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Contents

Articles

Freedom of information in Queensland: A preliminary analysis of the Report of the Queensland Legal, Constitutional and Administrative Review Committee

by David Hodgson &
Rick Snell 26

The relationship between freedom of information and whistleblower protection

by Robert Vaughn 29

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Comment

The report of the Canadian Access to Information Taskforce has finally been released just as this issue of the *Fol Review* goes to print. The report has been long awaited and the operations, methodology, legitimacy and agenda of the Task Force seriously questioned. I will leave an analysis of the report for a later date when I have more time to digest and analyse its findings. However, the process undertaken by the Taskforce has highlighted one of the pressing questions for Fol advocates, namely that of reform.

In recent months I have attended and presented at conferences in Jakarta, Auckland and Winnipeg. At those conferences I have heard about experiments and experiences with Fol from several jurisdictions, from academics, policy makers, users, non-government groups and the occasional journalist and member of parliament. Participants from countries new to Fol (Japan and Thailand) or reluctantly toying with the idea (Indonesia) echo the sentiments, hopes and aspirations that accompanied its introduction to countries like New Zealand and Canada. Yet from the audience and speakers' platform there have been numerous and well-crafted critiques which expose the failure of more established Fol schemes to deliver or raise concerns about the continuing efficacy of countries considered to be at the forefront of Fol delivery (Sweden and New Zealand).

At the Winnipeg conference there was unanimous agreement that reform was urgently needed to the Canadian Access to Information Act. The extent, nature, form and delivery platform of that reform produced a far more contested outcome. There seemed to be a clear divide between those who believe that reform has to commence with legislative amendments and stronger powers to order release by the Information Commissioner, and those advocating a focus on improving administrative compliance with the legislation. The problem with this division is that it is often formatted in an either/or option and little agreement can be reached on a reform program that is widely supported by both those outside government and those inside government. I hope that the Canadian Taskforce can produce such a program but I am not optimistic.

Rick Snell

Freedom of information in Queensland

A preliminary analysis of the Report of the Queensland Legal, Constitutional and Administrative Review Committee

Introduction

This is a summary of the Queensland Legal, Constitutional and Administrative Review Committee Report 32 'Freedom of Information in Queensland' released in December 2001. While issue can be taken with many of the recommendations (and omissions) the primary task of this article is to give readers a general sense of the contents of the Report. The Report in conjunction with its Discussion Paper and submissions to the Committee will provide a rich source of ideas and information about current Fol practice at the state level in Australia.

The Report also reminds us of the lingering legacy of the Australian Law Reform Commission and Administrative Review Committee Report 77 (1995). The ALRC Report is still used as a starting point for discussions and ideas about Fol reform in Australia. Yet the Commonwealth *Fol Act* is allowed to creak on with little in the way of essential maintenance or necessary refits. It would be a major cause for regret if a number of the suggestions made in the Report do not make it into legislation and/or operational practice in Queensland.

History and background

This review by the Legal, Constitutional and Administrative Review Committee (LCARC) of Queensland was initiated by the then minority Labor Government in March 1999. Research began as a Discussion Paper (published 8 February 2000) but was reconstructed in May 2001 and expanded into an examination of the health of Freedom of Information in Queensland under the new majority Labor Government (published December 2001).

General comments

The Report was preceded, by a number of weeks, by the passage of the *Freedom of Information Amendment Act 2001*. This Act made a number of important changes to the fees and charges regime in Queensland.

Three members of the Committee (two Independents and one National party member) chose to include a Statement of Reservation. This statement criticised the introduction and subsequent passing of the *Freedom of Information Amendment Act* into the parliament on two fronts. First, the amendments contained in the Bill for introducing new charges for processing Fol requests and supervising access to documents pre-empted the Committee's findings. Second, by introducing a Bill during the final stages of the Committee's inquiry, serious questions were raised about the legitimacy and role of the Committee's report in the parliamentary process.

It is a pity the government has pre-empted the LCARC report. The Report contains a series of well-researched, balanced recommendations for improving the current Fol regime. Operating within a limited time frame, and having to pick up from the work of the 1999–2000 Committee, the current Committee has adopted a similar philosophy to the previous Committee. The current Committee did not conduct any additional hearings. The high quality of the final report was attributable to two points:

- the quality of the submissions (especially from the state departments and the Information Commissioner) and the number of submissions received from individuals and community organisations; and
- the Discussion Paper presented a series of well-presented questions, supported by thorough research, that engendered full and frank discourse by getting the submitters to concentrate on establishing the basic principles and political foundation of Fol in Queensland.

The two roads of Fol law reform

Fol law reform can be seen as a parliamentary and political process dominated by the Executive arm of government. Reforms that impede the democratic objectives of Fol legislation and assist the Executive retain power of the disclosure of official information seem to require less consideration, time and formal processes than reforms designed to make the process operate more in favour of disclosure. Academic analysis (i.e. public policy theory) suggests that a distinct comparison can be formed between the type of law reform recommended (for instance by bodies similar to the LCARC) and the type of law reform implemented by governments. In effect, while recommendations for law reform have consistently highlighted the defects in the Fol process and advocated changes that would improve the quality of the Act, the amendments have, in general (and especially where majority governments are involved), decreased the accessibility of information through tighter exemption clauses and higher, or additional, fees for processing requests.

Summary of the Report

The Report maintains a focus on the intention and objectives of the Act but is aware of the practical difficulties that a bureaucracy will intrinsically have in processing Fol requests. The Committee has attempted to facilitate access in a way that is beneficial to the applicant and the agency. By minimising the resource drain that is inherent in the Fol requests process the Committee is creating a more conducive, user-friendly environment.

The Report has adopted a similar approach to other reports (Australian Law Reform Committee No 77, and South Australia's Legislative Review Committee Report 2001) in that it has recognised the general dissatisfaction with the way Fol operates is a product of the political and bureaucratic sphere, not just deficiencies in the legislative architecture. The Report is more comprehensive than the South Australian report, but less extensive than the current Canadian Access to Information Task Force. See <<http://www.atirtf-geai.gc.ca/home-e.html>>.

The Report recommends a combination of legislative and bureaucratic amendment. Some of the ideas show a strong level of understanding of the difficulties involved in the Queensland jurisdiction.

The Committee has gone beyond the ALRC report by introducing a new element to law reform namely the relationship between the applicant and the agency. This was also a key aspect of the South Australian Legislative Review Committee Report. For instance, Chapter 4 recommends the creation of an Fol monitor who, in part,

would assist members of the community in accessing information, Chapter 6 recommends the public service adopt a more 'Flexible and Consultative Approach' (6.2) in the FoI process and Chapter 8 recommends the Information Commissioner create guidelines relating to any formal external review decisions to create an easier environment for applicants to operate within (8.24). This is a welcome development to law reform recommendations in Australia. Generally, law reform has concentrated on the three domains of law, policy and bureaucracy but this report adds a new dimension (possibly based on an assumption that antagonistic relationships between applicant and agency are a cause of resource and time wastage).

Chapter 3: FoI purposes and principles

This chapter appropriately starts by placing the Queensland *FoI Act* in the political context of the Westminster system. It considers some of the arguments that have been submitted against the proposition that FoI and Westminster are incompatible. In conclusion the LCARC has accepted that some elements of the Westminster system require protection from public scrutiny, but FoI legislation was deemed to be compatible with any system of government that was based on democratic principles (3.3).

A second consideration in this chapter is whether the basic purposes of FoI have been satisfied. While the Committee did recognise that the nature of FoI made this a difficult question to answer (given that many of the benefits of the Act are intangible and not measurable), some preliminary analysis was conducted under 3.4.1: FoI Usage and Outcomes. This evidence shows that FoI has partly attained its objectives yet some barriers exist to accessing non-personal or policy information. Trends in the number of applicants and the type of requests show encouraging signs where the number of applicants, the requests for policy information and the number of documents that are fully disclosed has risen.

The Committee did note (at 3.4.2) that one of the factors influencing the success of FoI related to public perceptions; in particular the level of public education and awareness, and perceptions of how the public service reacts to requests (whether it is positive or negative).

The Committee's preliminary assessment of the Queensland FoI regime was guided by criteria that were deemed to be central to the efficacy of the system:

- more accountable government which is more open to public scrutiny;
- better understanding by citizens of the decision-making processes;
- greater participation in government;
- better decision making and records management and;
- citizens able to access and amend personal information held by government.

The Committee's conclusion (3.4.4) is that FoI has significantly contributed to open and accountable government, although the original design expectations have not been fully met.

Chapter 4: Enhancing the effectiveness of Queensland's FoI regime

The major recommendation of this chapter is the creation of an FoI monitoring entity designed to:

- promote public awareness of FoI, and provide advice and assistance to applicants; and
- monitor public agencies compliance and rates.

Currently no entity has a full-time legal responsibility for either of these roles, nor has any entity attempted to do so. Neither the Attorney-General's office or the Information Commissioner have any statutory role to play in training, collecting data from agencies or assessing legislative impact. It is argued, at 4.1.2, that the monitoring entity is needed to:

- heighten agencies' attention to how they implement the Act;
- enable the FoI monitor to develop an understanding of each agency's situation and the types of applications it receives; and
- develop and promote government-wide best practices, especially in information management.

These functions have been grouped under the following sub-headings:

1. Monitoring Functions
 - a. Conducting agency audits
 - b. Preparing annual and other reports
 - c. Identifying and commenting on legislative policy issues
2. Advice and Awareness Function
 - a. Providing a general point of contact and central resource for agencies and citizens
 - b. Promoting community awareness and understanding of the FoI regime
 - c. Providing guidance on how to interpret and administer the Act
 - d. Educating and training agencies and community groups
 - e. Acting as a facilitator in communications between applicants and third parties.

Subsequently, a pro-disclosure attitude would be engendered due to a better understanding of the purpose of the legislation, and resource costs would be reduced (assisting applicants to better draft requests, diverting repetitive work).

Chapter 5: What the FoI Act provides for

Principally, this chapter contains recommendations to amend certain provisions in order to clarify their meaning or increase their scope. For instance, the Report contains recommendations relating to the meaning of 'public authority' (5.2.2) and creating a right of access to *information*, not *documents* (5.3.1).

Chapter 6: The FoI process — access applications

The Committee has recommended that agencies should assist, consult and negotiate with applicants (including when they are not specifically required to under the Act) in an attempt to reduce FoI processing time and costs.

6.2.1 Consultation and assistance

- Inform applicants of the type of information that is relevant and accessible to avoid applicants making excessively broad requests.
- Increase the amount of information routinely, and voluntarily released by agencies.
- Avoid formal written consultative processes where possible in preference for telephone conversations or meetings with applicants.

6.2.2 Negotiation

- Legislative amendment to recognise the right of parties to negotiate

- Negotiation between applicant and agency for extended time frames, prioritising the search for particular documents, internal review processes, fees and charges

Chapter 7: Internal review

Given the Committee's approach of examining each step in the information request process, it is surprising that relatively little attention has been given to the topic of internal review. This chapter contains mostly minor bureaucratic and legislative amendments.

Chapter 8: External review

In line with the Committee's attention to improving the accessibility of the Act, especially for citizens with little legal knowledge, the methods of the Information Commissioner in producing decisions were examined with a view to simplifying them. The Committee endorsed the Information Commissioner to:

- employ information dispute resolution methods where possible;
- produce practice guidelines to assist agencies and applicants to understand, interpret and administer the Act;
- produce succinct, reader-friendly decisions that are easily accessible to agencies and applicants;
- publish all decisions either in full or abbreviated, summary or note form; and
- reform the Internet website to increase its prominence and accessibility.

Chapter 9: Fees and charges

The Committee recommends that no fee or charge should apply to an applicant who is an individual to make an application that relates to documents concerning their 'affairs' and should not be limited to their 'personal affairs'. 'A document that affects an individual's affairs is not necessarily a document that concerns that individual's "personal affairs"'. The benefits of this suggestion are that it would be more equitable to citizens; reduce any administrative burden on FoI decision-makers in applying fees and charges; and remove a significant source of dispute from the Act (9.5.1).

The Committee found several faults with the 'time spent' basis for calculating charges for information requests. The process could result in an applicant paying for inefficiencies in records management which increase the time spent searching for documents. It does not take account of the extended time inexperienced officers may take in finding a document, and, in extreme cases, is open to abuse by officials who wish to prevent certain information from entering the public arena. An alternative to this system is to calculate costs on the basis of the number of documents/pages considered by an agency or number of documents/pages authorised for release. Both of these alternatives have their advantages and disadvantages for both agencies and applicants. The former would reflect the level of resources dedicated to discovering the documents, but would require the applicant to pay for documents that they did not receive, for instance, because of exemption clauses. The latter alternative would create the reverse scenario.

Chapter 10: Exemptions — general principles

In relation to exemption provisions the Committee came to the following conclusions:

- A single, general exemption provision based on 'social harm' or the 'public interest' was rejected because it, potentially, would result in agencies developing new reasons for withholding information, and would either substantially favour disclosure or non-disclosure, and would result in uncertainty for agencies and applicants, leading to inconsistent application of the exemption provision by decision makers (10.2.1).
- A general overriding public test would not create the necessary level of flexibility for Cabinet exemptions (10.2.2).
- The Committee rejected recommending a reform that would retain specific exemptions but frame each exemption provision to focus on the harm that would result from disclosure, rather than the type or class of document (10.2.3).

Chapter 11: Specific exemption provisions

As the 'Statement of Reservation' outlined, the Committee was not supportive of the current Cabinet exemption, claiming that it was too broadly worded, allowing for significant amounts of information to be kept beyond the scope of FoI laws. The Committee, in response to claims that documents were placed before Cabinet for the sole purpose of preventing access to them via FoI, not for consideration by Cabinet, has recommended the insertion of a purposive test. The Committee was mindful of the central role of Cabinet, but the potential for abuse/misuse of this exemption warranted some narrowing of its range.

Chapter 12: Scope of the Act

- Questions were raised over the number of agencies and corporations excluded from the ambit of the Act (subsequently undermining the objectives of the Act) and the lack of a consistent policy approach in deciding which agencies warranted exemption from the Act (12.3.2).
- The LCARC confirmed the suitability of certain exemptions for government-owned corporations (GOCs) from the Act when they interfere with commercial activities. However, the use of a document-based exclusion (where the exemption travels with the document, regardless of which agency possesses the document) warrants amendment of the legislation to limit the exemption to documents concerning 'competitive commercial activities' (12.4.2).
- In relation to contractors, the LCARC has followed the Administrative Review Council's lead by recommending that documents in a contractor's possession that relate directly to the performance of their contractual obligations are deemed to be in possession of the government agency (12.7.1).
- The Committee found no fault with the provisions that could be used in commercial-in-confidence cases, but said more guidelines were needed for agencies to prevent the exemptions being claimed when insufficient consideration had been given to the effects on public accountability. The Committee envisaged a central role for the 'FoI monitor' here, through issuing guidelines and offering training on the interpretation and application of the exemptions (12.7.2).

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The relationship between freedom of information and whistleblower protection

In the last decade, many countries have enacted freedom of information laws. The number of these laws and their implications for governmental organisation, for citizen rights and for democratic accountability permit their enactment to be called, without hyperbole, a legal revolution. For example, Japan, a country noted for its powerful state bureaucracies and its tradition of secrecy, enacted an Information Disclosure Law (IDL), which became effective in April 2001.¹ Like the US federal *Freedom of Information Act*, the IDL adopts the principle of 'any person' access and the premise that government documents and records should be made available to the public unless they fall within an exemption to disclosure.² These same concepts form the basis for the presumption in US law that government documents are public.

During this same period, several countries have also enacted provisions protecting public or private sector employees who disclose misconduct, wrongdoing, and other risks to the public. These legal developments can likewise be viewed as dramatic. For example, in 1998, Great Britain enacted the *Public Interest Disclosure Act*.³ That enactment is striking for two reasons. First, Great Britain has a long tradition of secrecy and some British scholars had asserted that whistleblowing is inherently inconsistent with the legal and constitutional traditions surrounding Britain's parliamentary form of government.⁴ Second, the British law is striking for the breadth of its coverage, its acceptance of both internal and external disclosure, including disclosure to the media, and its use of the enforcement and dispute resolution procedures of general employment law. Like the IDL in Japan, the *Public Interest Disclosure Act* of 1998 sprang from a cultural and legal setting seemingly at odds with such a law.

These developments have been parallel because statutes protecting whistleblowers are closely related to freedom of information laws and the principles supporting them. These connections are easier to see with statutes protecting public sector whistleblowers. For this reason, the relationship of freedom of information to laws covering the public sector is pursued first. However, laws protecting whistleblowers in the private sector also are tied to principles supporting freedom of information statutes and other open-government provisions. This relationship will be explored subsequently.

Public sector protection

Protection of public sector whistleblowers, those public employees who disclose illegality, corruption, mismanagement, abuse of authority and risks to public welfare, is an important part of statutory embodiments of the public's right to know. In the world today, many different names are given to those public employees who disclose government misconduct, fraud, corruption or incompetence. In some countries, including the United States, they are called whistleblowers, like the police officer whose whistle draws the public's attention to some risk. They have also been called bell ringers, like those watchers who warn of approaching danger, and they have been called lamplighters like those public servants who make all safer by casting light into dark places. The European Union has referred to them as 'collaborators of justice'.

In the United States, protection of public sector whistleblowers has been closely linked to freedom of information laws. In 1966, when Congress enacted the federal *Freedom of Information Act*, there were few, if any, statutory protections of public sector whistleblowers. The *Freedom of Information Act*, however, vindicated the public's right to know. This vindication made it much easier to justify whistleblowing as providing information to which the public was entitled. Indeed, at least one early state whistleblower statute, that of Alaska, tied the protection of whistleblowers to the state's freedom of information law.⁵ The first proposal for a statute protecting federal-employee whistleblowers was linked to the federal *Freedom of Information Act*.⁶

The first major statute protecting public sector whistleblowers in the United States, the *Civil Service Reform Act* of 1978,⁷ was an independent provision. Today, hundreds of state statutes and other federal statutes protect both public and private sector whistleblowers and such statutes have increasingly been adopted in many other countries. Such statutes are now the goal of several movements that are international in scope — one concerned with open government, one with human rights, and one with the control of official corruption. This article permits the reader to see how these three movements all have important associations with the right to know.

Although today most whistleblower statutes are independent provisions separate from freedom of information laws, they remain connected to freedom of information laws through common principles and goals. The founders of the United States recognised the relationship between democracy, accountability, and access to government information. James Madison, who had been the fourth president of the United States, captured the importance of this relationship in his often quoted warning:

Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy or perhaps both.⁸

In his pre-revolution book, *A Dissertation on the Canon and the Feudal Law*, John Adams, later the second president of the United States, in discussing how liberty could not be preserved without an informed public, commented:

[T]hey have a right, an indisputable, unalienable, indefeasible divine right to the most dreaded and envied kind of knowledge, I mean of the characters and conduct of their rulers.⁹

Freedom of information laws vindicate the public's right to know, a right necessary to the rights of free expression and free association. Without access to information about government, the right to speak and the right to associate with others for change are enfeebled. Criticism without information is less powerful. Ignorance dulls outrage and reduces the incentives for individuals to organise and to use democratic procedures for change.

Therefore, freedom of information provisions help to assure political accountability by supporting the right of free expression and the right of free association. These rights allow citizens to organise, to advocate and to challenge the decisions of the government representing them.

Likewise, legal accountability through appeals to the courts requires information about government policies and practices. For example, government documents and records can fuel challenges to the conduct of government officials, which infringe upon the rights of citizens or which violate legal rules and standards. Political and legal accountability rest upon the right to know.

Without information, the ability of law to restrain government action can be so limited that the rule of law itself is called into question. In the passage of the federal *Freedom of Information Act* in 1966, Congress was concerned about the existence of 'secret law', government rules and standards unknown to those to which they were applied.¹⁰ Congress sought to enable any person to examine the standards controlling the exercise of public power by government officials. If legal standards are to limit discretion, those standards must be known. Unless they are known, they cannot meaningfully limit the power of government officials. Freedom of information provisions can allow citizens to acquire information as to whether legal standards and rules have been followed and to use that information to impose political and legal accountability upon government officials.

Protection of whistleblowers which encourages disclosures of misconduct, fraud, and abuse serves similar goals of preserving the rights of free expression and free association through the right to know. *When* information is available can be as important as *whether* the information is available. Whistleblowers can alert the public to risks and dangers in time to respond to them, perhaps to eliminate or reduce them long before the public would otherwise become aware enough of the results of the conduct of government officials to use freedom of information provisions. Whistleblowers are well placed to expose misconduct or incompetence that is the subject of coverup or which has not been committed to any written record and therefore unavailable under a freedom of information law.

Public employee whistleblowers are often uniquely positioned to understand the significance of information and to bring that significance home to the public. Sometimes this significance may have broad policy implications but often that significance may relate directly to individual events. For example, the *Whistleblower Protection Act* of 1989 resulted, in part, from the tragic explosion of the space shuttle, Challenger, soon after its launch. Subsequent investigations, spurred by the public disclosures of government engineers and those of a private contractor, demonstrated that both government and contractor employees had warned of the danger of explosion and beseeched government officials to delay the launch. These employees were ignored and later told to keep quiet; some were threatened with retaliation. It was the special knowledge and expertise of these employees that brought the truth to the public, truth that held government officials accountable for their decisions and truth that might prevent similar disasters in the future.

The passage of Great Britain's *Public Interest Disclosure Act* of 1998 also resulted in part from the recognition of the unique ability of employees to understand the significance to the public of facts and information in their possession. According to Public Concern at Work, the advocacy group that supported the legislation, the legislation rested on the conclusion that public disasters over the preceding decade demonstrated that in every instance, employees had been aware of the danger and

either remained silent from fear or found their warnings unheeded.¹¹ The public's right to know may literally be a matter of life and death.

Like freedom of information provisions, whistleblower protection laws can be seen as a type of 'sunshine law', the name given to many open government laws based upon the comment of former US Supreme Court Justice Louis Brandeis that 'sunlight is said to be the best of disinfectants'.¹² Sunlight is not only cleansing but the possibility that the light of public knowledge may be shone upon misconduct deters such misconduct. Knowledge which leads to accountability discourages wrongdoing and therefore the possibility of disclosure changes the expectations and behaviour of those who hold the public trust.

Given these close connections between whistleblower protection and the public's right to know, it is not surprising that in enacting the whistleblower protections of the *Civil Service Reform Act* of 1978, Congress saw the law as vindicating the first amendment rights of free speech and association.¹³ In part, Congress conceived the law as a response to weaknesses and uncertainties in the first amendment protections then provided to public sector whistleblowers. Like the federal *Freedom of Information Act* over a decade before, whistleblower protection was conceived against the values protected by the first amendment.

Private sector protection

Whistleblower statutes often protect private sector employees.¹⁴ Although the justifications for these provisions are slightly different, they draw on the same values as the protection of public sector whistleblowers, values linked to the right of free expression and association. The human right of free expression in a democratic society encompasses all citizens. The importance of the disclosures of private sector whistleblowers to public debate regarding government policy argues for their protection as well. The rights of free expression and association allow citizens to alter conditions in society by changing the policies and practice of government. For example, issues about environmental policy, food safety, tobacco, and other regulatory and public health policies draw heavily upon information and insight provided by private sector employees. Indeed, revelations regarding the Challenger tragedy involved both public and private sector employees. In this sense, the extension of protection to them is a breach of the distinction between the public and private sectors underlying much of employment law in the United States.

In addition, it is not just public employees who hold information about government and about government officials. Private sector employees also know of government misconduct. Often employees of private sector companies are important sources of information about the corruption of public officials or fraud regarding public funds. The federal *False Claims Act*,¹⁵ after amendments in 1986, has encouraged disclosures by private and public employees recovering billions of dollars fraudulently obtained under government contracts. Often the disclosures of unsafe conditions created by private companies expose weakness and abuse in government regulation and the derelictions and misconduct of government officials. The close connection between these whistleblower protections and the public's right to know is demonstrated by the apt application to private sector employees of John Adam's words over two centuries ago

directed to knowledge about the activities of government. Protection of private sector whistleblowers helps to guarantee that citizens will possess that 'dreaded and envied' knowledge of 'the characters and conduct of their rulers'.

Whistleblower protection laws and FoI linked to open government, anti-corruption, and human rights movements

The many connections between whistleblower protection laws and freedom of information provisions help to explain why several movements that are international in scope view the enactment of whistleblowers laws as an important agenda for reform. The values that relate whistleblower laws to freedom of information and other 'sunshine laws' also link open government, anti-corruption, and human rights movements. In one sense, these movements are the agents for these common values, although expressed with different emphasis by advocates within each movement.

Advocates of open government laws stress that whistleblower provisions buttress the public's right to know about the activities of government and about the conduct of public officials. Access is viewed as the opposite of secrecy. Although arguments for access can rely upon protection of the rule of law, the encouragement of efficient government and the empowerment of political participation, access like secrecy can support many interests. For example, information held by the government can address the activities of private companies or other groups providing consumers with the information to make decisions in the private market. The variety of reasons for access tend to emphasise access as a value itself, often not expressly connected to the broader values, such as democratic accountability, which support access. In the United States the emphasis that advocates of open government laws have placed on understanding the operations of government has allowed the Supreme Court to identify access to this information as the principal of 'core purpose' of the law.¹⁶ Ironically, the core purpose doctrine has been used to limit the scope of the disclosure under the federal *Freedom of Information Act*. Likewise, the failure to connect access specifically to freedom of expression and freedom of association has permitted the Supreme Court to indulge in a 'balancing of interests' in a way that tends to give greater specificity and weight to the interests supporting withholding of information.¹⁷ Properly understood, however, the public's right to know serves as an abbreviation of the range of values supporting freedom of information laws.

The international anti-corruption movement draws heavily on the deterrent effect of open government or 'sunshine laws'. It is the importance of whistleblowers in exposing and deterring corruption that has made whistleblower laws an important part of international efforts to control governmental corruption. In this way, the statutes of several Australian states focus on whistleblower protection as anti-corruption measures.¹⁸ Likewise, the European Union's Civil Law Convention on Corruption contains a provision that protects whistleblowers who have 'reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities';¹⁹ the Criminal Law Convention on Corruption obligates member states to provide protections in their internal laws for whistleblowers, or as the Convention calls them, 'collaborators of justice'.²⁰ Specifically, such laws should 'provide effective and appropriate

protection' to 'those who report criminal offences' established in accordance with the Convention.²¹ The Inter-American Convention Against Corruption also specifically protects whistleblowers.²² Proposals being considered by the European Commission and by the World Bank also seek to reduce the risk of corruption in the application and administration of the programs of those bodies by protecting whistleblowers.

The importance of whistleblower protection in the efforts to control governmental corruption is also illustrated by the Legal Projects to Combat Corruption sponsored by the Organization of American States. Those projects include the development of a model whistleblower protection statute to implement the specific provisions of the Convention on Corruption. Increasingly, groups, such as Transparency International, committed to the control of corruption have become some of the most vocal supporters of whistleblower protection statutes.

One of the important links between freedom of information laws and whistleblower provisions rests on the ways in which both relate to the rights of free expression and free association. These rights are also an important part of human rights law. The protection of many fundamental human rights rests upon free expression and association. Access to information identifies violations of human rights, exposes those responsible for abuses and enables both domestic and international groups and organisations to respond to these violations. Although the international human rights of free expression and free association allow a variety of national responses to meet international norms, they remain central to any legal regime designed to protect human rights. Therefore, such a regime would appropriately contain not only freedom of information provisions but also protections for whistleblowers.

The Legal Projects to Combat Corruption of the Organization of American States (OAS) illustrate the many connections between the values underlying freedom of information laws and whistleblower provisions. The Legal Project on Protection of Whistleblowers and the model whistleblower law which it generated demonstrates why these international movements all address protection of whistleblowers. The OAS projects included development of model laws regarding protection of whistleblowers, freedom of information and ethics regulation, that is, public financial disclosure regarding certain public officials. The conjunction of these three projects shows how the values of these three bodies of law are closely interconnected. All three model laws address public access to information necessary to support the rights of free expression and association. Although each law assures access to this information in different ways, all three recognise that control of corruption and democratic accountability are closely linked. In this sense, the legal projects themselves demonstrate the relationship between open government provisions, like freedom of information and public financial disclosure laws, and whistleblower protection.

The Legal Project on Protection of Whistleblowers and the model law which it generated also show how the three international movements concerning open government, control of corruption and the protection of human rights all support the protection of whistleblowers. A conference held in Washington, DC in April 2001 to discuss the model law drew attendees from a variety of non-governmental organisations representing the causes of open government,

such as the National Security Archives, of the control of corruption, such as Transparency International and the Public Ethics Foundation of Argentina, and of the protection of human rights, such as Amnesty International and the Center for Justice and International Law.²³ It is no accident that organisations aligned with these international movements are all attracted to a model law protecting whistleblowers. Open government advocates saw the law as supporting and complimenting freedom of information laws and other open government provisions. Anti-corruption crusaders recognised whistleblowers as central to punishing and deterring corruption, and human rights advocates perceived the protection of whistleblowers as another way of recognising and preserving human rights.

Indeed, the model law contains provisions linked to the principal values of each of these movements. The model law seeks to implement the Inter-American Convention Against Corruption, a convention which specifically recognises the importance of whistleblowers to the anti-corruption effort. The model law, however, also protects whistleblowers who disclose a range of misconduct other than corruption and it suggests as one method of enforcement the use of government officials and ombudspersons committed more generally to open government. Finally, the model law expressly rests its provisions on the rights of free expression and association. It extends the protection of whistleblowers beyond the employment context to include all citizens who speak out to denounce corruption and other forms of misconduct. The model law is a statutory embodiment of the human right of free expression.

The model statute also recognises that whistleblower protection must operate with other reforms which act to assure democratic accountability. In fact, the members of the Legal Project on the Protection of Whistleblowers believed that the adoption of whistleblower protection without other reforms would be a futile and perhaps dangerous undertaking. Without an open and accountable government, whistleblower protections might simply encourage public minded citizens to identify themselves as targets of retribution; a whistleblower protection law could easily become the 'Good Citizens Elimination Act'.

Whistleblower provisions are closely linked to freedom of information laws. They share common values. They seek similar goals. Both are intertwined with the rights of free expression and association as human rights that form the foundations of democratic accountability. The enactment of freedom of information laws and whistleblower protections within the last decade illustrate their common connections and the attraction of values which they implement.

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- This Conference, 'Globalizing the Rule of Law Through Information Policy' was held at the American University's Washington College of Law on 20 April 2001.

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