PUBLIC

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON THE PRODUCTION OF DOCUMENTS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON TUESDAY 10 MARCH 2020.

Mr SAM ENGELE, EXECUTIVE GROUP MANAGER, POLICY AND CABINET, CHIEF MINISTER, TREASURY AND ECONOMIC DEVELOPMENT DIRECTORATE, AUSTRALIAN CAPITAL TERRITORY, WAS CALLED AND EXAMINED VIA TELECONFERENCE.

CHAIR (Ms Forrest) - This hearing is being recorded and it will be transcribed by Hansard. It will be put onto our website as part of our evidence and used in our report at a later time. We are also broadcasting the hearing

I invite you to tell us who you are and, knowing we contacted your parliament through your Clerk, Mr Duncan, to talk about the process around the release of Cabinet documents in the ACT Parliament. It was suggested you were the best person to provide further information regarding that.

Mr ENGELE - My name is Samuel Engele. As I mentioned, my role is currently Group Manager of what is called Policy and Cabinet, which is your typical central agency. We do all the briefings for Cabinet and also, within one of the branches, there is the Cabinet Office. I was previously the Cabinet notetaker, which is the head of that Cabinet Office, so I have been in and around Cabinet and its processes for some time now.

In the ACT we have Cabinet and we have a few Cabinet subcommittees, all of which are considered, for the purposes of Cabinet documents, to be of the Cabinet.

CHAIR - We have some information about it, but just for our records, if you could go through the process and describe how and when Cabinet documents are released and what restrictions there may be on the release of documents and what the process is when there is a decision not to release part or whole of a Cabinet document.

Mr ENGELE - We have two separate procedures. One relates to documents that are 10 years or older; that is probably the simplest one to start with. After 10 years, a listing of Cabinet documents is released for those that are 10 years old and people can put in a request to access those documents from us. We apply the standard FOI rules in ensuring that there is no impact on Commonwealth-state relations or there are no impacts on release of personal or private information; otherwise, those documents are generally released holistically.

For current documents, we brought in a new FOI act a few years ago. It's quite an open FOI arrangement which works this way: that after a Cabinet decision is made there is a requirement to release a summary of that decision. That's released on our open access website. I can provide the secretary of this committee with the details of that. Essentially, it's a summary of the decision. Also, some Cabinet decisions will include a triple bottom line assessment, which is an assessment of the impacts of the decision. That can be released as well.

There are some timing questions with the release of particular summaries of Cabinet decisions. That can be about where the government is going to make an announcement in relation to a particular decision, but generally they are done on a rolling monthly basis, publicly. They are a very high level summary of what Cabinet considered and any decisions made.

With the FOI act as it relates to Cabinet documents, we are in the process of testing with the Commonwealth Ombudsman our escalation points for any disputes about the exact nature as it relates to Cabinet documents. There is an emphasis not to release any deliberative material of Cabinet, but the Commonwealth Ombudsman, who we use for a lot of our reviews of decisions in the ACT, has been working through a rationale for what constitutes the delivery of material and has generally been of the view that factual points don't constitute deliberative material and therefore anything that has been factual within a Cabinet submission has generally been released upon review by them.

We have found that a lot of Cabinet submissions and other materials have been released upon review. We are working with them to refine [inaudible] parameters about what constitutes deliberative material, but generally it has been found to be material that can be shown to remove the confidence of Cabinet decisions themselves rather than the material that's provided to Cabinet on which to make those decisions.

CHAIR - To clarify, there have been varying views put to this committee over the course of our hearings about information that is provided by departments or by advisers or others leading into the Cabinet process, and often these are public servants putting together their packages of information to inform a decision the Cabinet will make. Are you saying that if they are factual, they would generally be released without redaction, pretty much?

Mr ENGELE - That's correct. Obviously we also ensure that once private personal details and the like and the things that impact Commonwealth-state relations would not be released. They are under a certain category, but in terms of just if it's a factual information status update of a particular issue, they have been released. That's correct. The Cabinet rules will capture all those materials, briefings and other advisories that went into a deliberative decision. The assessment is not whether the document itself was a Cabinet submission or an email or a brief, but whether the material will remove the veil of Cabinet in terms of the decision-making of ministers.

CHAIR - Clearly documents that may reveal a matter that went to a vote in Cabinet wouldn't be released that identified which members voted which way.

Mr ENGELE - Yes, that's right. I think the things that pertain to particular advice have also been found to be deliberative as well. That captured some of the briefings that would be provided to ministers in weighing up balancing factors. The factors themselves, whether it be the cost of taking a particular action or facts that relate to the issue at hand, have tended to be viewed as [if] they're just facts and therefore they have been released.

CHAIR - To clarify, if you have an issue or a paper that proposes or argues two different aspects of the same topic, so that Cabinet when it makes a decision is aware of what the positive impacts may be as well as what the negative impacts may be, putting two different potential arguments forward there, would that sort of information be excluded as deliberative?

Mr ENGELE - Yes, that would be captured as deliberative. A typical very common example will be if you undertake a certain action that it will come at a cost to government and whether that cost is warranted. That has been viewed as deliberative generally, because the release of information would be that ministers chose not to take an action because it was too expensive and that would reveal what their deliberations were. There could be certain parts of that Cabinet submission that were released as factual.

CHAIR - Like the actual costing itself would be factual? Like the building of this new school will cost $*x* million. That would be factual and released?

Mr ENGELE - Yes, in some cases it does vary based on its particular nature. Clearly any information that's just sent up for noting which by its nature is generally factual because it's not asking for a decision will be releasable. When things sent up for decision go to FOI, a series of people will try to assess whether by releasing that fact it reveals deliberation. It's not a hard and fast rule. As I said, we're still working with the Commonwealth Ombudsman's decisions to better understand what they constitute. In many cases the bureaucracy has made a particular decision and then the proponent of the FOI has sought to appeal that. That automatically goes to the Ombudsman for the next step for review. In some cases, they've made a decision around Cabinet that we may not agree with, but we have been working with them to better understand their rationale for that.

CHAIR - Never having been a member of Cabinet - I don't think anyone at this table has been - in your experience in the ACT, are the papers set out with matters for information, matters for decision or in some format like that? Is there a pretty clear delineation as to what is information and what is deliberative information, if you like, for making decisions?

Mr ENGELE - No, look they're not. They tend to have been wound together. I think also we have had instances where documents that were asked for FOI were released in relation to briefings for ministers for Estimates hearings, so budget Estimates or our annual report hearings. We had, in some sections, flagged as 'not for release' under FOI but regardless the Ombudsman has applied their own independent lens and having things tied all in a particular way has not changed the nature of the information there or the Ombudsman's decisions around that. We have found that just by labelling things 'not for public release' that doesn't change its nature or the decisions of the Ombudsman.

CHAIR - On this matter, this is one of the arguments used in Tasmania - we have the Right to Information Act, which is a similar piece of legislation. That appears to have been used by public servants when committees or members of parliament have requested documents from ministers in committees or even in the House but mostly in committees and the minister has applied the same test as the RTI officer does to a member of the public asking for the document.

Can you explain if it's the same or different in the ACT with regard to documents requested by members of the public as opposed to members of parliament through their parliamentary work?

Mr ENGELE - No, we have the same process. In fact, the process in the ACT will be normally for the leader of the opposition or any member of parliament will request under FOI and it's just treated as a typical FOI through our processing. It is actually not uncommon for the opposition to just request documents through FOI rather than through the Assembly itself. There's a reasonable volume across all portfolios of information requests coming from not only government members.

CHAIR - Okay.

Mr DEAN - Sam, are any documents coming out of Cabinet marked confidential or watermarked in any way?

Mr ENGELE - Yes. All our Cabinets documents have a dissemination-limiting marker - 'Sensitive Cabinet' - which can be on anything from emails through to the actual Cabinet documents

themselves. That doesn't in and of itself provide them any protection, but it is intended to be a flag so that when people are reviewing requests for information, they understand those documents should be checked. Our process before we release anything with a Sensitive Cabinet DLM on it is to just have our Cabinet Office confirm that the people reviewing the document understand the nature of the document itself. That's really more to stop the inadvertent release documents.

They're all marked. All our primary Cabinet documents are watermarked by three individual members of Cabinet.

Mr DEAN - Thanks for that, Sam. Where you have two ministers involved coming from the Cabinet and a minister then corresponding with another minister in relation to a matter that's been raised within the Cabinet, could that be considered in your environment as a Cabinet-in-Confidence document?

Mr ENGELE - Sure, in some cases Cabinet will make a decision to delegate the finer detail of a particular matter for resolution between the portfolio minister and the Chief Minister. It could be the final drafting of legislation where some minor tweaks need to be made. That will be resolved through an exchange of letters and those letters as well. Whilst they tend to be less likely to be requested for release because they're related to things that are about to be made public, we would say that they should have the Cabinet markings on them, but they may well be factual rather than deliberative in nature. If they include deliberations of ministers, they should be excluded from FOI release.

Mr DEAN - Thanks, Sam.

CHAIR - One point made to our committee, particularly by our Government and the head of DPAC, is that if public servants providing advice believe this advice may become public, even though it's factual, that would inhibit or limit their approach to providing that advice in a frank and fearless way. Do you have any comments on that? Since the introduction of the new approach in the ACT, do you think it's had an impact on public servants' approach to providing advice?

Mr ENGELE - I don't think it's had any impact. Some of the experience, I note, in New Zealand is also to release Cabinet documents quite soon after. In discussing the issue with some of their colleagues over there, their view is that it has improved the quality of advice because now it's up for review much sooner.

I don't know that it has had a material impact in the ACT at all. We still aim to provide the best advice possible to the Chief Minister as part of our Cabinet briefings and we don't take into consideration whether things are going to be released at some time in the future.

It's interesting with some of the Cabinet documents now being released under the 10-year rule, some ministers were ministers back 10 years ago as well so there are Cabinet documents coming up that they were authors of earlier in their careers. But I don't think it's really had a material impact at all.

Mr WILLIE - Are you able to manage this just through the Cabinet Office? Another thing that's come up in this committee is the resources involved and potentially external advice. Have you had to seek external advice in some situations or has it become particularly resource-intensive to manage the release of documents?

Mr ENGELE - The FOI Act more broadly has required additional resources to be applied to it across government. I know that in my directorate we have changed how we process documents. They used to be processed in the business area that held them, whereas now we have a centralised team of information release that does that - that's not just for Cabinet documents, it is for all FOI requests that apply to us.

It does require resources; having a pro-release requires to making sure you don't inadvertently release personal information or information that could damage private businesses where that's not warranted, and impacts on your relationship with other governments. It does require additional resources. It's been our experience in the ACT that we have had to reallocate some people in time.

I think you can set up your arrangements in a way that allows you to create an area of expertise. That's what we've found with our FOI or information released - that's their day-to-day job so they're not constantly trying to understand what is and isn't up for release.

We've also have had to work within government with our legal teams to best understand the nature of the act, but that's the result of the new legislation rather than it being an ongoing issue.

Mr WILLIE - There are some similarities with being a small jurisdiction. Has that been manageable over time? You haven't seen an increase in resources being used for the release of documents?

Mr ENGELE - I think it has settled down over time. We also have some very tight time frames as well. In the past, the FOI legislation gave an ability to hit pause on the clock, whereas there's very limited ability to do that in the ACT. We really are having to ensure we're doing the searches efficiently and processing them quickly. I think there's been a period of settling in and I think they're probably in a pretty stable situation now.

Ms WEBB - In the two years since you've had the arrangement to release Cabinet documents as a matter of course, have there been any particular criticisms or issues raised about that system as you've had it play out?

Mr ENGELE - The benefit of having the review of external agencies of government has helped us. The Commonwealth Ombudsman has been a good system for us because they bring an air of independence to it. There's no question about their decisions and their application of the act.

I think that has been quite useful. The release of 10-year-old Cabinet documents can be quite a time-consuming process. What normally happens is, people - particularly the media - will request 70 or 80 Cabinet documents and we try to work with them as best we can to get them out in batches to them so they are not waiting for us to process all of those at once. Depending on the time frames for the 10-year-old Cabinet documents, where people will want things immediately, unfortunately, it will take us some time to process them.

That's probably the key complaint we've had, but over time we've refined that process. I'm pretty confident. We've just released the latest list and so we will have another batch of requests coming from the private sector and the media, I'm sure. I'm pretty confident we will be in a better place for March in processing them quickly.

CHAIR - To cover questions to follow up, you said you are working with the Commonwealth Ombudsman in regard to the definition of deliberative material of Cabinet. When do you actually expect that to be finalised?

Mr ENGELE - They're making decisions on requests and we are reviewing their rationale for the decisions, and better incorporating that into our own processes, rather than us. We are not actively sitting down and asking how do you define this or that, because I think where they are at is that they need to look at everything, every matter, on its own merits, and we are happy to do that.

We just want to understand when they're making decisions what are they doing, so we can incorporate that into our own decision-making. We want to avoid having a situation where we're making decisions that are then reviewed and released. We want to best understand how to apply those criteria and then apply them in as consistent a manner as possible. The fringe cases would be the ones up for review rather than requiring everything to go up for review.

We are just reading the review decisions, understanding what they mean for us and changing our internal processes.

CHAIR - I went to your website and looked at the March release. There are a lot of documents there. Most of them were released; there were some that weren't. When a document is not released, there is a document with reasons for that.

Can you talk us through the process of how that decision is made not to release, who makes that decision, and what documentation is provided in that circumstance?

Mr ENGELE - We have a set of templates as part of our Cabinet submission documentation which asks directorates to lay out what documents should be released and who will release them.

Sometimes we will release them on our central website, and other times they will be released by the directorates themselves. For example, for a new planning strategy, we would allow the directorate to release that, whether it be through public consultation or whatnot.

We try to have an orderly understanding about who is going to release what information and by what channel. There is a section which makes recommendations as to which documents shouldn't be released; also, there are the decision summaries.

That's an opportunity for the minister who is making the submission to flag that. The ultimate decision-maker under the act is the Chief Minister. They make a decision, and it's normally a sort of weighing up. There are a couple of things. One, they could just choose to defer it for a period of time. It could be that it's just a matter of aligning the timing, which is actually the most common reason. But then, there could also be reasons not to release, and that's weighing up the public interest of releasing and not releasing information on that decision.

We will go back after six months and have a look at whether the situation has changed in relation to those decisions.

CHAIR - With all those decisions?

Mr ENGELE - Yes. We go back and do a review if things have changed. An original one that came up for us was the budget, in that we were working through whether we should release

interim decisions on each budget item that was considered. We've now got to a point where we just make a single decision to release the budget. We don't release a sort of decision summary that says, 'Budget - Cabinet decided not to fund a new initiative.' We just release one budget that has all the Government's decisions on what to fund.

CHAIR - Okay. It's the reality that a lot of Cabinet decisions are released in those sorts of documents anyway; for example, where the budget is going to be considered by parliament.

If there is a decision not to release - it may be a timing issue as you described or another in the public interest. I'm reading one of the reasons for withholding access. It states -

> **Public Access decision**
>
> Having applied the test outlined in section 17 of the FOI Act, I have decided to fully exempt from release … the triple bottom line summary … as the factors favouring non-disclosure outweigh the factors favouring disclosure.

This is signed by the Chief Minister. You would go back in six months and review that.

Mr ENGELE - Yes.

CHAIR - Of these decisions made to withhold access, how many are challenged? What's the process for challenging them?

Mr ENGELE - There is no process for challenging those, but the process to challenge them would be to put in an FOI request for the documentation and the decision itself. It's all handled through the FOI process. I can't recall one of those decision summaries being questioned. It's always been the Legislative Assembly, the media or a private individual that will request the Cabinet document itself. Most people are more interested in the full detailed Cabinet submission rather than the summary documents.

CHAIR - If a member of parliament were asking for a document that's being withheld, say, in a committee inquiry into a particular matter on which Cabinet decisions had been made, what's the process for a parliamentary committee to access these documents? In Tasmania, we believe that Tasmania's parliament and parliamentarians have greater powers for access to documents than members of the public, for example. In that sort of circumstance, would there be a different approach?

Mr ENGELE - I have seen that you have spoken to Mr Duncan in relation to the orders to produce documents, so that has been one. I'm not as well versed in those processes as in the Cabinet process. I know there could be calls in committees to release documents, but, as I understand it, they're less formalised and don't generate the same requirements unless there's a motion in the Assembly to produce those documents. There have been instances where I've seen committees publicly request documents and then they have been provided by the government or a decision is made not to provide the document. They haven't been formalised processes that have consequences, as far as I understand, to the Standing Orders.

CHAIR - You're not really involved in that; that's more at a ministerial level - is that what you're saying?

Mr ENGELE - No, that's more in terms of the Legislative Assembly procedure, which is more the remit of Tom Duncan, the Clerk of the Assembly.

CHAIR - That's fine. You're not engaged in that process at all; that's something for the parliament and the Clerks to deal with?

Mr ENGELE - That's correct, yes.

Mr DEAN - Sam, I apologise if you have already been asked this question but is the release of documents an issue for your parliament?

Mr ENGELE - No, I think in supporting the FOI Act, the government has made a commitment to try to be the most open, pro-information release government. Generally, I don't think I've seen any issues.

There have been instances where the government has claimed privilege over documents but I think, as a general rule, that the legislation is in place and the government leaves it to the bureaucracy to process documents. Really the only requirement on us is to make sure that once a document request has been released, we provide a briefing to the relevant minister if it is something that is a sensitive matter. But that happens after the release of the documents, and it is really just to inform them that they may now be getting a question in relation to an issue related to that document so that they are prepared to answer those questions.

Mr DEAN - My next question follows from there. How many applications might you have had in 2019 for the release of documents from Cabinet discussions?

Mr ENGELE - I have to take that question on notice and come back to you because normally the FOI requests themselves are not specific to Cabinet documents. What will happen is we will receive a request for all documents related to a particular issue whether they are internal emails, Cabinet documents, and any other documents. That will be a broad net that will capture the Cabinet documents; they will then be processed like any other document, but with a flag that they are Cabinet documents - that their status is Cabinet.

Mr DEAN - Perhaps you might also need to take on notice: How many of those may have been refused? If they had been refused, what action was taken to follow up?

Mr ENGELE - I can take that on notice.

CHAIR - The reports you release - the ones that are not protected documents: can you just click on a link and open those documents and read them? Or do you need to request them formally through the office?

Mr ENGELE - These are the 10-year-old Cabinet documents or the current documents?

CHAIR - The current documents.

Mr ENGELE - An FOI request will be submitted by a member of the public. Then the process is that we will process them. As part of that, a decision will be made as to whether to publish those documents on our website, which is not the Cabinet website; it is the broader FOI website. Sometimes there will be documents released under FOI that may be sensitive, even though there is

a decision has been made to release the documents. The opposition might request not to release them publicly, or to redact them, because they might include sensitive details of individuals, for example.

In those circumstances the FOI team would not put those documents on the website. If you go to the FOI website, you will see a whole range of documents. It will have the full set of documents, which will include Cabinet and non-Cabinet documents, if they are available for release, and whether they will have redactions applied to them. They will be available on the website. It is not linked to our Cabinet decisions listings; they will just be the Cabinet decision and the triple bottom line assessment if applied.

CHAIR - If I wanted to put a request in for a particular Cabinet decision, I would make the application. If it were not a protected document, would it then be published on the RTI site rather the Cabinet site? That is where people would access it?

Mr ENGELE - That's right. We can send them the documents by email or print to other people. I guess the idea is that once they have already been released, it is best to have those documents available for other people who may be interested in them.

CHAIR - It is only the ones requested that end up being published on the RTI website?

Mr ENGELE - That is correct, yes. As a matter of course, we only publish the decision summaries and the triple bottom lines. That is applied to all decisions unless there is a conscious decision not to release. More detailed documentation goes through the FOI framework, and is published on the FOI website.

CHAIR - Under the new arrangement, you can imagine Cabinet is doing a bit work, and there are a lot of submissions and other documents that go through. Over the last four years, when you look at each report that comes out, has this increased the workload, because now it is like a document that anyone could go to and say, 'Ah, that's interesting. I didn't know they were looking at that, and so perhaps I'll ask for this, and ask for that'.

Since it has been introduced, has it increased the workload significantly, or not?

Mr ENGELE - There has definitely been an increase in work just in preparing those documents for release, and also in preparing those decisions. As you can imagine, you want to provide something that is clear to people, so you have to make sure they are well-worded and reflect the general decision.

I couldn't really say whether that has then generated additional FOI requests because it all happened at the same time as the new FOI Act, so it's hard to untangle what is coming out as part of the new act and its change in our processes.

CHAIR - I just want to clarify a question you answered earlier. You made a comment that this process has actually improved the quality of advice and the willingness of public servants to provide frank and fearless advice. Is that because within a relatively short space of time, their advice is likely to be made available - whether it is actually published or not? Is that your perception of what is going on? I am interested because we have heard so many comments that if people thought their advice were going to be made public, they would completely change their approach.

Mr ENGELE - My comment in relation to it improving was what New Zealand had expressed to me. I don't think in the Australian Capital Territory it has had a material impact one way or the other. Interestingly, the people processing the FOIs are now a totally separate team to the people creating the documents, so there is probably a little bit of a disconnect between people who are writing them, who probably don't see the change because they are not involved in making the decisions for release.

I have heard both arguments. I don't think in the Australian Capital Territory it has resulted in a particular change one way or the other.

CHAIR - From your communications within your workspace, you haven't heard these genuinely raised concerns that will we have to rethink how we do this?

Mr ENGELE - No, the key thing for us is that we are probably a bit more conscious in terms of writing something in a way that holistically explains an issue, so that if a document is released, it is clear what the issue was. Sometimes in the past you might have written things without putting in a lot of the background material, whereas now there is probably an effort to make sure that each document stands on its own in relation to clearly articulating all the factual issues.

In terms of changing the advice itself, I haven't seen anything like that in the Australian Capital Territory, but we definitely have changed the advice that we provide as part of our Cabinet briefings.

CHAIR - It sounds like clarity is considered to be important, so that if it isn't only the minister who picks it up at a later time, but a member of the public, no-one is making an assumption about background knowledge. Wouldn't that indicate that there is perhaps a more thorough approach to providing advice?

Mr ENGELE - That's right. Rather than changing a particular position or briefing in a particular way, it is probably more to do with how things are documented, and making sure that they are more thorough in terms of the background information.

CHAIR - Thank you.

Mr DEAN - Mr Engele, in relation to committees, does the position change at all where a committee is requiring information, and Cabinet has some issues in relation to it?

Mr ENGELE - No, it's all the same. It's the same process, whether you're the leader of the opposition through to *The Canberra Times* through to a member of the public. We apply the same processes.

The only difference is whether the Assembly votes to release a document, and that is the sort of issue Mr Duncan can provide more information on. In terms of the FOI Act, it is entirely agnostic as to the applicant.

Mr DEAN - Just so I'm clear, if a committee - say, a public accounts committee - required a document, it would need to go through the same process as anybody else, and go through Freedom of Information, is that it?

Mr ENGELE - Normally what would happen is they would request the document. The government may choose privilege over that, or propose not to give them the document, and then they would make an FOI application. That would then get processed the same as others.

I think it's probably worthwhile confirming with Mr Duncan the processes around the Legislative Assembly, but if a motion is made to the production of a document, that is the process, which I know that you spoke to Mr Duncan about last year, which triggered that particular process.

Mr DEAN - As a last resort, does the committee have the option of summonsing a document, or summonsing a person to produce that document?

Mr ENGELE - It's outside my area of expertise. Mr Duncan can provide you more advice on that.

Ms WEBB - When the FOI Act came through in 2018, did it have bipartisan or tripartisan support, or was it a contested piece of legislation as it came through?

Mr ENGELE - It was tripartisan. A range of amendments were put forward by different parties, and I know some amendments by the Greens and the Liberals were put through. I'd have to go back to look at the original debate, but it was agreed by all parties.

Ms WEBB - Broadly, the concept was supported across the board.

Mr ENGELE - Yes, that's right. The concept was supported.

CHAIR - Thank you very much Mr Engele for your time today. It's slightly broad of our term of reference, but it's a matter that has been raised quite often, about the impact of public servants providing advice if they believe it may become public. It does feed into that notion of the right of parliamentary committees and other members of parliament to access documents relating to government decisions.

We appreciate the background you've been able to give us on the way that your FOI Act works there. Also, Mr Duncan has helped us with the other Standing Orders process they have in the parliament, which has been really helpful, so thank you.

Did you want to make any closing comments? Something we may not have covered?

Mr ENGELE - The only other thing I would mention for completeness is the role of our Auditor-General and our newly created McCutcheon [TBC] Commission. They have broad powers to access any documents and Cabinet documents, and regularly do.

The Auditor-General may publish any Cabinet documents or extracts from Cabinet documents, but there is a process whereby the Auditor-General will consult with the government and give the government an opportunity to provide comment on the release of those.

That is an additional process, I guess, in terms of the public assurances around government decision-making and, on occasions, the Auditor-General has chosen to provide summaries of what went on in Cabinet, and that can include some of the deliberations of government.

CHAIR - So there is the Auditor-General in that jurisdiction. Thank you very much. I appreciate your time and the committee does. Thank for appearing this morning for us.

Mr ENGELE - No problem, best of luck with your inquiry.

THE WITNESS WITHDREW.

HONORARY ASSOCIATE PROFESSOR RICK SNELL, FACULTY OF LAW, UTAS, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Welcome, Rick. This is a public hearing for the production of documents committee, a select committee established last year. We are taking public evidence today and the evidence is being recorded by Hansard and will form part of our report at a later time. We appreciate that you did not provide a submission but with your expertise in this area, particularly right to information, which is slightly different to a request for documents from the parliament, which we would also like you to comment on if you are able to. If you think there is anything of a confidential nature you need to provide to the committee, you can make that request and we will consider that request. Otherwise, it is all public. We are also being broadcast today.

It would be appreciated if you could start with a summary of yourself and your background and the knowledge you bring to this committee. I know you are aware of our terms of reference but we would appreciate your comments in relation to some of the other aspects that have been raised during the committee. I assume you have had a chance to read some of the contributions thus far?

Prof. SNELL - In terms of background, I am an adjunct associate professor at the Law School, University of Tasmania. I have been retired from the university since June 2018. Prior to that, I was the key administrative law/public law lecturer for 28 years at the university. I have been involved with freedom of information and transparency since the early 1980s when I was an FOI officer in the Health department at the federal level.

I have written a number of articles on freedom of information and transparency. I am currently a member of the international expert panel for the Open Government Partnership which has 78 countries, including Australia, as members of that organisation. I was up at 2 a.m. doing a teleconference in Washington DC in that role. I have consulted widely in terms of consultancies to various countries - including Cambodia, Tonga and others - and at parliamentary committees and numerous conferences et cetera around the world. It is my major area of expertise and continues to be so. I am still carrying out research at the moment on right to information in Tasmania.

I have read all the submissions and transcripts so I am fairly on top of what you have been covering. I didn't provide a submission so basically I am ready to answer questions from you in particular and to develop that expertise in those particular points.

CHAIR - I'm fairly impressed that you've read all the submissions and the transcripts. That does help a lot. In terms of some of the arguments put in committee processes prior to this committee, such as the Public Accounts Committee and the Health Subcommittee of Government Administration Committee A, particularly in recent times a stalemate has been reached where a document has been requested and the minister has refused to provide it. They have applied the same approach that the RTI officer has applied to that request for public release of the document through the right to information request.

Can you explain to the committee what you believe are the differences there? Are they different? Should they be different? If they are not, do we need changes to make it different?

Prof. SNELL - Big question. The key thing I think I'd make is there should be no difference. Just like your previous witness in terms of the operation of a good RTI act and the operation of a good government documents information system, they should effectively run jointly together. In fact, given the submissions you've received from various parties, especially Dr Edwards' submission as a former secretary of the Department of Premier and Cabinet, Richard Herr's submission in terms of the kind of general concepts of parliamentary supremacy, and Professor Appleby and Dr Gogarty - especially their responses in their transcripts about the approaches you should adopt - I think it's quite clear that parliament and the Legislative Council and its committees should effectively have complete right of access to that information. This should be subject to a number of small, necessary exemptions decided on a case-by-case basis and have a limitation on the degree of sensitivity and confidentiality associated to them.

I have advocated for the last 30-odd years that information has a life sensitivity or half-life to it. Some information will remain confidential for very long periods of time, and needs to be. Other information almost becomes irrelevant as soon as the decision is reached. You may need confidentiality up to a point of the Cabinet decision, as an example, but almost immediately thereafter it becomes public, it is well known and in fact enhances the whole decision-making process to become publicly available.

My position is that as a matter of first principle, all information and documents ought to be available to select committees of the parliament for access.

CHAIR - Just on that, one of the biggest challenges, I guess, is the claim that documents are Cabinet-in-confidence and we get to the whole definition of what that is. Leigh Sealy, a former solicitor-general, makes the point that most decisions are released, often with great fanfare. We're trying to nail down what is a sensitive Cabinet document. Naturally the deliberations of Cabinet could be because it could expose divisions within Cabinet or whatever, but the decision itself, once it's made, without the deliberative process around that and the documents that lead to it, can you comment on what you think the status of those documents should be?

Prof. SNELL - That's in many ways a big area and I could spend days talking about it. I will try to make it as succinct as possible. I think the approach you've outlined is the approach that has been adopted in Tasmania. It is a retrograde, static, outdated, outmoded approach to the handling of information by governments of any degree of sensitivity. Effectively, it's a blackhole in terms of the way the RTI operates, but also government information systems themselves.

It takes what I have written about in some articles as a categorical approach to determining information sensitivity. It effectively says, 'Does this belong to a certain category?' If it does, then it should remain confidential or secret. You will see that in the submission from the Government. You will see that even in Leigh Sealy's submission, and certainly in Mr Egan's submission, you will see that type of approach.

As long as it can be given the definition, 'Cabinet document' of some description, it ought to remain confidential by a general principle perspective - i.e. Cabinet documents ought to be treated confidentially because they are part of that ministerial collective responsibility approach. Therefore, as soon as you can label it 'Cabinet', it ought to have a degree of confidentiality to it, regardless of what it may be. It could be bus timetables that have got themselves into a Cabinet document and by definition ought to have a superior degree of protection.

I've advocated - and clearly the ACT has adopted and New Zealand has followed for 20-odd years - the idea that it should be about consequences. What is the consequence of releasing that particular information at that time? If there is a negative consequence or an adverse consequence, you probably should not release the information regardless of how you describe it, whether it is Cabinet information, personal affairs information, internal working documents. If there is a degree of sensitivity about it and the consequences of releasing it are going to be adverse and it's an unacceptable risk or impact, it should not be released.

Currently, it's quite clear in the government's submission - and it's almost the same submission but has less detail than they put in the 1994 submission when they were proposing changes for the Freedom of Information Act about justifying the need and degree of secrecy attached to Cabinet documents - that the whole Westminster system would collapse if there is any access to that Cabinet information. Clearly, from my understanding, minutes are not taken of Cabinet discussions in Tasmania about who said what at what particular stage, so that degree of sensitivity that you are really trying to protect through this Cabinet-in-confidence process doesn't really exist. There is no record or information apart from verbal recounting by the participants in that meeting, who often verbally recount later down the track to various people.

CHAIR - Or write a book.

Prof. SNELL - Or write a book or whatever else. To my mind, this furphy about Cabinet confidentiality and the necessity for our Westminster system to hang off it and that everything else should be redesigned around it is completely off the charts in terms of its actual applicability. When you look at something like New Zealand, where now there is an order out that effectively all Cabinet documents have to be released within 30 working days unless there is a good reason not to, to me that's the most sensible approach you can have to that kind of government information-handling process. It ensures that the advice that goes before Cabinet is tested, it's going to be able to withstand external scrutiny and will win approval from stakeholders who have been involved in that particular process.

When you look at the Tasmanian Cabinet Handbook and the requirements for documents going before the Cabinet process, you almost ask yourself, 'Why does any of this need to be kept confidential?' as a generalisation because there is supposed to be rigour, there is supposed to be evidence, they are supposed to be to the point et cetera. I just don't accept the necessity for that almost blanket approach to Cabinet confidentiality. I think it should be done on the merits, on a case-by-case basis.

CHAIR - In terms of the argument that has been put, and I'm sure you have read it in numerous exchanges with the committee, that having such proactive release of Cabinet information will stymie frank and fearless advice - which you've alluded to in that previous comment that it's a nonsense - do you want to elaborate on that point further?

Prof. SNELL - I'm very happy to. As part of that, I have written a couple of articles [inaudible] about frankness and candour where I dismissed almost absolutely this idea about frankness and candour. But I think from the testimony you have already received from Mr Mason, as an example, giving his experience he said that in his view, he has never come across a public servant worth their name who would not give frank and candid advice in that process. I was just doing some research on the internet yesterday in preparation for this and I came across two articles. One was an article in *The Mandarin* from the then secretary of the public service in Victoria, who was effectively

saying this is what frank and candid advice is. I can't put my hands straight onto it but I'm happy to table it for the committee.

CHAIR - That would be great, thanks.

Prof. SNELL - Basically what he went through and said was advice from a public servant ought to be objective, it ought to be impartial, it ought to be able to withstand scrutiny, it ought to speak truth to power. This is what frank and candid advice is.

In my opinion, that type of frank and candid advice welcomes transparency rather than runs away from transparency. It's the public servants and the advisers who are not prepared to have their words out in the public and subject to scrutiny and subject to justification who will argue that their frankness and candour would be diminished by having it available in that process. It has been written in the New Zealand context by a former secretary of the Department of Cabinet that in their view, advice over periods of time has substantially improved as a result of the Official Information Act of New Zealand because people knew they were writing or advising for future scrutiny and they would need to stand by those comments 10 or 15 years down the track; they provided the best advice they could in the circumstances - or they were only asked to provide limited advice and not full advice; and they made note of the fact that they were advising on a particular area as required, but other information could be made available.

In those particular terms, this is what the public service is all about and generally will be the kind of norm of behaviour. I think the argument about people running away and effectively becoming 'yes' people, in response to the fact that there could be some transparency down the way is effectively not justifiable.

Mr WILLIE - On that, the head of DPAC, the head of the public service, spoke at length about some of those issues. What did you make of that submission?

Prof. SNELL - The former head of DPAC?

Mr WILLIE - No, the current one.

Prof. SNELL - Most heads of DPAC always make those types of submissions. Yet, if you look at Rhys Edwards, a former head of DPAC, he was effectively saying no, that's not the type of public service you want to have at that particular time.

I'd almost guess there is a kind of logbook back in the Cabinet Office for every secretary of DPAC to wheel out and say, 'These are the arguments and justifications to use for not releasing the information'.

I can't accept, as a former university bureaucrat myself, sitting on a government committee, the University Council or on the Vice-Chancellor's Executive in an acting capacity, that my advice would be any different if I knew it was going to be televised live at that time.

I think it really depends on the type and quality of the public service you have. If you don't expose them to that degree of scrutiny, they may well be timid. The Tasmanian public servants I encounter in normal, everyday life are not timid, are not shy, are not tailoring their advice to fit what they think people want to hear at that particular time.

I would be surprised that in their public capacity and in their official capacity, they become such retiring individuals and subject to being frightened about what people will respond to their advice.

Mr DEAN - My question is along a similar line, and I have written it down here, 'frank and fearless advice'. I hear what you say about public servants, but that is not the way they see it.

There are a number of senior public servants - it seems to be a cultural issue, and it's probably something where the governments, over time, have brought pressure to bear on those people. Would you see that as a possible scenario?

Prof. SNELL - Whether it's government or non-government, most organisations have taken an approach for towing the line. Whether it's universities, whether it's corporations, whether it's government departments et cetera, increasingly the area of dissent or the area of conveying opposition to a proposal from higher up is frowned upon. It's seen as being unhelpful; it's seen as being disruptive in that process. The organisations over time have effectively shaped themselves to remove individuals and others from the organisations who tend to lay their cards on the table and say, 'Interesting idea, but here are some negative aspects to that particular process'.

I think in Tasmania in particular there has been a reticence, especially at the senior levels of the public service, but it's the same at the Commonwealth level, to things like the right to information, on the basis that the release of information can be uncomfortable.

To effectively be told you didn't have the evidence to go along with proposal *x*, or there was someone else in the organisation who, way down the track, said, 'Look, we've done this before', when we put a hospital in this particular area, these are some of the considerations that would come into account, and then, lo and behold, five years later, the exact scenario that was set out comes up at that time, that's an uncomfortable position to be in.

It is much better in today's age of the 24/7 news cycle, spin doctors and so on - always to be seen backing the winning side, always seen to be right without questioning that process. Frank and fearless advice is an uncomfortable aspect of modern management.

CHAIR - I think 24-hour scrutiny has probably increased that. Do you think it has played a part? It is not going to change though.

Prof. SNELL - I think it can change. New Zealand is an example.

CHAIR - I mean the media scrutiny is not going to change.

Prof. SNELL - That scrutiny is not going to change. I think the way you change it is by releasing relevant, high-quality, timely information. That minimises the ability of the media to run off on a tangent.

CHAIR - Or the opposition.

Prof. SNELL - Or the opposition or whoever else it may be. They have to deal with the facts.

An interesting study was done a number of years ago by Johan Viberg, who had been a journalist in Sweden and came to Australia and was a journalist with ABC. He then did his thesis

on the way newsrooms effectively reacted to government information in that process. What he discovered was that in Sweden, which has had a much better RTI-type of access regime, any journalist worth their salt went to the official records first, because they knew they would get access to information. They knew if they didn't go to the official records and information first to source their material, they would be criticised. Effectively they relied on that as their beginning point of view rather than gossip and innuendo.

Johan came up with the conclusion that in Australian newsrooms, 95 per cent of journalists went to the gossip first because they couldn't get hold of the official information. They relied on leaks and their sources et cetera to start. They might get hold of information later down the track but they started in that kind of 'mates' area. That was really the only way they were able to get information - unsourced, unnamed, confidential et cetera, with an inability to test it, an inability to scrutinise at that time and having to take it at face value.

You change the culture of the way you operate by the level of transparency. I am not speaking here as a member of the International Expert Panel for Open Government Partnership, but that is what the open government partnership is all about - increasing the level of transparency to build that degree of trust and also increase the degree of professionalism of public servants, members of parliament and others in their ability to carry out their duties.

CHAIR - Would you be able to provide a copy of that paper?

Prof. SNELL - Yes.

CHAIR - You have alluded to legitimate reasons for non-release of information. Could you go through what the legitimate reasons would be, in your view?

Prof. SNELL - I think the RTI Act sets them out quite nicely. The government submission sets out some of the types of arguments. There are always arguments for confidentiality. I am not a great advocate that 100 per cent of all information should be readily available, but I think the onus should be on those seeking not to release the information to demonstrate what the harm is, and to limit the amount of information being sought to maintain confidentially. Cabinet-in-confidence counts if you can point to what the harm would be in releasing that information at that particular time.

CHAIR - Is embarrassment harm?

Prof. SNELL - No, embarrassment is not. Embarrassment was deliberately taken out of the RTI Act as a mechanism in 2009.

Mr DEAN - Does making statements that are not correct fit into that category?

Prof. SNELL - In terms of?

Mr DEAN - A reason not to release of information.

Prof. SNELL - No. The fact that a journalist, an advocate or a politician might incorrectly use the information is not a reason not to release that information. You can correct the record. The government, the ombudsman or whoever else it may be can correct the record. The person who has

misused the information is shown up as having misused it. Releasing information because it could confuse the public is not, in my view, an adequate enough justification to withhold it from release.

If you know there is a potential for information to be confusing to some members of public or to a particular area of the state, when you are making decision in that area then there is an obligation on you as the government or as the information holder to release information with context - to say, 'Yes, we are going to close this particular area, but this is the reason. These are reports that we've received' et cetera. You would put the information in context.

Mr DEAN - A good example of this case was one of the reasons this committee was set up. I don't know whether you followed the Public Accounts Committee where a document was requested from ministers in relation to the closure of the combined power station at George Town.

CHAIR - Post-sale.

Mr DEAN - Yes. There were a number of issues around it and a refusal to release the document. We summonsed the document and we still couldn't get the document.

CHAIR - We got a document, but it was redacted.

Mr DEAN - We got a document but the critical part was redacted.

Mr WILLIE - And they relied on freedom of information.

Mr DEAN - Yes, they relied on that. I don't whether you're able to comment on that.

Prof. SNELL - For me, that was one of the examples about how frustrating this whole process may be - any excuse, including the kitchen sink, not to release information. That is why I'd be a strong supporter of what's been proposed to you for, say, an independent arbitrator to be involved in the process. It's the same type of role, but the ombudsman plays the RTI process.

I think in all these processes, there are legitimate claims for secrecy or confidentiality, whether they be short term, medium term or long term. You need a body or an organisation or an individual that effectively can give their imprimatur to that claim. I think a claim being made by one side, such as the Department of the Premier and Cabinet, and a committee on the other side is a frustrating experience, especially when you can't know what information one side holds compared to the other.

Having someone independently say, 'In my view, this is Cabinet-in-confidence and it ought to be confidential because the release of information could have serious consequences', allows those claims to be validated. In a sensible system, both sides would accept, if you like, the umpire's decision in that process.

I'd say two things about the New South Wales' approach with the independent arbitrator. One, I don't think it necessarily needs to be a legally trained person. In most cases, I think it would be much better to have someone with previous public service or bureaucratic experience or, if you change the legislation, having someone like the ombudsman fill that role, because they've had to do that under the RTI Act. They have that kind of experience required.

Two, from New South Wales' experience, it would be to have the independent arbitrator rule on the determination at the start of the process. So, when the first claims are made for withholding

information, that's when the independent arbitrator is involved in the process. That has the ability to circumvent and short circuit a lot of the stand-off between the parties. In the New South Wales' approach, every single member of the Legislative Council has the potential to look at it. You have to worry about confidentiality and all that before you make a determination. It would be much better to move that independent arbitrator to the front end of the system.

CHAIR - We have looked at three different options. I think you are referring to the ACT as the recommended model - a document is requested, there's a dispute and it's immediately provided to the Clerk and then referred to the arbitrator.

It's interesting that New South Wales has had a lot of documents provided and not one leak. Victoria has the other model, where it's provided to the member who requested it and it's all on trust from there.

From what you've said, your preference would be similar to the ACT model?

Prof. SNELL - Professor Appleby talked about culture. I think that's an important consideration. Clearly, we are in a culture in this particular jurisdiction that doesn't lend itself to that great degree of openness, which I'm advocating in that process. Small steps. This would be one of those steps to say to the government, 'We're not releasing it to everybody in the Legislative Council to look at; we are effectively testing your claims against an independent arbitrator.'. It is just my guess, but I think you would have more buy-in from the bureaucracy of today and the government on that particular process than some of the alternative steps, which is what you have outlined in New South Wales and Victoria.

Ms WEBB - Stepping back from that a little bit, more generally to that idea of culture, given your expertise and scholarship in this area, I'm interested to hear your comments around a pathway we would typically see for a jurisdiction to move from that system based on category to a system based on consequence, and what we might see as the characteristics or precursors that might indicate a pathway is open to make that move.

Prof. SNELL - It has probably been my biggest failure as an academic that I haven't been able to provide and show what is needed to do it. I have advocated tirelessly, since being a FOI officer, and when I was a beginning academic back in 1990 with the FOI Act. I think culture is the key. What intrigues me is the inability to trigger what is necessary to make that cultural change, especially in Tasmania, and Australia in general. Taking a comparative approach, I hold the view that the Australian approach to government information is retrospective, retrograde and hopeless in terms of the way it treats it.

With the passage of an RTI act or FOI act in any jurisdiction, it really should be a question of almost flicking a switch - a complete change in ideology and approach that takes place. That switch happened in New Zealand. It happens in many other jurisdictions, such as Norway and so on. In Australia, and Tasmania in particular, it has never taken hold. Even people I have taught in my admin. law classes - whether you are Lara Giddings, or Will Hodgman - haven't realised what is necessary with that switch. They talk the talk, but have never really advocated the actual real intent of that legislation. If you read the object sections of the old FOI Act, you would have said we would have been here by now. We would have had 20 to 30 years of actual practical experience of transforming the culture of government decision-making with a high degree of openness.

With the RTI Act as it was redesigned in 2009, the whole intent and purpose of that redesign was to flick the switch. For a very brief time, you had the possibility for it. Since that time, no. I have spoken quite publicly about some of the reasons for backing that particular process. The FOI Act, or the RTI Act, and that general question about open government is, I think, a public good that just doesn't seem to be wanted in this jurisdiction from the powers that be. It is seen as disruptive, as ineffective, as time wasting. You only have to go back and look at Mr Egan's comments when he was delivering his in-person thing - 'What a waste of time, truckloads of documents, it's just a waste of space' et cetera. I have heard Tasmanian public servants at senior levels talk about the whole transparency RTI aspect in that process - that it is a lot of effort for only a very few dilettantes like myself who are interested in this type of thing so why should we go to all that time and effort to go through that process?

If you can achieve that cultural change, that would be fantastic. I think this committee has the prospects of doing so, if you go back to those basic principles and say that, almost as a right, parliament has the right to access all information - making a decision that there may be times where a degree of confidentiality is required. That kind of thing sets the tone for the rest that takes place.

I think you also have to be assertive about it. Professor Appleby talked about that. You need to stand your ground and assert the right to access that information, and put the pressure on the government and the departments to come up with a better way of doing things - a much more collaborative, much more productive way of making that information available.

Ms WEBB - There seems to be the easy way and the hard way to make progress in this space. In some jurisdictions - such as the Australian Capital Territory that we just heard from - there is that shared effort in a tripartisan way. Other times it comes about as a fight, and then a result what comes from a contested process may even go to the legal extreme.

It is interesting seeing the different ways that even this committee is cast in this jurisdiction, and I would hope that it doesn't have to be a contested fight to the degree that we have seen in other jurisdictions. From your comments just now, you obviously see that there is an opportunity, and you see that opportunity as a constructive and productive one.

Prof. SNELL - Yes. If you start on the basis that given what's happened with the RTI Act, we have reached that threshold, and have stepped across it, and it is a whole different new world. That world effectively involves a set of principles which fits in accordance to ideas about parliamentary supremacy, fits into accords in terms of open government, and then you design the system to flow along that way. While sections of the public service hold to what is in that Cabinet handbook and that whole approach about Cabinet confidentialities being the prime thing that is needed, then you're probably going to fight a losing battle.

I tell the story of the Danks committee, the original committee set up to look into secrecy in New Zealand in the late 1970s. By looking to secrecy, they came up with the official information act for New Zealand. They determined they had a simple choice to make. Were they going to effectively support closed government, or were they going to support open government? They decided to support open government. They then designed a system that would assist in that, and the principles you would put into place about an open government.

When you read the Danks committee report, halfway down paragraph 62, they say that all the previous principles talked about in the previous 61 paragraphs apply to Cabinet.

You go to the Australian approach, both in Tasmania and Australia as a whole, and Cabinet confidentiality is almost the first thing mentioned. 'We will design a system that starts with Cabinet confidentiality, and then we'll open up the system as much as we can, given that guiding principle.'

I think that guiding principle corrupts the whole process in terms of the way information ought to be handled.

CHAIR - On that point, you would have read in the evidence that when we had the current secretary of DPAC before us, she said the Cabinet handbook is reviewed at each election, and in the most recent election a new clause was put in to further narrow what information may be provided to the public.

From what you've just said, it seems we are actually going backwards at the moment - even further than we maybe had been.

Prof. SNELL - That kind of forwards-backwards analogy is a little bit difficult, because I think it's much more confused. I think the Government makes a very strong point that in a number of areas they have become much more open and transparent than they have been previously. They have funded the Ombudsman far more effectively than previously - but at the same time it doesn't stop them doing other things retrospectively. This whole dispute that has led to this committee is an example of that. It is inconsistent with some of those other commitments and steps that have been taken. It's a confused approach, because there isn't that idea about a very simple conceptual approach about what you're attempting to achieve, and how you measure what you're doing against those particular steps.

As an example, if you are committed to open government, you wouldn't have amended the Cabinet handbook in that particular way, and you would have realised that's what you were doing.

If you are committed to open government and some of the principles that both the previous premier and current Premier have outlined, you would go through your Cabinet handbook and probably revamp it from the very beginning. If anything was to illustrate a degree of success, would be that. In relation to that, it reminds me that we have already reached that stage in part with the RTI Act because Cabinet information is available after 10 years under section 25. So, anyone can ask for Cabinet information subject to it not triggering one of the other exemption sections, describing information as confidential, et cetera.

We already have a system with the idea that Cabinet information loses its cloak of secrecy within 10 years. We also have, as part of that particular section, subsection 5, that the premier may release Cabinet information when he or she wants to. There is already a device in place if you had a premier of the right mind to effectively adopt the ACT system, or adopt the New Zealand system, to effectively say that Cabinet information will automatically be available unless there is a good reason not do.

Let us just change this whole process and default to another system. That does not then release information that is damaging or information that may alarm the public unnecessarily during an epidemic that may be occurring et cetera, but it does effectively put to you and to your officials that the intent is to make as much of this information available as possible and to identify what the risks are.

CHAIR - It seems to me from listening to you, aside from the issue of the culture that this committee can comment on but cannot actively change, that we need a two-pronged approach - a method or a process around a dispute resolution process. You have recommended a process similar to the ACT's, but also a right to information process. I remember when that legislation was brought in, the second reading speech was quite aspirational at the time - and that this is a real push approach rather than a pull, and all of that. Anyway, the reality is that it has not quite come about that way, with an RTI process that also is well resourced and supported through the whole RTI assessment process and the Ombudsman's role within that.

We do not have a standing order or a process like the ACT that the committee can consider. As far as the RTI Act goes, does it need changing now in any significant way to make it more effective in its process but also make it, as the ACT uses it, a process that works across parliament and the public?

Prof. SNELL - My answer to that is I cannot see any particular legislative change that will make the difference and impact upon culture any more than what is already there. If you look at the act that was - and a declaration here, I was involved as a member of the advisory committee for that particular act - but that was a well-designed act and the whole intent and purpose was to set up a system that effectively would end up with a minimal amount of information, confidential, that was necessary.

Section 12, Dale Webster helped design the act and he had an important role to play in the design of that section. That is a section set up to effectively have a cascading openness approach. Information that has to be made available because it is required by statute, you make available. Information that should be available because it is in the public interest, you make available; information that is being requested, you have kept the information confidential or within the bounds of government because you did not think any member would be particularly interested in it, but suddenly you get a request from a member of the public about that information. You suddenly realise that you could be making this much more readily available so you activate that response. Because you have so much information that not everyone wants access to it all the time or would dare to have access, but when they are interested, you use the RTI processes as a means of identifying that people want regular updates.

Some of the departments do that with some of their information. They regularly update the registers or the collections of information to say what is going on. Then you would have a small amount of information that is contestable, which the department or agency effectively ought to keep confidential. For example, in the police force, it might be search procedures or other particular activities, and the police are effectively prepared to contest it and to justify it to an external reviewer such as the Ombudsman and go through that particular process.

I think the act is fairly rigorous in approach. As I have indicated publicly, the act has been run down ever since the beginning with the resourcing for the Ombudsman. I think the Ombudsman, or the Information Commissioner or whoever the external review body is, is a critical ingredient in the legislation and it is a critical ingredient about culture change.

As an example, the Ombudsman's funding was cut by one-third prior to the Freedom of Information Act becoming operational in 1993. There was a general across-the-board cut in the public service and the Ombudsman was triggered by the same amount. They got a new portfolio, FOI, and they effectively lost one-third of their budget to deal with it. They've been playing catch-up - and not very successfully - ever since that particular time.

For the last four years, or even longer - probably 10 years - the Ombudsman has been under-resourced with staffing. In the last 12 months we have seen some adjustment to that, but you've got 20-odd years of catch-up to play. The Ombudsman in this jurisdiction has not had the capacity to play a leadership role. Someone needs to play a leadership role. It ought to be the premier in conjunction with the Ombudsman. The Ombudsman, in particular, could do it if they had the resources to run the training courses, to effectively monitor the RTI process. One of the things I indicate in my research is that the approach to RTI is terribly inconsistent across government agencies. Some are better than others, some are atrocious in the way they handle requests and the way they justify or not justify the withholding of information, and our Ombudsman hasn't had the capacity to actually do very much.

CHAIR - Should it be the Ombudsman's role to actually ensure that the RTI officers are effectively trained? Whose job is that?

Prof. SNELL - The Ombudsman should be in a position to be able to train those officers, to give them advice and support. At the beginning, if you go back to 1991 to 1993 when the act was being put into position, that's what the Ombudsman was doing and they were doing it quite effectively. You find this in most Australian jurisdictions - there is an initial burst that is well funded, well supported and there is that kind of buy-in to the principles and ideals of that particular process. When you see under-resourcing, when you see lack of training taking place, as a public servant, you effectively dismiss the RTI Act as really having any -

CHAIR - Rick, this may not be a question for you and I'm happy to ask it of someone else, but do you understand what the process is for the appointment of an RTI officer? What the qualifications are and that sort of thing?

Prof. SNELL - It varies, there is no set process for that. When I was an FOI officer decades ago in the Commonwealth public sector, I had a duty list of 15-odd duties, including secretary to a national disaster committee for Tasmania. FOI was number 15 on my list of duties and it was the last thing I needed to pay attention to and it was the last thing I got done in my list of duties. Some are well trained, but what happens in most jurisdictions is over time the training and the trained officers move on. If they are very good, with that experience, they move into other positions and the ones who follow receive less training, less support and less awareness about what the act may be about. I think now, with the appointment of extra staff in the Ombudsman's office, that is kicking up a little bit, but it's still relatively minor compared to what's taken place previously.

CHAIR - I think the extra resourcing in the Ombudsman's office is obviously really welcome, because the Government has given a whole heap of other roles to the Ombudsman's office, not just in RTI. Clearly, there's a huge backlog and the member for Windermere can talk about his backlog.

Mr DEAN - Three years.

CHAIR - There's a huge backlog not just for him, but for many people out there. Whilst the extra resourcing is absolutely needed, and I'm sure welcome in his office, most of that would be absorbed, I imagine, in catching up and processing very long waiting claims. So, training may still not be part of that capacity. That is a question, I guess, for the Ombudsman. We will have to ask the Ombudsman this, I'm sure - whether more funding is needed to make sure that RTI officers are actually well trained.

Prof. SNELL - I think training is one thing. You can be a well-trained officer, but if the indications are coming from the top of the agency that RTI does not matter or that RTI is a minor or secondary issue, or Cabinet confidentiality or commercial-in-confidence sensitivity trumps everything else, regardless of what you have received in training with the Ombudsman - it's one thing to be trained by the Ombudsman, to go back to your department and get clear messages about what you can and can't release in that process - in the absence of any leadership, that becomes dominant in your thought processes as to what you are going to release.

Mr DEAN - I will make a comment on your previous position; you raised the Premier in this. It's a question and a statement. My concern here is: how is the committee going to convince the Government that change must occur in respect to the release of information?

It has been fought in the media, and we had all those full-page advertisements over a number of weeks, and I am not even sure if they are finished yet. Then we have the Premier, who is not wanting to confront this committee, wants to keep away from this committee -

CHAIR - Appear before rather than confront it.

Mr DEAN - Appear before this committee. Then we have this cultural issue, which is paramount in my view and is causing a lot of the concern that we have. I hear what you say as to how we can, from your point of view, have an impact.

Prof. SNELL - I think your final report, depending how it's pitched, what you pitch in it and why you are doing it is an example of that. It is effectively saying, 'This is the twenty-first century. This is an information age. The way we treat and handle government information is central to that process, and the ability of the Legislative Council to carry out its functions of accountability.' In the Government's submission, their arguments about what your limited role may be are less than helpful in that process.

Given some of the other testimony you have received, to carry out your role of scrutiny and accountability, you need high-quality, reliable, timely information. Rather than just requesting documents retrospectively down the track, it should be an obligation on the public service to provide you with timely information, even before you probably realise you need it. If they know you are inquiring into a commercial transaction involving a power station, there are certain types of information that they know they are well aware of, that they may have and that they should be in a position to make available to you where it counts in that process - whether it's in a briefing or it's in the actual documentation itself. It's all part of the mindset about what their role is in that particular process - and also, what the costs are of withholding that information. The whole idea about being able to command the production of documents and having to go through an arbitration process effectively puts the onus on the Government to justify its non-release and cooperation.

It is buying in - and you can see the ACT has done it - and the benefits they have from that process. You have seen that New Zealand has done it. A number of other jurisdictions have accepted the idea.

I have written about this with Joseph Stiglitz, the information economist. He affectively argues that public trust is related to the reducing of the asymmetry of information between those who have the information and those who don't have the information.

Have a look at the number of public debates in Tasmania which do not get much above shouting in the gutter at each other because one side has all the information and another side has none of the information, or doesn't trust those who have the information and that they actually provided them with information, whether it's about hospital funding, university building projects in the centre of the city et cetera, whatever it may be.

It is the sharing of that information - I may still not agree with you; give me all the information you've got and I will still be opposed. It's much more difficult for me to be opposed on logical, reasonable, rational grounds if I have to overcome some of the evidence and information. If you have done the building sites studies, if you have done the transport studies, say, for the university's move into the centre of the city, or the accommodation impact et cetera, I may still object and be disapproving of the move, but I can't do it on the basis of possible impacts when you have done the research and information.

I think it has the ability to transform debates, and it's one of these things - we know it happens and you would have expected that anyone with a degree of education within government would realise that you have the ability in this small state to make a fundamental difference about the sharing of information. Yes, you may arm some of your political opponents to ask much more difficult and penetrating questions that may provide a degree of embarrassment from time to time, may appear on the front pages of the *Mercury*, although sometimes unlikely even then to appear on the front pages, but you have the ability to transform debates.

We talk about being a smart society. In the past we talked about being an intelligent island. If we have just over 500 000 people, plus a number of expatriates who have a degree of interest about what takes place in their old home state, sharing information that's high quality, reliable and trustworthy can only enhance planning, debate, discussion et cetera. We still may never agree. I can't imagine Eric Abetz and myself ever agreeing about many things in life, but we can still have informed debate taking place.

CHAIR - Thank you, Rick. It has been helpful having your long-term experience and insight into this area. It has helped to clarify that two-pronged approach. We appreciate that. We are nearly out of time, but do you have any closing comments you would like to make or are there things we haven't covered very well?

Prof. SNELL - No, I think most things have been covered really well, but I would say that I hope your report is a mechanism that can advance some of these concepts and ideas fairly strongly. Taking up Professor Appleby's thing, it may well be partly confrontational to assert the right. I was talking to my wife just before this, having a coffee, and explaining what we are going to do and talk about and she said, 'It has taken us this long to think about actually requiring the production of documents, getting to this stage?' If they have the power sitting there in the Parliamentary Privileges Act, you've got the RTI on the books where you have already established an in-principle access of everybody, all citizens, including parliamentarians, to information. As your previous witness from the ACT testified, what does it look like if a Legislative Council select committee puts in an RTI application for the information and, given the fact it may take the Ombudsman forever and a day, it is in a much better position to have it independently arbitrated and determined on some principle rather than a government official or government minister saying, 'No, I'm not going to give it to you because you might embarrass me'.

CHAIR - From the parliament's point of view, timely access to information is really important.

Prof. SNELL - Probably two-thirds of your citizenry, who have grown up in the information age, are astounded by the fact that you have to wait weeks and months often for information, or not get the information, compared to having that decision made relatively quickly. As an example about government information, it's all electronic; it's on registers et cetera. They can say, 'We've got it', 'We haven't got it', 'We can give it to you' or 'We can't give it to you'.

CHAIR - Thanks for your time, Rick. We appreciate that. Tell your wife she is quite right.

THE WITNESS WITHDREW.

Mr NEIL LAURIE, CLERK OF THE PARLIAMENT, QUEENSLAND PARLIAMENTARY SERVICE, WAS CALLED VIA TELECONFERENCE, AND EXAMINED.

CHAIR - Thank you. For your information we're being broadcast today. People won't see you but they might see us if they link into our website. The evidence you're providing today is being recorded in *Hansard* and will be transcribed and form part of our evidence at a later time. You don't have parliamentary privilege as such because you're not in our jurisdiction and we don't require you to swear, but do you have any questions about giving evidence in these circumstances? Or are you fine?

Mr LAURIE - No, that's all fine.

CHAIR - Thank you. The members of the committee here today are Ivan Dean, Josh Willie, Meg Webb and myself. We have our secretariat and Hansard staff in the room as well.

We have been inquiring into the production of documents since last year. The inquiry flowed from a couple of examples where parliamentary committees in particular had difficulty accessing documents that the Government and the parliament had in their possession. We appreciate the submission provided by the Queensland Parliamentary Service. We've heard evidence from the ACT, New South Wales and Victoria regarding the processes that are in place as deadlock-breaking arrangements, predominantly through their Standing Orders. It would be really helpful if you could describe for us how it works in Queensland, noting that we don't have a specific process along the same lines as those jurisdictions.

Mr LAURIE - Queensland is a unicameral jurisdiction. As a result, in all our parliamentary committees, the Government, via its membership of the committees, still has some control over them. There is a majority of government members on each of the committees. If a committee reached a situation where it needed to exercise the powers to gather information, it's almost assumed that the information will then be provided.

I can give you a relatively recent example. Last parliament there was an inquiry into coal workers pneumoconiosis (CWP) - the black lung disease, it's called in Queensland. It is a disease that's predominantly in the mining industry although it's been identified in other areas as well. It is a disease that was thought to be virtually eradicated but has reappeared and so there was a select committee established to look into that matter.

That committee was a select committee of the House but its membership still included more government members than non-government members. That committee, however, exercised its powers to gather information from corporates, including all the big mining companies, and from government entities such as the departments that had been responsible for regulating the industry like the mines department and the health department et cetera. There was no serious challenge to the exercise of those powers. Our experience may be a little different than many other jurisdictions because we are unicameral. Once a power is exercised, it's basically complied with.

CHAIR - It's interesting that those powers were not challenged even by the corporates.

Mr LAURIE - Yes.

CHAIR - Did they request some of the information remain in confidence with the committee?

Mr LAURIE - I'm sure that may have been the case - to be honest with you, so much information was gathered by that committee.

Once the power was exercised it was quite an amicable process in each case. For example, even though the orders may have requested the appearance of somebody on the production of the material on a certain date, the letters that accompanied the exercise of those powers stated that the material could be provided in advance in which case they wouldn't require people's attendance.

In most cases I think the material was provided and it was provided in a way that was convenient to the committee. For example, the documents requested by the meeting were provided in a digital format so it was easier for the committee to digest.

CHAIR - Have there been examples where members of the opposition, even though they don't have the numbers to get a motion supported in the House or within a committee, have tried to access documents that aren't available publicly?

Mr LAURIE - There may be some of those occasions. They're not the sorts of things I can talk of publicly. They would occur in camera so I can't talk about specifics. I think it's relatively rare. The way our system works is that there is a recognition that if you don't have the numbers you don't try, per se. That being said, I think that generally ways are found to get information without resort to the powers in most cases.

As I outlined in my submission to you, committees would generally not exercise the power unless they were fearful that not exercising the power would lead to the loss of the material. They would try to get information by a request or invitation first. I think governments are very attuned to the fact that holding back information is sometimes more - I think governments have come to learn that holding back information can sometimes lead to criticism that they would not otherwise get if they just released information. I think that's a real factor in what's gone on here as well.

CHAIR - Do you think that within the Queensland Parliament there's a culture of providing information and publicly releasing information unless there is a real need for confidentiality and a sensitivity about that information? Is there a culture that they are more likely to put information out there without even being ask to do so?

Mr LAURIE - I think that we have changed dramatically in the last two decades in that there's a lot of government information out there now that once upon a time would never have been. Governments do proactively try to release information rather than having it dragged from them. There will be exceptions to that general rule. Governments are still very sensitive about Cabinet material and Cabinet stuff can arise from time to time.

I have to say I think both sides of the House are very conscious of the need for Cabinet confidentiality. They are fairly respectful of it. The example that I gave to you where even though the government of the day had the numbers to get the Cabinet documents of the previous government, they didn't exercise it. Sensibly, I think, because they realised at the end of the day if they started that sort of process, then future governments would try it on as well. Both sides recognised that Cabinet confidentiality is an important convention.

CHAIR - Again, you may not be able to answer this, but hopefully you can shed some light on it. What sort of documents are you referring to when you say 'Cabinet material' or 'Cabinet information' that is generally not released?

Mr LAURIE - Take, for example, the black lung inquiry I referred to earlier. I don't think there was any issue with what the committee was really looking for in that inquiry: how departments had administered the regime set up two decades before to prevent black lung and how it was administered - had there been failings; and why hadn't the failings been picked up? That was the central thrust of its inquiry. The black lung issue had been addressed in the early 1990s, so there was a real feeling it had been almost eradicated, but that obviously wasn't the case. All the systems that had been set up appeared to have failed, so the committee was looking at that. There was no difficulty in obtaining information they wanted from the departments and from others, both through the use of those powers and also by calling witnesses to give verbal evidence. The committee itself didn't then go looking and would not have gone looking into the actual activities of Cabinet per se because they would have respected that process. Does that make sense?

CHAIR - Yes, it does. They are looking here at a series of failures over a period of time which possibly crossed across more than one government. I imagine they would have been looking in those sorts of circumstances for something to stop the occurrence of black lung and prevent further instances of it. It crosses party bounds.

Mr LAURIE - Yes, that is right.

CHAIR - In the circumstance where access to a document may lead to the government being embarrassed in some way by the decision they have made, they may have ignored advice or taken an overly optimistic view of some advice or whatever, that is where it may be considered a Cabinet decision. Wouldn't the process of not going back to previous governments' information be convention, even though the power is there, like you say, so it has never been sought at all?

Mr LAURIE - Each and every circumstance is different, I suppose. I can go back to the late 2000s in Queensland where there was quite a significant issue about the failure of a new health payroll system that eventually ended up costing the state in excess of $1 billion in remedial activities.

In that instance my recollection is that the relevant minister came into the House at a relatively early period and tabled internal memorandums from the department that where concerns about the system before its adoption, these had been expressed in internal memorandums. He tabled a whole series of those documents to show the paper trail and to demonstrate that the paper trail never actually reached his office. That was an example of a minister getting on the front foot to try to show the opposite of what you are saying.

I can't but think that there have probably been numerous instances in public administration where the alternative might be in existence but those documents would be hard to get under most arrangements. For example, some documents that end up on the minister's desk might be available through normal processes of FOI, or right to information as we call it now, but on some occasions they might also be exempted for some reason. History tends to suggest that if documents aren't provided in those circumstances, they eventually come out one way or another through legitimate means or others. Hiding documentation is a long-term bad idea for governments, in my opinion. In terms of the House and in terms of committees in Queensland there is a real politic that we have to be aware of. I don't think that committees are going to be doing those fishing exercises.

CHAIR - In terms of the management of Cabinet information and documents and that sort of thing, what is your process around general release?

Mr LAURIE - The general release for Cabinet documents is they have a 30-year rule on them.

CHAIR - So it is 30 years in Queensland?

Mr LAURIE - Yes, and early in January every new year the State Archives releases the latest Cabinet documents for the previous year. They are usually accompanied by a whole range of historical pieces on radio and television about them.

CHAIR - That is a lot longer than other jurisdictions which have a 10-year and New Zealand, which -

Mr LAURIE - Yes, I have a recollection that is under review in Queensland at the moment. There is a movement towards reducing that to 10 years. I do not know if that has actually occurred, but my recollection is that it is under review.

Mr DEAN - In your submission, Neil, you referred to having had eight applications, nine motions moved, for the production of documents since 2008. Most have been made pursuant to standing order 27 and most of them amended by the government. Are some of those made through freedom of information?

Mr LAURIE - No, they are all under Standing Orders. One of the constant things that took us a long time to get to - and it does not just relate to the issue of production of documents, it also relates to the issue of questions, particularly questions on notice.

I do not know whether you have a questions on notice process like ours, but any member of our House on every sitting day can lodge one question on notice with myself. It goes on the Notice Paper and a minister has 30 days to answer that question. They are answered in writing, I should say, and they are answered outside sittings most times. Our questions on notice process is a little bit like a mini-interrogatory system that members themselves can [inaudible] on. When it comes to questions on notice and to orders to produce or summonses, or all sorts of things, the public sector itself has for a long time always looked at freedom of information, or as we call it, right to information now.

One of the issues is that sometimes we will get public servants or ministerial officers or whoever ringing here saying that they have asked this material, but it is exempt under FOI or it is exemption under right to information. Then we have to go through the process of explaining to them that really the right to information system is completely separate to the system of answers and questions in the House and all the rest of it. In their mind, they deal with right to information so often they think it is exempt and it is exempt, but that is obviously not the case.

Right to information, I think, has rightly - as I said in my submission - led to a decline in the House regularly ordering the production of material. One of the things that right to information has done in the public sector that we have to constantly reinform them about is the fact that they think that the exemptions and right to information automatically apply to parliamentary proceedings which, of course, they do not.

That arises in the committee context from time to time. Committees will ask departments for information or ministers for information and there will be a response around it being is exempt under RTI. RTI exemptions to us are irrelevant per se, but some of the grounds for RTI the

committees would take into account. At the end of the day, when a minister answers the question on notice, they can give what information they so desire as long as they are responsive to the question and the Speaker is then left in a situation of sometimes adjudicating if they feel that there has not been a proper answer.

CHAIR - Just on the right to information approach, that has been used in Tasmania a little in that same sort of circumstance and it has resulted in what I would call a stalemate. In the cases where you as the Clerk have had some communication with the departmental officers who are relying on an RTI exemption, what has been the outcome of those discussions?

Mr LAURIE - I think eventually they realise there is a different between the RTI exemptions and parliamentary processes. I don't know what the situation in Tasmania is like, but in government most public officers can tell you in detail the Cabinet process in terms of getting documentation and Cabinet approval. Public servants seem to know it like it is holy writ, but parliament is all a bit of a mystery to them, if you like. Sometimes what really is required is a little bit of education and that would solve the problem.

CHAIR - In terms of solving the problem, does that mean they produce the document or documents?

Mr LAURIE - Most of the time the sort of documents and sort of exemptions they are raising, and it has been a while since I have had one, are not what I would call higher policy issues or exemptions like Cabinet confidentiality. It will go to some other, more obscure exemption in the Right to Information Act - it might reveal private identities or something of that nature.

CHAIR - Which can easily be redacted.

Mr LAURIE - Yes, that's right, or it can be provided on the proviso that the committee shouldn't release it without redaction. In most instances that I can recall, the initial objection has not been pursued once the fact that the exemptions under right to information don't apply are carefully explained. Does that make sense?

CHAIR - Yes.

Mr LAURIE - I would say that in 95 per cent of instances the information can be provided in a format that's not going to be offensive to anybody. Does that make sense?

CHAIR - Yes. Historically, Queensland has had an interesting history with Cabinet documents and we were told by others - and you may be able to confirm or deny this - that when Bjelke-Petersen was premier, he used to put whole loads of papers in trolleys and wheel them through the Cabinet room to give them immunity.

Mr LAURIE - A lot has been said about Joh Bjelke-Petersen that's not necessarily correct. I don't think he can be credited with that one because my recollection is that, for example, we didn't have right to information until 1992. That issue about rolling trolleys full of documents through the Cabinet room, I think actually occurred under the Goss government. In Joh Bjelke-Petersen's time there was no right to information. The Labor government introduced it in 1992, but they themselves started rolling documents through in the mid-1990s.

The Freedom of Information Act itself was then reviewed again and called the Right to Information Act. I think there has been a cultural change when it comes to freedom of information. The new Right to Information Act was really much more about placing the obligation on being proactive with the release of information, rather than departments reacting to rights to information, being proactive and putting as much information as possible out there.

I think one of the biggest problems at the moment for anyone trying to look at government is that there is a mountain of information out there; there is a lot of information out there. Interpreting it, understanding it and cataloguing, it is a whole different issue.

CHAIR - Your new Right to Information Act came in in 2009? Is that correct?

Mr LAURIE - That's about right.

CHAIR - Tasmania had a change too, but it appears sometimes that those cultural changes may not have occurred. The rhetoric was right.

Mr LAURIE - Culture is always a lot harder to change than legislation.

CHAIR - Yes. Do you believe that's happening in Queensland - that there is a much more proactive approach to the release of information now?

Mr LAURIE - I do think so. For a long time now governments of both sides have been quite good in the amount of information they put into the public sphere. I'm not naive enough to think there is not information out there that has not been put out there. I know also that there have been allegations raised from time to time that some of the information put out there is 'washed', particularly statistical information, but I don't have any hard evidence that there is anything dubious about that. Allegations like that have been made from time to time.

Mr DEAN - You say cultural change has occurred with regards to releasing of information. Are you able to make any statement or comment on what might have changed that? Has it been a more open government? Has that been the reason or is there some other reason for it?

Mr LAURIE - I think a lot of it has to do with the information revolution - the fact that there is a general expectation now that information will be on your websites.

I think that everyday usage of the internet and the availability of information generally means that departments and agencies, when they look at the information they have and when they are trying to work out what information they will put out there, are being quite proactive with the amount of information going out there. Does that make sense?

Mr DEAN - Yes, it does. If I could just follow on with another point: if a member makes an application for information under RTI, and if that information was declined or refused, does the member have the ability to make that application by way of a motion to the House?

Mr LAURIE - A member has the same rights to make a right to information application as any member of the public or the community generally. If their application is refused, they can go through the same appeal process as is open to any member of the public.

Also, any member has the ability to put a notice of motion on the Notice Paper. It will generally fall off after 30 days unless it is dealt with.

The non-government parties in Queensland have a right to move and have resolved one motion per week. That would be the opportunity for them to put forward requests for information where they want to get some material that has been refused by FOI.

Mr DEAN - Is there any evidence of that being successful?

Mr LAURIE - I would think that in most instances members - and by members, I mean it's usually the opposition office, to be honest with you - would put in an RTI request. If they failed in their RTI, they would then appeal that through the appeal processes. That would be the most common thing for them to happen.

I have been surprised at how little oppositions actually try to use their motions to get documents. They would rather use those motions for political resolutions, rather than for practical information-gathering exercises.

CHAIR - On that point, is a review of an RTI request done by your Ombudsman, or is there some other process for that?

Mr LAURIE - No, there's a discrete office now. Once upon a time, freedom of information, as it then was, was contained within the Ombudsman's office, but there was a separation between the Ombudsman and the right to information offices some years ago. There is a separate office for the right to information.

CHAIR - In terms of the right to information officers who assess the requests, either from members of parliament or members of the public, or the media, whoever, how are they appointed and who trains them?

Mr LAURIE - I point out that my agency is actually exempt from the process. I'm probably not the best subject selected in this. But, as I understand it, the DG of the department nominates who are going to be the right to information officers. The policy of government has for some time now been to ensure that those officers are not ministerial officers, if you like. They are public servants and therefore they're theoretically independent from government in that sense. They make the initial decisions. The persons affected by the decision, including third parties, are given an opportunity to comment on the release and then they make the decision. If the decision is not one that the applicant likes, they can then make an appeal within a certain amount of time.

I should just note something else, too - all right to information requests when they are released are now also published on a website. You can look online and see what the applications were, and when they're released, the information actually released will be there. In most instances where they are of a public nature rather than a private nature, they actually become generally available once they've been through right to information as well.

CHAIR - I guess that's the case in the parliament if they're tabled documents.

Mr LAURIE - That's right, yes, a similar situation they are now online. As I said, my agency is not subject to RTI. However, I've been involved in the process as a third party, because sometimes [with] my correspondence, for example, the government might be caught up in an RTI

application. My personal experience has been that the officers handling it don't seem to over-exercise exemptions. Does that make sense? My observation of it is that they play a fairly straight line.

CHAIR - That comes back to the culture of 'release unless there's a good reason not to' approach.

Mr LAURIE - Yes. There will going to be people out there who have more experience in this area than myself, but that would be my general observation. I think right to information is played pretty straight.

Mr DEAN - In your submission, Neil, you also refer to the fact that committees - for the Assembly as well - have the power to order the attendance of witnesses and the production of documents. Does that happen much or is it normally proceeded fairly freely and openly?

Mr LAURIE - I would say 99.99 per cent of people who appear before committees are there voluntarily. Then, the type of inquiry will determine whether summonses are issued. Even when summonses are issued, everything will still happen voluntarily. For example, in the instance I gave before of the black lung, summonses were issued but the material was generally provided in advance and no-one had to turn up and give the material. Does that make sense? Hostile witness per se is a fairly rare thing.

Mr DEAN - It does. One reason for this inquiry is because of a similar situation having occurred with the Public Accounts Committee in this state where at the end we had to summons a document. It was produced but a redacted version of the document was produced, hence there was a lot of toing and froing.

Just to take that one step further, you are also saying, and I'm not sure if I'm interpreting this right, that the Speaker may require a person to answer the question or produce the document or other thing. Does that happen with a committee procedure as well?

Mr LAURIE - No, so sorry - were you referring to my answer before about questions on notice?

Mr DEAN - No, this on page 3 of your submission under the heading of 'Orders and summonses in the House and committees pursuant to legislation'.

Mr LAURIE - No, that's what is provided for in the legislation. The procedure for a committee would be if a person fails to abide by a summons to a committee, a committee would report that to the House and it's for the House to deal with it.

Mr DEAN - Right.

Mr LAURIE - Does that make sense?

Mr DEAN - Yes, it does.

Mr LAURIE - In my memory, it's probably never happened that the House, itself - I think we've only ordered somebody to attend at the Bar of the House about three or four times in our history.

If somebody fails to produce documents to a committee or fails to attend a committee summons, it would be reported to the House and the House would then send it to the Ethics Committee and the Ethics Committee would make a recommendation that the person would be probably dealt with by contempt.

Mr DEAN - Thanks, Neil, that answers well.

CHAIR - Thanks, Neil, that's probably covered the questions we had. Did you have anything you want to add before we finish up?

Mr LAURIE - No, not really. I guess most of what I had to say was in the written submission.

You'll see from the submission that there's an underlying recognition in Queensland of the real politics of dealing with government and committees. Surprisingly, it hasn't been as big an issue here as it could have been, but then our committee system is very much focused these days on the legislation that's going through the House.

Our committees are much more driven by the legislation these days than we are by Public Accounts and Public Works matters. I'm not saying that's necessarily a good thing, but I'm just saying that's the reality. Issues really only arise in Queensland when we get to those select committee issues like the black lung issue I described before.

CHAIR - All legislation goes to one of the parliamentary committees before it's dealt with in the House?

Mr LAURIE - That's right. Every bill now - it's a requirement under our constitution - goes to committees for at least six weeks for examination.

The parliamentary committees are very focused on getting briefings and information from government about the content of the legislation, having public hearings for the stakeholders and looking at those reports and reporting the legislation.

They still have jurisdiction to look at Public Works and Public Accounts things but they are taking a little bit of a back seat compared to the legislative examination that goes on.

CHAIR - As a matter of interest, are many amendments to legislation proposed during that committee process?

Mr LAURIE - Yes, since the committee system has been in operation, amendments to legislation in committee have increased by about 300 per cent; anecdotally, I can tell you that subsequent amending legislation - that is, legislation that comes in to amend mistakes in the original legislation - has decreased.

We are getting better legislative outcomes in the sense of the time being spent on that legislation is identifying issues earlier and it being resolved earlier.

Mr DEAN - Neil, in setting up committees to look at each piece of legislation, are these committees set committees or is an independent committee set up for each piece of legislation?

Mr LAURIE - No. We have what we call a portfolio system of committees and the name tries to explain that our portfolio committees, as they are called, are all designed - and there's usually seven of them, a minimum of six but usually seven committees - will cover the field of government.

Every committee will have two or three ministers whose portfolios they're essentially responsible for and each of those portfolio committees has jurisdiction over the legislation that comes in relevant to that portfolio and the House refers it to them.

They also look at the budget Estimates for that portfolio when it comes in and they act as Estimates committees and they are also Public Works and Public Accounts committees for those areas as well. They have self-referral power now as well as to anything within the portfolio. They are literally shadowing a portfolio.

Mr DEAN - Thanks for that, Neil. That is somewhat similar to the way our sessional committees work. It's a similar process.

Mr LAURIE - I think everyone has different names for the same thing.

CHAIR - Thank you very much for your time, Neil. We appreciate your insights and they have been added to the range of views we've had on this important area.

Mr LAURIE - Thanks.

THE WITNESS WITHDREW.