

## Response to the Review of FOI laws

Karen Kline

Thank you for the opportunity to provide a submission to the review of FOI laws.

My experience with the 2010 reformed FOI laws has been a most unhappy one. It has culminated in the much criticised court decision *Kline v Official Secretary to the Governor General*-[2012] FCAFC 184.

The focus of my submission will be why the Office of the Official Secretary to the Governor General should not be excluded from FOI requests by an excessively rigid interpretation of 6A. I am in agreement with Mr Peter Timmins, Graig Thomler and others that this restriction be removed.

My FOI request concerned a number of documents including working manuals, policy guidelines and criteria related to the administration of awards within the Order of Australia. As a statutory body the Office of the Official Secretary is subject to FOI. Further, as a government agency these documents should be made available to the public as part of the information disclosure scheme. However, as a result of a denial of my request by the FOI Commissioner which was upheld by the Administrative Appeals Tribunal (AAT) and the Full Federal Court (FFC) the following has occurred:

- 1.) In all levels of my FOI review not a single document was sighted. The denial of my request was based on it's subject matter.
- 2.) The objects of the FOI Act were overridden.
- 3.) There is no accountability of the public servants administering the Honours system prior to nominations being presented to council.
- 4.) The documents I have sought have also been denied to the Finance and Public Administration Senate Committee.
- 5.) As a result of my unsuccessful FOI request, I have an adverse costs order against me. This is despite the fact I am a pro-bono client with no means to pay.

My unhappy FOI experience is totally at odds with increasing scrutiny and accountability of government activities. The end result in my case will serve as a disincentive for citizens to participate in Government processes, with a view to promote better informed decision making. As other commentators have stated, the FFC decision does not reflect a healthy modern and open democracy. It is also manifestly absurd in that it says that the administration of Honours is not a matter of an administrative nature.

The preferable view would be s6A defines the scope of the application of the FOI Act to the Office of the Official Secretary; that the objects in s3 confer rights of access for a number of purposes including to increase scrutiny, discussion, comment and review of the governments activities. That the act is beneficial legislation and any ambiguity should be resolved in a way that is most favourable to those it is intended to benefit; and that the words in s6A accordingly should be given a meaning that is fairly open consistent with the objects.

Given the exceedingly narrow interpretation of 6A by the FFC, in the interests of the objects in s3, s6A needs to be removed from the Act.