

Day 3 – Wednesday, 28 November 2007
Parallel Sessions – Session 1A 11.00am-12.30pm

Speaker: John McMillan

Position: Commonwealth Ombudsman, Australia

Organisation: Office of the Commonwealth Ombudsman

Presentation title: Designing effective FOI oversight - the Australian Experience

Freedom of information legislation was first enacted in Australia in 1982.

This occurred soon after the creation of a new system of administrative law, that included an Ombudsman and an Administrative Appeals Tribunal. It was an easy choice at the time to relegate the FOI oversight task to both bodies. The Ombudsman would be able to investigate complaints about FOI administration; and the Tribunal would be able to review and determine most FOI exemption and charges decisions. The adjudicative role of the Tribunal was seen to be especially important as a way of confronting the unbroken tradition of official secrecy that FOI was designed to end.

All the Australian States and Territories have since enacted FOI legislation. Some have chosen the different oversight option of an FOI Commissioner, with both an investigation and a determinative function.

Partly this was done because of the absence at the time in some states of a comparable body to the federal Administrative Appeals Tribunal. Partly, too, a Commissioner was seen to be a fresh and more effective alternative to adversarial review of FOI decisions.

The debate continues in Australia about the most suitable and effective framework for FOI oversight. This debate runs parallel to other debates, about whether FOI has the unqualified support and commitment of governments. And whether it is time to reconsider FOI fundamentals, especially to take account of the electronic age in record creation and storage. A review of FOI laws is currently underway in four jurisdictions in Australia.