms of the Information Commissioner. But subject to that issue, we certainly do think that there should be some central coordination. One of the options is the option they have in the Commonwealth, which of course is the Attorney-General's Department really performs that coordination function. My experience is that they do that reasonably well, but you still have the public perception, the possibility once again—the appearance at least—of a conflict of interest and the way they handle that. As I say, my experience was that they had a much more open sort of attitude than you would find in the line departments. As I say, they did a very good job at it.

The CHAIRMAN: Thank you very much for your contribution this afternoon. It has been very valuable to the Committee. We will excuse you from the Committee's proceedings now and we will adjourn for afternoon tea until 3 p.m. Members of the public are welcome to join us for refreshments directly outside the Chamber.

The Committee adjourned at 2.36 p.m.

The Committee resumed at 3.15 p.m.

ELIZABETH MOHLE, examined:

STEVE ROSS, examined:

The CHAIRMAN: Thank you, ladies and gentlemen. We will reconvene this hearing of the Committee. Thank you very much for joining us. We have this afternoon as our next witnesses officers of the Queensland Nurses Union, a very fine organisation. For the benefit of the transcript, could you please indicate your names and titles?

Ms Mohle: My name is Beth Mohle and I am Project Officer with the Queensland Nurses Union.

Mr Ross: Steve Ross, Industrial Officer with the QNU.

The CHAIRMAN: Thank you for your attendance and your time this afternoon. First of all, we invite you to provide a very brief statement to the Committee. In doing so, can I advise you that during your evidence you might wish to refer to particular FOI applications by way of example. While we would find this useful if it is relevant to our review, we remind you that this is a public hearing. Therefore, we ask you to avoid making statements which reflect adversely on any identifiable person or entity. The Committee is, indeed, looking at this matter at a general level in terms of seeking advice and assistance in reforming the Act. So we do not wish to get into any particular detail about any issue that the union would like itself to resolve. We can keep on that agenda. If you would like to make a statement, please keep it very, very brief and allow the members to have the opportunity to ask you questions.

Ms Mohle: We might cut it down then. We prepared a written submission which I was going to read from.

The CHAIRMAN: You are welcome to table that.

Ms Mohle: I will table that. The particular issue we would like to address is pursuing issues in the collective interests of our members, but the other issues that were raised in the letter we dealt with at the end. So we could delete that bit and just table the document.

The CHAIRMAN: Please table it. We would really prefer that you talk candidly and generally to assist us and allow us the opportunity to ask you questions.

Ms Mohle: Thank you for the opportunity to appear before this Committee to give our views on the review of the Freedom of Information Act. We appear on behalf of the secretary of the Queensland Nurses Union, Ms Gay Hawksworth, who has commitments in Cairns today so cannot be here. As I said, my name is Beth Mohle and I am a project officer with the Nurses Union, and appearing with me today is Steve Ross. He is an industrial officer of our organisation.

This verbal submission should be considered in conjunction with our previous written submission to the inquiry. We would like to highlight some particular issues of concern. As I said, our main area of concern is in relation to pursuing issues that are of collective interest to our members. The Queensland Nurses Union is a State registered trade union with both industrial and professional objects. It is the principal union in Queensland with a legal capacity to improve and protect nurses' wages and working conditions. Our membership currently stands in excess of 26,500 and is growing. The QNU covers all levels of nurses in Queensland: registered nurses, enrolled nurses and assistants in nursing. Our members are employed in all types of health care settings, be it those in the public or private sectors, including the not-for-profit sector.

At the outset, I would like to reiterate that the QNU has for some time now held great concerns about access to meaningful information held by Government in Queensland and, in particular, information held by Queensland Health. FOI legislation is pivotal to ensuring openness, accountability and responsibility in Government and meaningful participation by the public in the political process. The introduction of such legislation was central to the Fitzgerald reform process and the democratisation of this State.

The issue of FOI is important to our membership generally but is of particular interest to members employed in the public sector. It is of particular concern to the union that organisations that are totally reliant upon Government funding for their operation, such as the majority of nursing homes in this country and the Mater Public Hospital in Brisbane, are not subject to FOI provisions. This is totally unacceptable, in our view. As we stated in our first written submission, the QNU has used FOI legislation while acting in the individual and collective interests of

membership. The union has generally had more success in utilising FOI when acting in the interests of individual members, for example, to facilitate WorkCover claims and to correct false or misleading information on personnel files. There are certain difficulties relating to WorkCover applications and we address those in our written submission.

There are other issues relating to the administration of the FOI Act as it relates to the individual interests of members that have broader implications for nurses collectively that are of concern to this union. We wish to highlight, for example, specifically the way in which the Queensland Nursing Council administers FOI and how this relates to the investigation of complaints against registered and enrolled nurses. The QNU has held concerns for some time now about the QNC's investigative processes.

The union has recently had the opportunity to review the Information Commissioner's decision No. 2 of 2000, which is Villanueva and the Queensland Nursing Council, a midwife, Ms Simone Talbot and Dr Michael Gordon, who are third parties. This is an extremely important decision and one that has implications for all health professionals. The decision has been referred to the QNU legal committee for further close examination. Our initial response to this recent decision is that we will carefully review the implications of this decision for our members. We place on record our willingness to be involved in a review of the QNC's investigative processes and how these relate to the appropriate administration of FOI by that agency. We intend to develop and implement an appropriate policy that will address current deficiencies while at the same time ensuring our members' rights to a fair and transparent investigative process that affords to natural justice.

The QNU has, however, experienced difficulty in obtaining access to information in the collective interests of our members. This information can usually be categorised as information that is not of a personal nature and relates to policy decision-making processes of Government. In our view this is where the basic purposes of the FOI Act are not being met. It appears to us that there is still an assumption in this State that information relating to decision-making processes must be kept secret. This reluctance to provide information is a serious impediment to open and accountable government in Queensland.

Based on our experience with departments, such as Queensland Health, the QNU believes, however, that the cultural shift required in public administration that would ensure greater public accountability for advice given and decisions made has not occurred to a great extent. There is not, in our view, the general promotion of a pro-disclosure culture within many agencies, and we speak from first-hand experience with Queensland Health. The QNU has experienced, and continues to experience, considerable difficulty in accessing meaningful information on Queensland Health decision-making processes. We have sought access to information pertaining to issues that are of direct relevance to our membership but are seen in the eyes of Queensland Health officials as being in some way controversial or potentially embarrassing. The department has in these cases exhibited extreme reluctance to release all of the relevant information. The QNU has been most dissatisfied with the extreme secrecy exhibited and the reluctance to open up their decision-making processes to public scrutiny.

Notably, the QNU has utilised FOI to gain information in the collective interests of our members with respect to the following issues: in 1993 we made application regarding a Cabinet decision to cut nursing career structure positions; in 1993 and 1994, the privatisation of the Greenslopes Hospital, and we used both the Federal and State FOI Acts in that case; in 1998, the co-location of public and private health facilities; in 1999, the operation of State Government nursing homes in Queensland and decisions regarding placement of nursing personnel with operational services; and in 1999—this is our most recent FOI application—it was related to the budget situation and activity levels at the Royal Brisbane Hospital.

It is important to note that since our first application in 1993, the QNU has increasingly experienced difficulty in accessing information. This is particularly highlighted by our experience in the last few years. The last three applications referred to above—those pertaining to co-location, State Government nursing homes and Royal Brisbane Hospital budgets—have all been treated as deemed refusals and referred to the Information Commissioner for intervention because Queensland Health failed to meet statutory requirements for the processing of these applications. In all of these instances we encountered extreme reluctance on the part of Queensland Health to release meaningful information in the context of the established industrial relations consultative

processes. We were, therefore, forced to utilise FOI processes in order to scrutinise the deliberative processes of the department and the advice given to the Minister on these matters.

It is our belief that the combination of underresourcing of the Administrative Law Unit of Queensland Health and, more importantly, an anti-disclosure policy on behalf of the agency has led to unacceptable delays and withholding of information that we believe should be in the public domain. By way of a case study, it is worth while to examine more closely one of these recent applications, that relating to State Government nursing homes. For the information of the Committee, I will table a brief summary of this so that we do not have to go through it.

As you can see from the document that we have tabled, it has been over nine months since our application to Queensland Health for the release of information regarding State Government nursing homes. It is extremely ironic that the latest extension given to Queensland Health was sought on the grounds that they were preoccupied with making a submission to this inquiry and, hence, could not give adequate attention to the request from the Information Commissioner. We have been very patient and very reasonable with regards to giving leeway to Queensland Health with regards to time lines provided in the FOI Act relating to the release of information and decision making. Any reasonable person would, however, believe that nine months constituted an unreasonable delay, especially when the information sought is in the public interest.

The QNU firmly believes that the exempt documents should be released as powerful public interest issues are involved. These relate to the attack on the nursing model of care and removal of qualified nursing personnel from State Government nursing homes and the resulting impact on standards of care and the safety of residents in these facilities. As you would appreciate, this issue is topical, given the high level of public concern about quality in aged care facilities and accountability for this.

For the information of this inquiry, the QNU has been in dispute with Queensland Health for well over 12 months about this matter and there has been ongoing industrial action at Karingal nursing home since 5 March 1999. Queensland Health management at Fraser Coast is proposing a similar course of action to that under way at Karingal. At the heart of our concern about this issue is that these actions are part of an agenda of deregulation in aged care that will result in the removal or significant erosion of the nursing model of care in that sector. We totally reject this agenda and will continue to do so.

The CHAIRMAN: Sorry to interrupt your flow there. We are really not trying to get into the merits of the case. I know you would be very concerned about those merits, but we are really trying to inform ourselves about the way that the system works and the deficiencies of it. So if you could try to direct your submission to that, thanks.

Ms Mohle: It is of extreme concern to us that we have not been able to gain access to this information by usual industrial relations processes, and this goes to the heart of the concern that we have generally about access to information with Queensland Health. The only course of action that was left to us was to utilise FOI. The same difficulty has been experienced with regard to information, as I said before, pertaining to co-location and the Royal Brisbane Hospital budgets. It is certainly not our preference to use freedom of information. We would much prefer to obtain the information in the usual consultative manner. In the past this information that we sought, say in regard to budgets, has been routinely available at a local workplace level at the consultative committees there, but in recent times we have been advised that there has been a change of policy with regard to the release of budget information. So we have not been able to obtain that information at the consultative committee. When we sought clarification on that, Queensland Health officials have advised us that that is still the policy.

Of particular concern to this union is the wide definition of "budgetary information". I will just table this document, which highlights another problem. By way of a recent example, under the third enterprise bargaining agreement with Queensland Health there was a provision for around about $10m of non-wage expenditure items, that is those costed items that did not form part of the actual pay increase. There was provision for benefits, such as training, rural and remote accommodation—

The CHAIRMAN: I think we are really getting into some very specific detail and merit again, sorry.

Ms Mohle: Basically, it took months. We asked for this feedback—information—on non-wage expenditure and we were advised that that was not available. When we pursued it for months via consultative processes and when we were finally provided with the information, that is what was provided to us. It did not provide us with enough information to know whether that money had been expended appropriately. I will not go to the other issues, but I will sum up what that example highlights to us. In our view, it highlights a lack of commitment on behalf of Queensland Health to genuine consultation about legitimate industrial relations issues. It shows that there is not appropriate consultation on those matters.

The CHAIRMAN: We are probably not interested in consultation or policy views on industrial relations; we are really interested in the operation of the Freedom of Information Act today. Could you perhaps sum up with any further comments on that issue.

Ms Mohle: I will sum up by saying that access to information is central to appropriate industrial relations processes. Our dealings with Queensland Health are seriously compromised because of the culture of secrecy within the department. That is basically all we have to say in relation to that. I will not address the other particular issues the Committee raised in its letter to us given the shortage of time, but at this stage we are prepared to answer any questions.

The CHAIRMAN: Thank you very much.

Mrs GAMIN: You have answered my question at points 38, 39 and perhaps 40 of your submission, but you have answered it very briefly and I wondered if you would like to expand. There is a high level of complexity in the whole FOI process. The appeal process can be slow and very legalistic. Do you think there is a case for abandoning the system of internal review as a prerequisite to external review, that is, going straight to external? Is there a case for some other model of external review under FOI?

Ms Mohle: Certainly the time frames have been of concern to us. We have not given any great consideration with regard to abandoning internal review as such. We think there are certain things that can be done that could speed up the process, such as the use of information technology and having information more readily available via the Internet. Using those sorts of resources that are available now would really free up things a lot. If a lot more general information was available on things like web sites, that would help and probably cut down on FOI applications in general.

Mrs GAMIN: Do you think the technology that is available now is sufficient, or do you think a whole new technology and processes would have to be introduced?

Ms Mohle: Referring to a department like Queensland Health, it would be possible, but I do not think they are at the stage at this particular point in time to be able to do that across-the-board, because they are at different levels depending on which district health service it is in terms of the information technology infrastructure. For certain larger departments it would be much more difficult for them to be able to do that, but they are moving in the direction whereby that would be possible in the near future.

Mrs GAMIN: Thanks.

The CHAIRMAN: Can you give us some examples of the sort of information you might see as being put on the Internet that might assist in terms of the automatic release of information that is going to make the entire system work better?

Ms Mohle: Information is available now. The elective surgery waiting list is currently already available. We think some of the information that we try to seek with regard to Royal Brisbane Hospital budgets could be there in terms of activity targets and information like that. Case mix information would also be of use to us. It is very technical information that means something to us that may not mean anything to other people. That is the sort of information we were seeking in our Royal Brisbane Hospital FOI submission in relation to the budget there. The information is all readily available at the hospital. We were advised that it would not be difficult for them to provide the information we are seeking in our application because it is there and they could easily provide it to us. There is a lot of information of a technical nature relating to how the health system operates which could readily be provided.

The CHAIRMAN: Obviously the health system is one which is already undertaking a lot of administrative release of information and is fairly proactive in terms of trying to move things to that automatic form of release. That obviously needs some feedback mechanism to work effectively

and for there to be some consciousness within the system that there is a particular need and a repetitive pattern for certain information. Can you see any way to ensure that that happens? Do you see any way that that feedback might work better systematically?

Ms Mohle: With regard to, say, patients having administrative access to those sorts of medical files, that is working quite well from what I have heard in terms of Queensland Health. There is absolutely no difficulty. They have obviously got systems in place that are working really well in terms of informally allowing people to have access to information rather than going through FOI. The difficulty we have from our perspective is gaining information of another nature.

Mr Ross: It comes back to that idea of a pro-disclosure culture within the particular department. In our view, that does not exist at the moment. If it did exist, then those sorts of feedback mechanisms would almost fall into place.

Ms Mohle: A difficulty we are experiencing is that it is incredibly difficult. It would be our preference not to use FOI to gain the information that we think should be freely available. As we appreciate, there is a sensitivity about health matters in particular. We certainly do appreciate how sensitive the Health portfolio is, but that information was freely available in terms of budgetary information, as an example, under the first enterprise bargaining agreement with Queensland Health. We were provided with that information at local consultative forums. It certainly did not provide any details. Not providing that information does not make it not appear on the front page of the Courier-Mail. If information is going to be leaked, it is going to be leaked. We think that people who have a legitimate stake in the system like trade unions who are involved in consultative processes should automatically be provided with it.

Ms BOYLE: Still on the major topic of the culture of secrecy, as you call it, it strikes me that it is a bit more complicated than that. I would like to put to you another couple of factors that bear on it, particularly if we as the Committee are to determine ways of addressing it. It goes back, does it not, to matters between the union and the department on a much wider scale? Maybe, for whatever reason, the relationship is not progressing well. That extends into the FOI area from there. The other issue you have given some recognition to which has factors that we may have to take into account is resourcing.

From a glance at the nursing homes request you have put in, you would know well in this decentralised State that there are documents all over the place and that collecting all that information is a big job, regardless of a culture of secrecy, even if you wish to. When you finally did get that information, if I read it correctly, you had 80% of it. You could have provided them with a list of the 80% that you already had in the first place to save them accessing those documents. I remain to be convinced that all of the difficulty is entirely on the department's side. Perhaps a mediation or conciliatory working together approach could save everybody a lot of time in terms of you accessing the information you need rather than just putting in a request and getting angry when it does not come back on time and saying, "Isn't the department rotten."

Ms Mohle: With regard to that particular application, we had been involved in negotiations with the department over a period of time—we are talking over a year—about that matter and had attempted to obtain that information. It was not possible to do it. We certainly do not take making an FOI application lightly, because we do actually appreciate the amount of work that is involved in it. In relation to what has been provided to date, the 80% of information that you refer to is the only information they would release. It is on their files. What is still outstanding is actually the information we are seeking. I do not think that the 80% is the issue, because that is what the department was prepared to release. They were prepared to release it because it was either submissions that we made to them or the responses that they provided to us.

I certainly do agree that there are currently difficulties with our relationship with Queensland Health in a number of areas, but it goes beyond that, though. When you are after information that is central to something such as enterprise bargaining as to how the money is being expended in EB3 and what you get provided with is the document I have tabled today, that is of considerable concern. We have been requesting that information for months. We advised the department of the level of detail we sought and that is what we have been provided with. We certainly would like a more open relationship with Queensland Health. We are at a loss to say how we would achieve that outcome.

Ms BOYLE: That is a pity, because my next question relates to the extent that there is a culture of secrecy. I am sure there is still that culture in a number of departments, not just

Queensland Health. Sometimes that may stem from a political attitude; sometimes it is departmental. Maybe it is both. Legislation is not really going to change what is a spirit, I suppose. Do you not have any suggestions for us on how we might change that?

Ms Mohle: Because we had to cut down our verbal submission, we actually do have some suggestions in relation to that. We think education is central to it, and it is education of all parties involved as to what FOI is about and how central it is to open and accountable government. We see that in terms of our role. We take very seriously the fact that we want to be involved in the partnership to make the health system work better in terms of our relationship with Queensland Health. We have worked very hard to try to achieve that and have put a lot of effort into trying to achieve that end. We think that education is very central to it.

In relation to the second link to improving FOI performance, if you like, of agencies, it might be useful to have something in performance contracts for senior executive officers which will reflect an agency's performance in relation to FOI generally and encourage them to implement pro-disclosure strategies as a part of that. For example, we believe that it might be appropriate—and it was a suggestion that was made in the discussion paper—that if an agency fails to make application to notify part of a decision within a specified time frame that should be deemed access to documents rather than deemed refusal of access to documents. The last mechanism we think is necessary is to review and improve FOI resources and processes. We mentioned before innovative use of information technology. There are some pretty simple things that can be done that would actually improve the situation.

Ms BOYLE: Thank you.

Mr BEANLAND: Ms Mohle, I refer to recommendation 7 in your written submission in relation to the matter of public interest tests. You talk about the need for standardisation of public interest tests. You list a number of items before that which seem to relate to the legislation. I presume from this that you believe there needs to be amendment to the legislation. Do you deal with departments other than the Department of Health? If so, do you find that there is a difference in how the intent of public interest is comprehended across each of the departments, or do you just simply deal mainly with the Department of Health?

Ms Mohle: We do deal with other departments. In the FOI application we made with regard to Greenslopes, for example, we dealt with the Federal Department of Veterans' Affairs. There was a difference in attitude in terms of approach to freedom of information that we noted with that department. That probably has to do with the fact that they have had freedom of information a lot longer than the State jurisdictions so they have had time to put in place processes and education to facilitate the release of information. In relation to State Government departments, we do deal with other ones, but not to the same level with which we deal with Queensland Health.

Mr BEANLAND: Do you find other departments interpret the public interest test differently to Queensland Health?

Ms Mohle: I could not really comment on that.

Mr BEANLAND: So it is mainly the legislative process. In relation to Greenslopes, just for my interest, was that to do with general policy type information or personal information in relation to staff or patients?

Ms Mohle: It was when the Commonwealth was divesting itself of Greenslopes Repatriation Hospital. It was to do with industrial relations processes relating to that. It was when Ramsay ended up buying Greenslopes hospital.

Mr BEANLAND: I have one more question. I take it that the Queensland Nurses Union is mostly looking into matters to do with industrial relations. You are not referring to personal details of patients.

Ms Mohle: No.

Mr BEANLAND: Do you often ask for information relating to personal details of staff? Does that come up?

Ms Mohle: We make application on behalf of members in relation to WorkCover claims. That is largely the only area in which we would make applications that relate to personal

information. We have also used it to check information that may be held on personnel files about individuals and correct anything that is misleading or not factual.

Mr BEANLAND: You do that, rather than the individual doing it?

Ms Mohle: We assist individuals to actually do that.

Mr BEANLAND: The individuals actually make the application?

Ms Mohle: Yes. We are assisting them as a union.

Mr BEANLAND: That is how they get access to their own information?

Ms Mohle: Yes.

Mr BEANLAND: You are concerned about the delays and the problems that individuals have in accessing their own personal information?

Ms Mohle: Largely that has not been a problem. Our experience with WorkCover is that it has met its obligations. A lot of it is available under administrative access, but we highlighted the difficulty there in terms of what is available under administrative access and FOI.

Mr BEANLAND: Your main difficulty, then, relates to industrial relations type issues, I presume, and policy matters that relate to IR issues or workplace relations issues.

Ms Mohle: Yes.

Mr Ross: We take a fairly broad brush to the term "industrial relations issues". Obviously, given the nature of our industry and the nature of our membership, we are very concerned with the quality of the service that is being delivered to the general population. We see that those sorts of issues come within our ambit of interest.

Mr BEANLAND: But from the personal information side you do not have a problem? It is the other side.

Ms Mohle: Generally, yes.

Mr PITT: I refer you to recommendation No. 8. You recommend that the ambit of the Act be expanded so that it applies to private sector organisations in a contractual arrangement with the Government to provide some form of service. Could you give us an example of how you see that applying? What sort of organisations are you thinking of?

Mr Ross: Those types of organisations that are in receipt of some form of Government funding and have entered into some form of contract to deliver a service, generally some form of social infrastructure service, on behalf of the Government. For example through the HACC program, nursing homes is the example that has come up that has been quite topical.

Mr PITT: Laundry services, cleaning services, things like that? They call them hotel services, do they not, in hospitals?

Mr Ross: Yes. I suppose the answer to that is yes, although we have not turned our minds to those specific areas.

Mr PITT: Given the nature of your membership, which goes across both the public and private sector, why have you not included access to the private hospitals?

Ms Mohle: We made a submission in 1994 to the Australian Law Reform Commission's review of FOI about extending FOI to the private sector. We were not successful in achieving that. We mentioned in our submission that we had made application about that.

Mr PITT: But you would be in favour of extending it to people not contractually bound to Government?

Mr Ross: We certainly consider that there is merit in those sorts of proposals. If you like, that is almost at one end of a continuum. There is Government, there are quasi-Government organisations, there are organisations that are in some form of contractual relationship with Governments and there are organisations that exist independent of Government. That one is at the end of that continuum. I suppose we would like to work through the continuum.

Mr PITT: I refer you to recommendation No. 14, that there be no increases to charges for access to information and that the Government commit adequate resources to ensure the appropriate operation of FOI legislation in this State. One thing that has been coming up through the hearings over the last two days is the cost implications, the resourcing downside of trying to

do the right thing by FOI. This morning I suggested that perhaps the commercial media, because they are using the information for commercial purposes or financial gain, could perhaps consider paying more. I look at your organisation. On the one hand I could say that you are looking to improve pay and conditions for your staff but then there is the public benefit to the people of Queensland through the actual activity you are involved in. Could you comment on the two dimensions there as to whether or not you should pay?

Mr Ross: The issue is access. Any increase in charges that poses some form of impediment to access would be something we would not support. I understand your point in respect of those seeking to use the information for commercial gain. Perhaps there should be a different onus on them in respect of meeting the costs of it. I could possibly see some merit in that.

Dr PRENZLER: Do you think your organisation or your members are being disadvantaged by the fact that you cannot submit FOI applications to private industry? Do you think it is having a direct effect? In the public system, even though it may be somewhat problematic for you to get the answers on time or to get the answers you want, eventually you get something. In the private sector, which is not subject to FOI, do you think there is a disadvantage to your union members?

Mr Ross: Certainly in those areas of the private sector where there is some contractual relationship with the Government to deliver a particular service, we see that there is real disadvantage occurring to our members—for example, where staffing cutbacks are being made but the nature of the contractual relationship with the Government is something we do not have access to. In order to go to the reasons behind those decisions to cut back staff, we have no mechanism by which to check behind those decisions. Another example may be in just meeting particular standards of service delivery and those sorts of things. Again, there is no opportunity to go behind the decisions that have been made by the private sector organisation as to what services they are providing and what they are not providing. We cannot go to that sort of information.

Dr PRENZLER: Do you think the FOI Act should be extended to the private sector, then?

Mr Ross: Ultimately, yes.

Dr PRENZLER: I refer here to your recommendation No. 16. You recommend that mechanisms be developed to ensure that timely assistance be provided to agencies identified as being unable to meet the statutory FOI time frame. Do you have any examples of that occurring? Which agencies are you referring to?

Ms Mohle: I think we made a suggestion that there are certain things that could be done to assist agencies. I know, for example, that Queensland Health has been under considerable pressure lately in terms of meeting FOI applications as a result of the volume and the number they have had. We made suggestions about what could happen in terms of basically having flying squads, if you like, of FOI practitioners who could rotate through agencies that were experiencing difficulty at a particular point in time. An agency might just have a rush of FOI applications. They might be able to go into agencies and assist them through difficult periods.

Dr PRENZLER: To follow that a bit further, one of the areas we are canvassing is the possible re-establishment of some sort of central monitoring and coordinating unit for FOI which will be able to assist people to put in applications and monitor how the system is working. Do you think that is a good idea?

Ms Mohle: I think that would be a good idea. I think that would be of assistance. Going back to our flying squad example, expert FOI practitioners might be able to be located in a unit like that. I think it would also help to actually change cultures to have people who are committed to FOI able to go to agencies and assist them. Also in terms of the other suggestion you made about assisting applicants, I think that would be most useful.

Mr Ross: I go back to the earlier point in terms of access to the private sector. Part of the rationale behind our suggestion that FOI should be extended in that area is the trend over the last decade or so for a number of services previously delivered by Government to be delivered by private sector organisations through a variety of different mechanisms. It concerns us where essentially social infrastructure or infrastructure products that are there to provide improvements to the community as a whole are being delivered by private sector organisations where there is

not a level of accountability for the way in which those services are delivered. That might be provided through the freedom of information type approach.

Dr PRENZLER: You believe that is one good argument for why it should be extended to the private sector in this case?

Mr Ross: Yes.

Ms Mohle: Certainly in our first written submission we tabled the recommendations from the report to the Federal Attorney-General from the Administrative Review Council about contracting out of Government services. There were particular recommendations that went to that issue about how there has been a shift and how there is a need to implement mechanisms to address concerns about access to information in those sorts of situations. We dealt with that in our first submission.

Dr PRENZLER: Is one of your feelings that Governments may be trying to hide behind the establishment of these private type bodies, such as Government owned corporations, etc., to cater out these facilities?

Mr Ross: It has been our experience that, through use of the concept of commercial in confidence, there appears to be a barrier to access to a lot of information as to the nature of their relationship between Government and private organisations and the type of services.

Dr PRENZLER: Your organisation is definitely running up against that barrier?

Ms Mohle: Certainly in relation to the freedom of information requests we made about co-location of public and private health services. That was the nature of the information we were seeking and we could not have access to it because it was commercial-in-confidence information. Yet it is pretty central in terms of the delivery of health services in Queensland. We are very concerned about that issue.

Mr Ross: We also note some international comparative material on this issue in terms of mechanisms for examining matters that seem to be subject to that commercial-in-confidence concept.

The CHAIRMAN: Thank you very much for your time and your contribution today. It has been very valuable to the Committee.

GEOFF COPLAND, examined:

The CHAIRMAN: I welcome our next witness to the hearing. Thank you very much for your time today and for the written submission you have already provided to us. Would you like to make a very brief opening statement?

Dr Copland: Yes. I am an applicant through the FOI process. I have had success in obtaining information through an application. It took a while. I was patient and I was very successful in my endeavours. My submission, which I wrote to the Committee last year, covers a few points which I thought were relevant from an applicant's point of view. Maybe I can deal with those to start with.

It is very hard for those who are not legal practitioners, journalists and so on to follow their way through the FOI Act. It is not an easy document to comprehend. Perhaps a manual should be available for the applicant to look at. That should be on the web, so that people can access it from their homes. I know that the Information Commissioner does have a very good site now. His decisions are listed there and people can read those but, to my way of thinking, they are in legalese and it takes a while to get to the point in some of them. That is my first point. I would like to see a web site called "Freedom of Information Act access" or something like that. I have listed some of the things which I think should be in that document.

The first thing is: what is the difference between personal and non-personal documents? I find that particularly difficult to understand. I have read the decisions of the Information Commissioner, but it is still not clear to me what the difference is. That is a fairly critical step for an applicant. You are paying $30. It is no big deal, but there is an issue about whether you should do it automatically anyway, just in case it is deemed to be a non-personal application, and save the delay in further processing.

How do you convert information into a document so that you can access what you want to get to? "Information" is one thing, "document" is something else. There is a difference. That takes a lot of thinking about when you are an applicant: how do you convert what you want into a document? The expected time period for the process should be there, not just "as per the Act" but the actual real time so that you are not being unrealistic in your expectations.

With the implementation of the Act, perhaps there is a tendency of people not to record information in a documentary format so, therefore, it cannot be accessed. Having meetings where there are no minutes kept is probably the classic example, yet a decision is made from that meeting which could affect an individual quite significantly, but he then does not have recourse to the background to it. I think that is something to consider. That is really all I had to say as an applicant, but I would be pleased to answer your questions.

The CHAIRMAN: Thank you very much.

Mrs GAMIN: I found your submission was interesting. It was totally objective. That was good.

Dr Copland: Thank you.

Mrs GAMIN: I notice in the first paragraph you mentioned that many of your applications had been referred to the Information Commissioner for external review and in every instance up until now the access was granted when it had been initially denied by the agency. So I come back to the question that I have been asking most of the witnesses here today. It is very complex, is it not, the whole business? The appeal process is slow and legalistic. Do you think that there is a case for abandoning the system of internal review prior to external review? Is there a case for some other model of external review under FOI, or a significant variation of the existing model?

Dr Copland: I have found the Information Commissioner's Office extremely helpful and I had no problem with getting advice and seeking where the application was at. As far as the internal review processes are concerned, I think that probably is a critical step—the agency has an opportunity to review the initial decision of the person to make sure that there is not an obvious issue there which could be resolved internally. The Information Commissioner's Office, it is a limited resource as well as the agency itself. We are talking about much greater resources for the Information Commissioner if all reviews went forward at the first step.

Mrs GAMIN: In your case, the internal reviews were unsuccessful from your point of view and then they went forward to the Information Commissioner.

Dr Copland: That is correct.

Mrs GAMIN: Did you find his office timely in its response?

Dr Copland: I think, again, one has to be patient. I understand the workload that these people have and I do not expect unrealistic time periods. I think that is probably my perception of it.

Mrs GAMIN: Okay.

Dr Copland: I mean, I do not hassle people at the Information Commissioner's Office for where things are and so forth. You wait for their advice.

Mrs GAMIN: Okay. Thank you for that.

Ms BOYLE: Dr Copland, I have two questions. Have you dealt with different Government departments and different agencies? If so, was there a difference in terms of how you were managed, as it were, or how the issue was managed? Does that lead you to any comments on the best way that members of the public can have their needs looked after?

Dr Copland: There were two Government agencies, or departments, I have been involved with. I think that they have similar ways of processing the applications. I do not think that there is a major difference.

Ms BOYLE: I wonder, too, you might consider whether any of the information that you obtained is information that, in retrospect, you would say should have been available through normal administrative processes in any case so that FOI could have been avoided if our Government was more open?

Dr Copland: I agree entirely. In an ideal world, there should not be a need for a Freedom of Information Act. A request for information under the Act is a symptom of a communication problem. That is what it really boils down to. The information should have already been provided through normal processes. When an individual has to revert to an application, it is very stressful for them. From my point of view, they do not do it lightly. It is a big step and they should not have to do it.

Ms BOYLE: Thank you.

Mr BEANLAND: Dr Copland, you mentioned having a friendly user's guide. That is very nice, but can you give us a few other suggestions, though, of what you have in mind not only for a user's guide—how that can be made friendly—but also what other improvements to the processes that you, as a user, believe are worth while?

Dr Copland: I have raised a few points before. I think the time period that people should expect the application to be processed would be very useful—the real time—so people do not have unrealistic expectations. I think a good application and a bad application perhaps—some tips on how to apply if you want to put in an application and, going back before that, perhaps some advice on why you are putting in this application, why you do not go and talk to the people who appear to be denying you access, anyway, and maybe that will resolve the problem without going that next step.

Mr BEANLAND: As well as the steps that one would take to make an application?

Dr Copland: That is right. I think that it probably could be a slightly broader topic in gaining information, which includes putting in an application for information through the Freedom of Information Act.

Mr BEANLAND: Just on this same matter, you have already mentioned the legalistic decisions from the Information Commissioner. Have you looked at judgments from the Appeal Court, or places like that? Do you think that the decisions from the Information Commissioner are far more legalistic and complicated than they need to be? Is that what you are saying?

Dr Copland: I am not a legal practitioner; they all look legalistic to me and very complex. In the Information Commissioner's decision, he quotes lots of cases and he goes through all the case law and so forth, which is interesting to read, but when you want to get to what it is all about, it is quite difficult and hard to comprehend.

Mr BEANLAND: It is difficult to get to the nuts and bolts of it.

Dr Copland: It is quite difficult.

Mr BEANLAND: So you think that it could be simplified and put in plainer English, etc.?

Dr Copland: I think so. I think that it is written in a similar sort of way to a judge's decision, I would assume.

Mr BEANLAND: Okay. One of these days you might read the Appeal Court judges' decisions and you will be able to compare. Thank you very much.

Mr PITT: Just judging from what you have presented here today, you obviously have a great deal of patience and forbearance with the system. However, there are others who could be put in a different category and perhaps misuse, in my view, FOI—although some people who have presented evidence today say that there is no such thing as misuse of FOI. Bearing in mind that, as you have indicated, people in various departments and agencies have heavy workloads and FOI is a cost drain and a resource drain, how as an individual would you suggest to us that we perhaps reduce the number of vexatious applicants or repeat applicants for no particular purpose?

Dr Copland: I think that is a very difficult question: how do you distil the genuine applications from the vexatious applications? I am not quite sure how do you that, really. In putting the fees up and making it more expensive, that is really denying people who cannot afford the fee, really. I am not quite sure how you would do it. I think, having perhaps some sort of information base that they can go to to say, "Before you put in an FOI application, this is what you should have done. You should have had direct contact with the people involved" and so forth, that may help to resolve some of the applications that go in. As I said before, I think an FOI application is in itself a sign of poor communication between two parties. That is what it is really about. You should not have to resort to that step, but it is there and people use it. Maybe they use it too freely and there should be guidance on using other systems as well.

Mr PITT: Your indication that a user's guide would be very helpful for people, whether that be in paper copy or in electronic form, I think has merit. It has also been suggested to the Committee that perhaps a central agency should be established, or re-established, so that the initial contact for any FOI can go to that particular agency, who can discuss the parameters of the Act and give people some sort of indication of how to go about things. Do you think that would be useful?

Dr Copland: I think that would be an excellent idea. At the moment, people can put in a direct application to any number of agencies in each individual location, which must be a very inefficient way of doing the business as far as gaining information, apart from the resources that are consumed in that process. If there was some sort of central site that people could use, apart from giving them what I would think would be counselling about the process, anyway, and advice on, "Do you really want to do this?" I am sure that it would make it much more efficient.

Dr PRENZLER: Dr Copland, just referring to your submission, I have noticed in there that you seem to have a problem with the meaning of "personal affairs". You are stating in here that that definition can sometimes be interpreted very narrowly, and sometimes it can be interpreted very broadly if it revolves around business affairs that you may be associated with. Could you expand on this, please? What difficulties have you had with that area?

Dr Copland: That definition which I have used in my submission is actually a quotation from the Information Commissioner—one of his decisions. I thought that it was a very good definition of "personal affairs" and I would like to put that forward: if it applies to an individual, it should be considered personal affairs. I am not a legal practitioner and I just step away from that, but certainly, to have the decision on whether it is personal affairs or not, and you do not put forward the fee to start off with, can certainly delay the processing of an application. From my own personal point of view, I would pay the money. When I have put in an application, I have paid the money and I say, "Okay, I will not get it back but I will assume that it is considered non-personal because I do not want the delay to occur while the $30 fee payment is debated." Certainly, yes, the meaning of the term has caused me personal problems as far as the process is concerned. I have appealed to the Information Commissioner about that and he has agreed with my position on it and that has brought it forward from there. So I am not quite sure if that answers your question.

Dr PRENZLER: What I am trying to ask is that if any amendments to the Act come forward, do you think that that area should be more clearly defined?

Dr Copland: I agree entirely. I think that is a potential for lots of conflict and confusion—not having a clear definition in the Act. Again, I am not a legal person but I think that is a really important issue to be resolved.

The CHAIRMAN: Thank you, indeed. Your submission has been very valuable to the Committee and we appreciate your time this afternoon. We will excuse you from the Committee's hearings now. I understand that we have two witnesses to join us from the Office of the Information Commissioner.

GREGORY JOHN SORENSEN, examined:

PETER HOWELL SHOYER, examined:

The CHAIRMAN: Would you please identify yourselves and your positions for the benefit of Hansard?

Mr Sorensen: My name is Gregory John Sorensen. I am the Deputy Information Commissioner.

Mr Shoyer: I am Peter Shoyer. I am the Assistant Information Commissioner.

The CHAIRMAN: I welcome you this afternoon, at the end of a long couple of days. I am aware that you have listened to all of the evidence so far. We thank you for your commitment and the time that you have been able to allocate. I am also aware that Greg Sorensen is working under great adversity in that he is suffering from the flu. I hope we all take that into account this afternoon and ease him through this as much as possible. To that end, perhaps we can discuss broadly how we might proceed this afternoon.

The main thing the Committee would like to do is give you the opportunity to respond to any comments that have been made in the course of the proceedings over the past two days. Also, we would like to get an indication from you as to the existence and timing of a further submission to the Committee in relation to its discussion paper, which we look forward to. This afternoon, perhaps you can talk broadly about what we can achieve, given that we are running a bit late. We would like to give you the opportunity to put anything further you would like to say in writing. This afternoon we have an opportunity to address this issue on the public record in a very general sense, without getting bogged down in any detailed submissions, which I know will be very valuable to the Committee and will be forthcoming from your office. That will allow you to get away this afternoon, without too much stress and strain being placed on Greg Sorensen's throat.

Mr Sorensen: That is very kind of you. It may be a new strain. I am thinking of calling it "chronic review fatigue syndrome". One of the problems we have got in getting a further written submission for your review is that we are in the middle of the statutory period for responding to the report of the management consultants. We are due to do that Tuesday week. I do not think we will have any clear time to focus in detail on some of the issues you raised in your letter of 5 May until that is out of the way. We have turned our attention to them briefly for the sake of being prepared to answer questions today, if need be. I tend to think that the best use of the time today would be just to deal with any questions that members of the Committee have. I do not want to make a long statement, but there are a few things that I would like to briefly respond to in respect of comments that have been made. Firstly, I apologise on behalf of the Information Commissioner, Fred Albietz. He would have been here had he not done some severe damage to his ankle playing tennis last weekend.

The CHAIRMAN: Another of the walking wounded from your office.

Mr Sorensen: He had a specialist assessment last evening and, fortunately, it does not look as serious as was first thought and he may not need surgery.

The CHAIRMAN: We wish him the best in his recovery.

Mr Sorensen: He sends his apologies. Taking the easiest thing first, one thing that I noted at the time shocked members was Professor Fotheringham's complaint that he never received a copy of the decision in his case when he gave his evidence yesterday. I can personally vouch that I did write a letter to Professor Fotheringham at his home address on the day the decision was published. It was mailed. It was never returned to us. Apparently it was never received by Professor Fotheringham. I can only apologise to him for that. If things are returned to us unopened, unclaimed in the mail, we do our best to track people down. I was somewhat surprised, given that that case received a bit of publicity in the press at the time. I was fairly sure he would have known about it and would have contacted us if he had not received the decision. We certainly made an attempt to comply with our legal obligation to notify him of the decision.

A small number of witnesses have made comments today which might suggest some impropriety on the part of the Information Commissioner or others. I do not consider it appropriate to canvass individual cases. This is a general review of the FOI Act. I am personally familiar with those cases. I can categorically deny any impropriety on the part of the Information Commissioner or any of the Information Commissioner's staff. The Information Commissioner and

his staff conduct reviews to the best of their abilities. It is unfortunate that some unsatisfied applicants choose to ascribe improper motives to decisions with which they do not agree.

I will address one point raised by Dr De Maria in his interesting and provocative presentation this morning. I think it leads into probably the only point I was going to make were I to make an opening statement. He made some remarks to the effect that the Queensland Information Commissioner had a culture of conservatism in comparison with his more proactive Western Australian counterpart, who seemed to be doing a lot more, he said, with roughly similar—12 full-time equivalent—staff. At the time our office commenced operations—our first case was received in 1993—there was in existence, and had been for some time, a well resourced unit of approximately five or six staff within the Department of Justice that was responsible for advice, awareness and training. It had at that stage produced a first training manual.

From the start, I developed a very good working relationship with the head of that unit and we had an understanding as to what our respective roles would be. He was feeding back to me concerns that agencies had and suggesting exemption provisions that could be targeted for leading cases. They were producing training materials and conducting seminars for staff. That situation persisted through a second manual and for at least three years until, I think, 1996—it may even have been in the reign of Mr Beanland as Attorney-General—when the Government took a decision to disband that unit. The point was that during that time with very limited numbers of staff we were trying to cope with an enormous influx of work that no-one ever predicted. It was never conceived as part of our role to conduct that advice and awareness training function. Certainly, we had no statutory imprimatur to do it; another unit did.

If you look at the Western Australian Freedom of Information Act, you can see quite clearly that it is legislatively prescribed as an add-on role for the Western Australian Information Commissioner. They are resourced accordingly. We do believe it is a very important role and that the general administration of the Act in Queensland has suffered for want of someone fulfilling that role. We have made a detailed submission in our May 1999 submission to the Committee about it. We have suggested that our office does have the expertise to carry out that role, and I believe we would do it conscientiously, if we were allocated specific extra funding to do it. I would suggest that we be given equivalent funding to what the Western Australian Information Commissioner uses to do that role. We have good close ties with the Western Australian Information Commissioner and we would clearly be able to carefully study the way in which she discharges that role and bring ourselves up to speed to do something comparable reasonably quickly. But, of course, we cannot justify diverting resources away from the external review function when one hears the range of complaints about delay that you have heard over the last two days. There is no doubt that the delays were considerable, and they are only just starting to come down now.

The key factor in that is that we have been given resources to bring our average file load per case officer down from 60-plus in the early years to about 25 per officer now. The Western Australian Information Commissioner has been functioning virtually from the outset on about 10 cases per case officer. They have been about five or six times faster. In my view, that is always going to be the key determinant. The number of cases per case officer dictates the amount of time that cases have to queue for attention before they can be dealt with. At the level at which we deal with things, we tend to be getting either the hardest issues or the most obstinate applicants or both.

The FOI Act can be a very, very difficult Act to apply. It has a lot of difficult provisions. Away from the sharp end of it, it can be pretty straightforward; you can just exercise a discretion in an agency to give out stuff, if there is no substantial harm, and not worry too much about the technicalities of the exemption provisions. Some 90% of cases are resolved with matter going out. The difficulties come when they have to start applying those legalistically framed exemption provisions to justify withholding matter. That is where it starts. That is the decision we have to review. It starts with the way the exemptions are framed and the need to demonstrate with evidence that those exemption provisions can be upheld. That is all I will say for now. I will try to deal with questions.

Ms BOYLE: I am pleased that the detailed responses to our questions will come on paper at a later date, because I welcome the opportunity to hear your views about the big

picture—about the spirit of freedom of information in Queensland. You have also heard the submissions put to us that from being a very undemocratic State the FOI Act in the early nineties moved Queensland towards more open government but that there is still a culture of secrecy. Some of that has been levelled at whoever is in political power at the time in terms of the concerns people have about the Cabinet exemptions and the extent to which they are used. Some has been levelled at the bureaucracy in terms of an unwillingness to be accountable or to avoid public embarrassment if documents were released. I have a limited faith in the law as a means of changing a culture of secrecy. Could you step back from the Act and talk to us for a moment about in what general ways we could better achieve the goal of more open government in Queensland?

Mr Sorensen: Yes, I agree that it is certainly an attitudinal thing predominantly. It is a spirit thing. It can make up for a lot of law. I think some of the issues that have been raised in your issues paper are starting along the right track. But this is not an uncommon phenomenon. In private, I could tell you some horror stories about the attitudes of individual senior public servants to FOI and information access. In a lot of other jurisdictions the same phenomenon is encountered. There is talk there that you virtually need a generational change in public servants; that you need public servants coming through and growing up with it as part of the furniture and getting through to senior management levels before you are ever going to achieve a really fundamental change in culture. Trying to encourage information access practices in agencies whereby the FOI Act becomes the avenue of last resort is very important and valuable. This was a view urged upon me by Canadian practitioners when I was doing some of the preparatory policy work for this Act at EARC. That really has to come from the top down with political leadership and leadership from senior public servants. The problem with it all is that they are being squeezed to do more with less. They do not necessarily regard information access as part of their core functions. FOI is something that is going to be trimmed and suffer if core functions are put under stress financially.

The suggestion in the issues paper which picks up on the Australian Law Reform Commission's suggestion about making it part of performance planning and review, or indeed performance contracts for senior executives, has some merit if it is going to come through a leadership commitment to make some inroads into the enforcement of openness, not just with respect to FOI but with respect to the whole area of the management and disclosure of information. Most senior executives are now on five-year contracts. If you start writing it into those contracts as part of something on which their performance will be reviewed—the extent to which they can commit their agency to that kind of approach—then it can flow right down through the performance planning review process. It goes down the line further and becomes an ordinary part of performance planning and review. A lot of those people will say that that sounds like pie in the sky and it will never happen. It will take a bit of leadership to get it to happen, but that is one possible way it could work. Can you think of any, Peter?

Mr Shoyer: I think the key to it, though, is in this properly resourced advice and awareness function—that is the term used in Western Australia. Certainly you can back it up with legislative stipulations that there should be open access, but if you have actually got an office which is well funded and is saying to agencies, "Okay, let's find out how you can put more of these things on the Internet. Let's see how you can trim down your FOI procedures, how you can give more administrative access." That is certainly a key, but it certainly does need support from the top as well as that. But if you have that driving force and then someone at a reasonably senior level who people will listen to is promoting that—and that at the moment is probably what we are lacking: that driving force.

Mr BEANLAND: I recollect that back when it was established there was a central directorate at the Department of Justice. That was wound back, I think, in 1995. I remember the director—I am not sure what he was before that, but he was certainly a senior public servant who took on that role. He went and the whole thing was wound back in early 1995, from memory.

Mr Sorensen: I think it was 1996.

Mr BEANLAND: There were no staff there when I arrived. I know that because I remember asking someone about it.

Mr Sorensen: It certainly started to wind down in 1995; you are right.

Mr BEANLAND: You do agree that there clearly needs to be a central function or directorate of some description obviously carrying out a number of roles. There needs to be a group of people whether it is there or somewhere else, or do you think it is appropriate to have it within your orbit of operations or should it be in the Justice Department?

Mr Sorensen: I think that is a choice that there are a few policy issues attached to. We have said that we are happy to do it. We believe that we have got the expertise and could do it well. I have no difficulty with the Department of Justice doing it if they were prepared to take it seriously and attempt to do it well. I think the key in either event is to make sure that it is a statutorily prescribed function, and it therefore has to be resourced.

Mr BEANLAND: It has to be statutorily prescribed.

Mr Sorensen: It is a program of itself.

Mr BEANLAND: If it is statutorily prescribed, then that is a function of whoever does it—and the educative role, etc. The second issue is something similar which a number of speakers have touched upon and I just want to get your comments on it. It is the legalistic nature of the decisions that are produced by yourself, Mr Sorensen, and by others, perhaps, but under your name. Could you make some comments about those? I presume you believe that obviously they have to be of a fair depth and weight in order to ensure that, when they go to the Appeal Court, they stand up at the Appeal Court, or do you believe that they could be simplified in some way to make it a little easier for the public to understand?

Mr Sorensen: It is a complex issue because there are legal obligations. The content of decisions prepared by tribunals in Australia is a matter of legal obligation. There is clear legal authority from the Federal Court, which reviews decisions of the Commonwealth AAT, and from the Supreme Court of Queensland and New South Wales about their State tribunals. There have been a number of cases where tribunal decisions have been overturned and sent back simply because the tribunal failed to properly set out its reasons—make proper findings of fact and set out its reasons and so forth.

There is a good deal of law on it. I referred to it in the May 1999 submission to the Committee. We feel obliged to comply with that. There is a view being urged on us that we probably could write less. In the past we have written more in what we call our group of leading cases because we sort of had in mind that we were doing that specifically for training and education purposes, that at the time we had applications for review flowing through to us at an enormous rate and we could see the same errors being made over and over again.

For instance, no-one seemed to understand how section 46(1)(a) worked. So were we going to try to produce half a dozen cases on 46(1)(a)? What we opted to do was pick a test case and try to set out in a good deal of detail how the breach of confidence exemption works and then hope, in turn, that will be picked up in the training manuals that were being done by the Department of Justice and it would filter back through the agencies, or the agencies' legal advisers would absorb it and explain to administrators how it works. We were sort of saying, "We are going to do the greatest good for the greatest number of people if we get leading decisions out there that authoritatively explain how these provisions are supposed to work so that the primary level administrators can pick it up and start applying those principles."

At about the end of 1995 we moved to trying to write the majority of our cases in a shorter form by way of letters to the participants and they are usually, we would hope, not as legalistic as the others, but some people apparently still find them so. I am a bit bemused by it. I am especially bemused by the appellation "excessively legalistic". When you are dealing with exemption provisions that turn on areas of the general law like legal professional privilege and parliamentary privilege, which are notoriously difficult things—we thought we got the law of imputed waiver of privilege, which is quite arcane, correct in one lengthy decision we did two years ago, and just before Christmas the High Court reviewed its previous leading authority and cast doubt on its correctness. So we have to go back to the drawing board on imputed waiver of privilege. In the same case they changed the sole purpose test which had prevailed for 24 years to a dominant purpose test.

The general law is in a state of flux. When you put in exemption provisions which incorporate by reference the general law, you have to resort to the general law to determine how you are going to apply the exemption provisions. I am not sure of the point at which you say

"legalistic" ends and "excessively legalistic" begins. That is what we are being accused of. I have not seen the particulars of that charge.

We have taken on board the sort of responses that we have got from the management consultant process, from this process. We are going to look very closely at whether we can shorten decisions. One thing we will certainly do is try to include plain English summaries so that no-one is in any doubt as to the effect of them. If we were to be given a full advice and awareness function, we could do a lot more in terms of training to try to make them more understandable.

We are always writing for a third audience. We are writing for the participants in the case, we are writing for the wider audience of administrators who have to pick up and apply it, and we are also writing for an audience of judges who could judicially review the decision. We get it all the time during the preparation of cases, "Look, you go against us on this one. I will be taking it to the Supreme Court." We have to write something in detail so that the Supreme Court will understand where we are coming from and know that we have complied with legal requirements on tribunals.

Ms BOYLE: I think when you were talking to me as well as in addressing Mr Beanland's question, several times you mentioned "as long as we are dealing with legalistically framed exemption provisions" as though there is some other way to frame exemption provisions other than legalistically? Could we do it in a different way?

Mr Sorensen: You heard the suggestion from Dr De Maria this morning. There are ways to do it. Whether they will be effective is another matter. To my mind, his suggestion could not work with just a social harm test because most of the exemption provisions now set out what Parliament has stipulated is a social harm that will justify withholding information. Most of them are already qualified by public interest balancing tests so that, if you can demonstrate this social harm, that is a reason for withholding, unless there is a public interest consideration that outweighs it. His suggestion would actually be more draconian in terms of withholding than the existing provisions in a lot of ways. It would allow agencies to come up with new grounds that Parliament had not thought of, and not even subjected to a public interest balancing test. So the minimum you could have is a social harm test, unless there is a countervailing public interest which outweighs it. What that would probably do if you had it was just initially throw agencies back on what they are used to by saying, "Well, previously this was regarded as an acceptable social harm so presumably it will be again", but it would open the way for more creativity.

My view is that you can only effectively simplify by pushing the boundary way in favour of openness or way in favour of non-disclosure. If you polled all FOI administrators now and asked, "What's the easiest exemption provision in the FOI Act to apply?", I guarantee you would get a 90% success rate that it is section 36(1)(a). You could not get an easier exemption provision to apply. It is also probably the worst provision in the Act from a policy point of view.

Mr BEANLAND: That must be the Cabinet one.

Mr Sorensen: That is right. Any document submitted to Cabinet is exempt—full stop. It could not be easier.

Mr PITT: You mentioned before perhaps going all the way to completely open access. If the people of Queensland are going to have this open access to FOI, not only should access be there but they should understand it and be able to apply it. I know you have no statutory foundation within your role to actually take on an educative role, but if you were given the resources and that role were made available to you, how would you go about unravelling the mystery of FOI to ordinary Queenslanders so they could take best advantage of it?

Mr Sorensen: There are a number of things we could do. We have thought about some of them. I think we could think about them more and consult with the Western Australian Information Commissioner to see what she has done. I am familiar in general terms with a range of things she has done in terms of public education activities: holding seminars for particular categories of users such as journalists to train them. I think we would be establishing a web site that was dedicated to showing people how the FOI Act works and how to navigate your way through it; and how to cast that in more user friendly plain English language and to also talk about the legal problems they might encounter in a less complex way so that people who have ready access to the Internet could use that.

I still think we are overestimating at this stage the extent of the penetration of the Internet and computers in Queensland. I think you have to do a bit more than just pander to the techies. We have a few ideas. We would go into it pretty closely with the Western Australian Information Commissioner to see what she has done that she thinks has been successful and try to duplicate that.

Mr Shoyer: I think in terms of the Internet the suggestion of setting up a web site that lists all of the documents available in different agencies—that is the sort of technology that is available simply now and can be implemented, providing you have someone to say to the agencies, "Let's do it." I think a lot of it would be actually getting agencies interested because there are a lot of FOI coordinators now who are very committed to FOI and getting them and their senior managers interested in helping out in disseminating knowledge about FOI and about what is out there and what is available.

Mr PITT: Just to follow up a bit further on the openness of the FOI Act itself, we have heard a number of submissions from people over the last two days regarding access of information from Government owned corporations and other private sectors as well. I would be very interested to hear what your views are on that. Should we extend it that far? How would we do that? How would you, as an office, function in that way?

Mr Sorensen: I think that is what Sir Humphrey would call a courageous move. The Australian Law Reform Commission looked at it and baulked. It would be very brave of Queensland to go down that route. There is no doubt that there are some sound reasons for it in certain areas. Some respectable arguments can be made. The private health sector is one in which you could perhaps see that there is an inequity of treatment between private hospital patients and public hospital patients in respect of information access.

There are a lot of publicly resourced activities that have pretty precise private sector counterparts, like private schools. Department of Education schools are subject to the FOI access regime. Some of the private schools such as the grammar schools would have come under this regime if not given specific exemption. It is certainly not appropriate to do it on a general basis. You would have to pick target areas and justify why you would put that imposition on what are effectively private sector service providers. I think there is too much to be cured in Queensland in the way the public sector system operates to be worried about extending it to the private sector just yet.

Ms BOYLE: On the topic of commercial-in-confidence — and I suppose this takes us back to Cabinet exemptions — I have not been in a position of seeing those sorts of documents at a Cabinet level to know why Governments of all persuasions are so reluctant to have them out in the open. Can you give us some examples of the sort of commercial-in-confidence material that might be difficult to have in the public arena where there may be some good reasons for at least hesitating, if not actually exempting it?

Mr Sorensen: There is a lot of classically commercial-in-confidence material or trade secrets information that someone has put a great deal of research and development money into, which they think they are going to make some money out of by protecting their monopoly of that information. They may have to put it to a Government agency to get some kind of regulatory approval to use it. Governments hold a good deal of information taken from private sector business entities for regulatory or licensing purposes which those business entities would be very upset about getting into the hands of competitors. It is essentially a private interest but one we regard as worthy of protection in our liberal economy.

Ms BOYLE: On a different topic, if we were to have an advisory and an information unit, however that was better organised than presently, then, as you have indicated, whoever is in Government is going to have to provide increased funding to make that happen if we are to be a more open society. That needs to be balanced with the tremendous costs that I am told we are already incurring by vexatious applicants—those who appear to enjoy as a lifestyle trawling and taking a lot of time and a lot of resources. Some I know of are pensioners or people who are not employed and so they have the time to do this as a lifestyle. There may not necessarily be anything nefarious about their motivations, but they are using up a disproportionate amount of Government resources for what is, to an extent, a recreation. Is that democracy? At what price? I would rather have the extra funds go into advice, monitoring and better systems which do something to curtail the extent of so-called vexatious applicants. Do you have a view about that?

Mr Sorensen: There is no doubt that it seems to have exacerbated problems for agencies and problems for us in Queensland. We have started with and stuck with the most liberal charging regime in the country, which I think is a sign that Government would like the Act used and it proves itself by being used. But, at the same time, it has given an encouragement to that unrestrained use of FOI that is pretty firmly blocked with substantial financial hurdles in other jurisdictions. Queensland also has a provision in section 28(2) for substantial and unreasonable diversion of resources which is far more circumscribed than in any other jurisdiction. That is the one where you would normally want to try to block the outright trawling operation and force someone to be specific about what it is they really want. We can say, "Come on. Let's be fair with public resources. Tell us what you really want and we'll try to find it, but you just cannot go trawling like that."

It has certainly had an impact. A large part of the reason for our delays at the Information Commissioner level is that so many cases come through to us with very large numbers of documents in issue. The Western Australian Information Commissioner would probably try to ensure that no agency was dealing with more than a couple of hundred documents in any one application. We routinely get 7,000 documents with multiple third parties who have to be consulted. Agencies see this all the time. They get applications that they have no hope of dealing with inside of 60 days. They let them go and come through to us. I am surprised that some of them turn around and then say that we should be subject to time limits.

There is a very fine question in that, though, relating to if you are going to look at adjusting the cost regime, how far you want to go to limit use by way of a financial hurdle. In trying to screen out the pests, you are going to screen out a lot of perfectly reasonable meritorious users. That is why we have suggested in our submission on costs that there is not a lot of justification for messing too much with costs, but if you do, the thing is to build in disincentives to that outrageous extreme request for far too many documents and refusal to try to negotiate over what it is people want.

The CHAIRMAN: There being no further questions, thank you very much again for your contribution. Is there any final brief statement you would like to add that has not already been made?

Mr Sorensen: I do not think so.

The CHAIRMAN: Thank you. We look forward to your further and more detailed submission to the Committee. We thank you for the cooperation that you have already provided to the Committee on a number of occasions and also throughout our visits to your office. Before concluding the Committee's public hearing, on behalf of the Committee I would like to thank all witnesses and members of the public who have attended the hearing in the past two days. The Committee will consider the input obtained during the public hearing in conjunction with the submissions that we have or are about to receive, as well as other information obtained through research, and consider its report.

In addition, I would like to thank the staff of Parliament House who have assisted in the hearings, particularly Hansard, the attendants, security and the catering staff. Most of all, I would like to thank the very competent and capable secretariat of the Committee, which includes Kerryn Newton and Veronica Rogers and behind the scenes Tania Jackman, who has done an enormous amount of work to back us up through that office. Thank you again to all those people and to the witnesses who have contributed so much. I now declare this public hearing closed.

The Committee adjourned at 4.54 p.m.