



# Open and Shut

This blog takes an interest in all issues associated with Freedom of Information (FOI) and privacy legislation in Australia. It also includes comment about open transparent and accountable government and privacy issues generally drawing on developments in Australia and overseas. Information contained on this site is general in nature and does not constitute legal advice.

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T U E S D A Y , O C T

### ➔ Australia's FOI act 39th best in world ranking



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In an [international survey](#) based on 61 credible indicators, the Commonwealth Freedom of Information Act, as amended through the 2009/2010 reform process, scored 86 out of a possible 150 and has been ranked 39 in a comparative table of the laws of 89 countries.

Australian law was assessed as just a little better than Canada with 85 points, but behind the USA 89, New Zealand 93, UK 95, Indonesia 102 and a long way behind the leaders Serbia 135, and India and Slovenia 130.

The focus of the survey was the adequacy of the law-not on how it works in practice. As the report notes, "countries with relatively weak laws may nonetheless be very open, due to positive implementation

### About Me



[Peter Timmins](#)

Peter Timmins is an Australian lawyer and consultant who works on FOI and privacy protection issues in Sydney, NSW. He has Arts and Laws (Honours) degrees from the University of Sydney, and has been involved in the FOI field for 25 years. He provides professional management advice and assistance to agencies on FOI related implementation issues and assists applicants who seek access to government

efforts, while even relatively strong laws cannot ensure openness if they are not implemented properly."

While there is room for a quibble here and there about the marks assigned, it's a reasonable general assessment of the act, placing Australia in the fair to middling group and not near the lead in world pecking order. The reforms of last year improved the law but didn't emerge from a comprehensive review, or adopt emerging Australian best practice in a number of areas. My guess is the state FOI laws where new replaced old, outside the scope of this survey, would rate a little better.

The [study](#) was conducted by [Access Info Europe](#) (Spain) and the [Centre for Law and Democracy](#) (Canada). Dr Johan Lidberg Senior Lecturer in Journalism at Monash University, and well known for his comparative FOI work was a member of the International Advisory Council and the local expert who assisted with assessment. In correspondence with Open and Shut Dr Lidberg made the point that the index is incomplete without an 'access in practice' component, noting Sweden, Norway and Iceland, all with strong track records in practical access to information, score in the bottom third.

There is no universal accepted international standard regarding adequacy or excellence when it comes to access to information law. The indicators used in this survey however address the relevant issues and provide a good framework for assessment purposes. They were drawn from a wide range of published thinking on the subject ([ARTICLE 19](#) (pdf) and the [Carter Foundation](#) for example), input from the advisory council and comparative study of numerous right to information and related laws from around the world.

The 61 Indicators( [more information here](#)) are grouped into seven categories. Australian scores against the maximum were:

Section	Max Points
1. Right of Access	Australia 2/6
2. Scope	10/30

information. Peter is an experienced public speaker and commentator on these issues. See [Career Summary](#) for more details.

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3. Requesting Procedures	21/30
4. Exceptions and Refusals	15/30
5. Appeals	24/30
6. Sanctions and Protections	4/8
7. Promotional Measures	10/16
<b>Total score</b>	<b>86/150</b>

The assessors' comment that " signs point to the fact that implementation of the law is relatively good, so it is entirely possible that this score undervalues the true openness of Australia's government" is almost certainly true- anecdotal evidence is that disclosure has improved since November 2010. The indicators used do not cover proactive publication, acknowledged as a key element of a strong right to information regime, and now part of our system.

The Australian data is in an Excel spreadsheet- scores for each category are in tabs at the bottom of the page- and can be accessed [here](#) along with data for others.

A few ratings seem on the tough side- Indicators 9,10 and 57 for example. However offset to a degree because we received two points for having a public interest disclosure act (53) that doesn't exist. The act cited as evidence is South Australia's. Oft promised federal legislation is yet to eventuate.

Shortcomings that cost the Australian law points include:

- No constitutional right of access to information;
- Exclusions from the act for parliamentary departments, intelligence organisations, a range of other executive government agencies. Private sector bodies in receipt of significant government funding are not covered. All in all a

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deduction of 20 points in Category 2 for these weaknesses in the law.

- Excessive "wiggle room" on time limits
- Fees-not limited to cost of reproduction.
- The extent of secrecy provisions in other legislation
- Broadly framed exemptions, some that contain no harm test. No universal public interest override, for example for disclosure of information about corrupt conduct.
- No sanctions for improper public service employee conduct such as undermining the act or destruction of documents.

Overall the survey shows:

More recent laws protect the right to know more strongly; of the 20 countries with scores above 100, 11 adopted their RTI laws since 2005, and 7 since 2000 – these laws tend to have much stronger oversight, enforcement and promotion.

Of the 20 countries with scores above 100, 7 are in East and Central Europe, 5 in Asia, 4 in the Americas, 3 in Africa and only one is in Western Europe;

Europe overall accounts for 15 of the bottom 20, primarily the older European laws which are more limited in scope and have weaker appeals mechanisms.

Congratulations to those involved-a major project by any standard, a welcome addition to what we know about FOI laws, and some useful input for the legislated two year review of the Australian act.

(Update: According to [this report](#) on a session on the RTI Ratings at the Ottawa information commissioners conference "John McMillan, Australian information commissioner, said he was grappling with evaluating agency performance, but commented that he has "an uneasy feeling" that the RTI ratings methodologies have a bias

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based on their creation by civil society groups.' Perhaps so, but governments generally have done little to stimulate or lead debate about best practice law or standards. This is a good effort by the civil society groups involved .)

Posted by Peter Timmins at [9:33 AM](#) 

Labels: [Federal Government](#), [Freedom of Information](#)

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