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State of Play: PSI Reuse in Australia

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Abstract

After having lagged in developing information policy frameworks during the decade up to the mid-2000s, recent developments have seen Australian governments (at federal, state and local levels) reposition themselves close to the leading edge of policy and practice on public sector information (PSI) access and reuse. Acceptance of the recommendations proposed by committees of inquiry into the issue[1], the reform of Freedom of Information (FOI) laws to support proactive release of PSI, the establishment of Information Commissioner Offices by federal and State governments, the widespread adoption of Creative Commons licensing of government copyright materials and use of web 2.0 technologies to distribute PSI, demonstrate that Australian governments increasingly grasp the social and economic importance of PSI. The Australian Government's Declaration of Open Government (July 2010) reaffirms the federal government's commitment to this course, pursuing "open government based on a culture of engagement, built on better access to and use of government held information, and sustained by the innovative use of technology." While real progress has been made towards the implementation of broad-reaching information strategies, attention is now required to the further development of the policy framework, the principles governing information access and reuse and practical guidance tools. A notable feature of the Australian experience is the use of open content licences (primarily Creative Commons licences) on copyright-protected PSI, not only as an operational mechanism for managing government copyright but also as a driver of information policy.[2] By releasing their materials under non-exclusive, open content licences, government agencies have adopted a policy position that, by default, PSI that is made available for access will also be able to be used and reused.

Key words

PSI; access; use; reuse; Crown copyright; open content licences; Creative Commons licences; Australia; Freedom of Information; Right to Information; information policy; information policy framework; international

About the Author

Anne Fitzgerald is a Professor in Law Research at QUT Law School where she is involved in research on several projects including Open Access to Knowledge (OAK) law[3] and Access to and Use of Public Sector Information (auPSI).[4] Anne has a JSD degree from Columbia University, New York (2002) a LLM degree from Columbia University (1992) and a LLM (International Business Law) from the University of London (1989). She has an extensive background in the areas of intellectual property law, internet and e-commerce law and international trade law and has taught and published in these areas since 1991. From 2005 a major focus of Anne's work has been open access to public sector information and publicly funded research outputs and she has been a lead researcher in the collaborative project between QUT's Faculty of Law and the Queensland Government that investigated the application of open content licences (specifically, Creative Commons licences) to PSI. In 2008 she was a consultant on intellectual property law and information policy to the review of Australia's innovation system (*Venturous Australia: Building strength in innovation*) and in 2009 was commissioned to write a report on copyright for the Government 2.0 Taskforce (*Engage: Getting on with Government 2.0*).

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[1] See, in particular, the federal government's response to the Government 2.0 Taskforce's report, *Engage: Getting on with Government 2.0,* 3 May 2010, at http://www.finance.gov.au/publications/govresponse20report/index.html (accessed 22 May 2010); and the Victorian government's response to the report of the Victorian Parliament's Economic Development and Infrastructure Committee's *Inquiry into Improving Access to Victorian Public Sector Information and Data,* February 2010, at http://www.diird.vic.gov.au/diird-projects/access-to-public-sector-information (accesssed 28 May 2010).

[2] A good example of the adoption of open content (Creative Commons licences) as a central element of government informaiton policy, see *Queensland Government Enterprise Architecture: Guideline – Government Information Licensing Framework (Final),* March 2010, v1.0.0.

[3] See http://www.oaklaw.qut.edu.au

[4] See http://www.aupsi.org

1. Introduction

After having lagged in developing information policy frameworks during the decade up to the mid-2000s, recent developments have seen Australian governments (at federal, state and local levels) re-position themselves close to the leading edge of policy and practice in relation to access to and reuse of PSI. Until recently, the situation was fragmented and lacked a coherent policy foundation, whether viewed in terms of interactions within, or among, the different levels of government (local, state/territory and federal), or between the government, academic and private sectors. Although some important initiatives and practices could be identified (most notably in relation to spatial information, educational materials[5] and publicly funded research), they dealt with different aspects of access, use and reuse and were only loosely connected.[6]

However, recent developments at federal, state and local government level Australia-wide signal a distinct change. Positive responses to government inquiries into PSI access[7], the reform of Freedom of Information laws (FOI) and the establishment of Information Commissioner Offices at federal and State levels, the widespread adoption of Creative Commons licensing of government copyright materials and numerous initiatives to provide online access to government information and data, indicate that Australian governments increasingly recognise the importance of PSI and are progressing towards the development of comprehensive information strategies. The Declaration of Open Government, issued by the Australian Government on 16 July 2010, gives effect to the principal recommendation of the Government 2.0 Taskforce in its landmark 2009 report, *Engage: Getting on with Government 2.0* [8]; it acknowledges the importance of better access to and reuse of government held information and the innovative use of technology in achieving a more open, participatory and transparent democracy.

Documents published by the Australian federal government in the course of a 2-week period in May 2010 heralded significant advances in PSI access and reuse policy and provide the legislative basis for further development and implementation of the policy framework. On 3 May 2010, the government's formal response to the report of the Government 2.0 Taskforce was released, essentially accepting the Taskforce's recommendations.[9] Significantly, the response to the Government 2.0 Taskforce report was itself released under a Creative Commons licence[10], as were the National Broadband Network

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[5] For example, AEShareNET had pioneered the use of standardised licensing in the education sector in Australia.

[6] For more detailed treatment of the development of Australian policy on access to PSI, see: A Fitzgerald, *Open Access Policies, Practices and Licensing: A review of the literature in Australia and selected jurisdictions,* QUT, July 2009, at http://www.aupsi.org/news/CompiledLiteratureReviewnowavailableinhardcopy.jsp; A Fitzgerald, B Fitzgerald and N Hooper, *Enabling open access to public sector information with Creative Commons Licences : the Australian experience*, in "Access to Public Sector Information: Law, Technology & Policy", B Fitzgerald (ed), Sydney University Press, Sydney, 2010, at http://eprints.qut.edu.au/29773; A Fitzgerald, *Open access and public sector information: policy developments in Australia and key jurisdictions* in "Access to Public Sector Information: Law, Technology and Policy", B Fitzgerald, Sydney University Press, Sydney, 2010, available at: http://eprints.qut.edu.au/31024/ (accessed 28 May 2010).

[7] Notably, the federal government's response to the Government 2.0 Taskforce's report, *Engage: Getting on with Government 2.0,* 3 May 2010, at http://www.finance.gov.au/publications/govresponse20report/index.html (accessed 22 May 2010); and the Victorian government's response to the report of the Victorian Parliament's Economic Development and Infrastructure Committee's *Inquiry into Improving Access to Victorian Public Sector Information and Data,* February 2010, at http://www.diird.vic.gov.au/diird-projects/access-to-public-sector-information (accesssed 28 May 2010).

[8] Government 2.0 Taskforce, *Engage: Getting on with Government 2.0*, December 2009, at http"//gov2.net.au/report (accessed 10 July 2010).

[9] Australian Government. *Government Response to the Report of the Government 2.0 Taskforce – "Engage: Getting on with Government 2.0",* at http://www.finance.gov.au/publications/govresponse20report/index.html (accessed 22 May 2010). See also the Hon Lindsay Tanner MP, Minister for Finance and Deregulation and Senator the Hon Joe Ludwig, Special Minister of State, *Rudd Government releases Gov 2.0 Response,* Media Release 26/2010, 3 May 2010, available at http://www.smos.gov.au/media/2010/mr_262010_joint.html (accessed 22 May 2010).

[10] The *Government Response to the Report of the Government 2.0 Taskforce* was released under a Creative Commons Attribution 2.5 Australia (CC-BY) licence. The Government 2.0 Taskforce's report, *Engage: Getting on with Government 2.0* (22 December 2009) was also released under a Creative Commons Attribution 2.5 Australia (CC-BY) licence, see http://www.finance.gov.au/publications/gov20taskforcereport/doc/Government20TaskforceReport.pdf (accessed 22 May 2010).

Implementation Study and accompanying wiki (6 May)[11]and the Federal Budget Papers (11 May).[12] Another development – apparently a world first for a national parliament – is the adoption of Creative Commons licences for the Australian Parliament's website and the great majority of parliamentary materials.[13]

On 13 May 2010, the federal Parliament enacted legislation that provides a new legal foundation for its policy of promoting greater openness and transparency in government, enacting the *Freedom of Information Amendment (Reform) Act* 2010 and the *Information Commissioner Act* 2010.[14] The amendments to the FOI legislation – the most significant overhaul of the FOI regime since it was first introduced in the early 1980s – establishes a default position of open access to PSI.

Working in parallel to the FOI reforms at federal and state level, an important catalyst for change in Australia has been the recognition that PSI reuse can be facilitated by directly addressing the obstacles presented by the complex, protracted and restrictive licensing practices and procedures that are typically encountered. Adoption of non-exclusive open content licensing practices (for example, by using Creative Commons licences) to enable innovative reuse of PSI (commercial and non-commercial) enables governments to take effective steps towards open access, in advance of the development of comprehensive information policy frameworks or the overhaul of FOI laws.

2. Reform of the legislative basis for access to PSI

The process has begun of overhauling the freedom of information (FOI) schemes that were first introduced in Australia in the late 1980s to early 1990s[15], to provide the legislative basis for open access to PSI. The current phase of FOI reform activity commenced in 2007 when the Queensland government appointed the FOI Independent Review Panel ("Review Panel"), headed by Dr David Solomon[16]to review that State's FOI regime. Central to the FOI reform agenda is a shift from a "pull" model under which PSI is only disclosed in response to specific requests, to a "push" model whereby PSI is routinely and proactively made available for access and reuse.[17]

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[11] Released on 6 May 2010. Australian Government. Department of Broadband, Communications and the Digital Economy, *National Broadband Implementation Study,* available at
http://www.dbcde.gov.au/broadband/national_broadband_network/national_broadband_network_implementation_study and wiki, available at https://wiki.dbcde.gov.au/dashboard.action (accessed 22 May 2010). The *National Broadband Implementation Study* was released under a Creative Commons Attribution-Noncommercial-Share Alike 2.5 Australia (CC-BY-NC-SA) licence.

[12] Released on 11 May 2010. There are four Budget Papers, each of which were released under Creative Commons licences. See for example, *Budget Paper No. 1, 2010-11,* circulated by the Hon Wayne Swan MP, Treasurer of the Commonwealth of Australia and the Hon Lindsay Tanner MP, Minister for Finance and Deregulation, available at
http://www.aph.gov.au/budget/2010-11/content/bp1/html/index.htm (accessed 22 May 2010). The Budget Papers were released under a Creative Commons Attribution 2.5 Australia (CC-BY) licence. A Budget update, released on 14 July 2010, was also released under a Creative Commons Attribution 2.5 Australia licence, see http://www.budget.gov.au/2010-11/content/economic_statement/download/ES_Consolidated.pdf (accessed 16 July 2010).

[13] This development was announced by Senator Kate Lundy at the Gov 2.0 Expo 2010 in Washington DC, 26 May 2010. See Senator Kate Lundy, *Keynote Address – Gov 2.0 Expo 2010,* 26 May 2010, Gov 2.0 Expo 2010, Washington DC, at http://www.katelundy.com.au/2010/05/26/keynote-address-gov2-0-expo-2010/ and *Lessons from Down Under: How Australia is leading the world in Gov 2.0,* 26, 26 May 2010, Gov 2.0 2010 Expo, Washington DC at http://www.katelundy.com.au/2010/05/26/keynote-address-gov2-0-expo-2010/ (accessed 28 May 2010).

[14] The Hon Joe Ludwig, Special Minister of State, *Rudd Government Delivers FOI Reform,* Media Release 27/2010, 13 May 2010, available at http://www.smos.gov.au/media/2010/mr_272010.html (accessed 22 May 2010).

[15] *Freedom of Information Act* 1982 (Cth), *Freedom of Information Act* 1989 (ACT), *Freedom of Information Act* 1991 (Tas.), *Freedom of Information Act* 1989 (N.S.W.), *Freedom of Information Act* 1992 (Qld), *Freedom of Information Act* 1991 (S.A.), *Freedom of Information Act* 1982 (Vic.), *Freedom of Information Act* 1992 (W.A.)

[16] The other members of the FOI Independent Review Panel were Simone Webbe and Dominic McGann. For further background to the review, see http://www.thepremier.qld.gov.au/initiatives/foi_review/index.aspx (accessed 22 May 2010).

[17] See for example, the *Government Information (Public Access) Act* 2009 (NSW) which establishes (in s 5) a "presumption in favour of disclosure of government information unless there is an overriding public interest against disclosure". Section 13 states that there is an "overriding public interest against disclosure of government information ....if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest consideration in favour of disclosure".

Following publication of the Review Panel's report *The Right to Information*[18] in June 2008, the Queensland government responded[19] by enacting the *Right to Information Act* 2009 (Qld) to give effect to its recommendations. The primary object of the *Right to Information Act* 2009 (Qld) is to "give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest" to provide access.[20] By enacting the *Right to Information Act* 2009 (Qld) the Queensland government sought to emphasise and promote the right to access government information[21], with PSI being released administratively as a matter of course, unless there is a good reason for it being withheld, such that formal applications under the Act should only be necessary as a last resort.[22] Government agencies are required to publish a publication scheme setting out the classes of information available and the terms on which it is made available, including any charges.[23]

At the federal level, prior to coming to office at the general elections in November 2007, the Labor Party had announced, as part of its policy platform, its intention to reform the *Freedom of Information Act* 1982 (Cth). Following review of the bills by a Senate Standing Committee, the *Freedom of Information Amendment (Reform) Act* 2010 (Cth) ("FOI Reform Act") and the *Information Commissioner Act* 2010 (Cth)[24] were enacted by the federal Parliament on 13 May 2010.[25] The FOI Reform Act amended the *Freedom of Information Act* 1982 to:

- establish a statutory framework for a pro-active publication scheme for PSI;

- provide a single public interest test, which favours disclosure;

- abolish application fees for access requests and applications from persons seeking access to their own personal information, and reduction of other fees; and

- reduce the embargo period under the *Archives Act* 1983 from 30 years to 20 years for most records.

The *Australian Information Commissioner Act* 2010 (Cth), enacted at the same time as the FOI Reform Act, establishes a new Office of the Australian Information Commissioner as well as two new statutory positions, the Australian Information Commissioner and Freedom of Information Commissioner. The Information Commissioner will be responsible for reporting to the Cabinet Secretary on information policy. In anticipation of the passage of the legislation, in February 2010 the government appointed the federal Ombudsman, Professor John McMillan, as Information Commissioner Designate.[26]

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[18] David Solomon, Simone Webbe, Dominic McGann, *The Right to Information: Reviewing Queensland's Freedom of Information Act,* Queensland Department of Justice and Attorney General, 10 June 2008, available at http://www.foireview.qld.gov.au/documents_for_download/FOI-review-report-10062008.pdf (accessed 22 May 2010).
[19] *The right to information – A response to the review of Queensland's Freedom of Information Act*, 20 August 2008, available at http://www.thepremier.qld.gov.au/initiatives/foi_review/index.aspx (accessed 22 May 2010) and Press Release, Premier of Queensland, the Hon. Anna Bligh, *Public to gain greaer access to Cabinet documents,* 20 August 2008 at http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=59777 (accessed 22 May 2010) .
[20] *Right to Information Act* 2009 (Qld), s 3(1). See also the Preamble the Act, paragraph 3.
[21] *Right to Information Act* 2009 (Qld), s 23.
[22] *Right to Information Act* 2009 (Qld), Preamble, paragraph 2.
[23] *Right to Information Act* 2009 (Qld), s 21.
[24] The Hon Joe Ludwig, Special Minister of State, *Rudd Government Delivers FOI Reform,* Media Release 27/2010, 13 May 2010, available at http://www.smos.gov.au/media/2010/mr_272010.html (accessed 22 May 2010).
[25] The Bills were introduced into Parliament on 26 November 2009 and were referred to the Senate Standing Committee on Finance and Public Administration Legislation, which reported on 16 March 2010, see http://www.aph.gov.au/senate/committee/fapa_ctte/foi_ic/report/index.htm (accessed 22 May 2010).
[26] Senator the Hon Joe Ludwig, Cabinet Secretary and Special Minister of State, *Appointment of the Information Commissioner Designate*, Media Release 08/2010, 26 February 2010, at http://www.smos.gov.au/media/2010/mr_082010.html (accessed 28 May 2010).

Other Australian States/Territories have enacted FOI reforms or are commencing reviews of their existing legislation. NSW has enacted the *Government Information (Public Access) Act* 2009 and the *Government Information (Information Commissioner) Act* 2009 and Tasmania has enacted the *Right to Information Act* 2009, both of which entered into force on 1 July 2010. Since January 2010, reviews of FOI legislation have been underway in the Northern Territory[27] and Western Australia.[28] In December 2009, following a recommendation by the Ombudsman, the Victorian Attorney-General, Rob Hulls, issued revised guidelines on the operation of the *Freedom of Information Act* 1982 (Vic) to ensure that the Act is interpreted consistently with its "terminology, intention and purpose".[29]

3. Open content licensing drives policy on PSI use and reuse

As the OECD recognises in the *Ministerial Report on the OECD Innovation Strategy* (2010), "complex and lengthy licensing procedures" are as much an impediment to PSI access and reuse as restrictive or unclear rules governing access and the conditions of reuse.[30] A unique feature of the Australian experience in recent years is the extent to which it has focused on the role of licensing practices in facilitating or hindering access to PSI. In particular, attention has been directed to the use of simple, standardised, open content licences to overcome the obstacles presented by existing legal arrangements for access and reuse. Significantly, work to improve the licensing of PSI and investigation of the applicability of open content licences commenced in 2004-2005 and was already well advanced by the time the need for comprehensive information policy strategies and reform of the legislative basis for access to PSI was addressed from 2008 on.

Efforts directed toward the adoption of open content licensing by government agencies have been an important driver of policy relating to access and reuse of PSI.[31] Distribution of government materials under machine readable open content licences has implications that go beyond the standardisation of the terms of use of government copyright materials. The use of Creative Commons licences imports a policy dimension as materials distributed under such licences are not simply made available for access but can also be used and reused, with few limitations (such as proper attribution of the author, reuse for non-commercial purposes only or distribution of the material in an unaltered form). Use of standardised (non-negotiated) licences avoids the delays to access and reuse that inevitably occur if it is necessary to negotiate and draft licences specific to the circumstances. By adopting non-exclusive, open content licences that grant extensive reuse permissions, government agencies were able to move much more rapidly towards open access practices than would have been possible if they waited for information policy frameworks to be formalised and FOI regimes to be reformed. In those few sectors where information policies had already been developed, the adoption of open content licensing enabled the key government agencies whose materials were covered by those policies (notably the Australian Bureau of Statistics and Geoscience Australia) to rapidly adjust their practices to facilitate access to and reuse of their materials.

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[27] Public submissions were due on 30 April 2010, see http://www.foi.wa.gov.au/dnn/Miscellaneous/FOIReview.aspx (accessed 28 May 2010);

[28] Public submissions were due on 30 April 2010. The Terms of Reference are available at http://www.foi.wa.gov.au/dnn/Miscellaneous/FOIReview.aspx (accessed 28 May 2010).

[29] Victorian Attorney-General, *Attorney-General Guidelines on the Responsibilities and Obligations of Principal Officers and Agencies*, December 2009, at http://www.foi.vic.gov.au/wps/wcm/connect/f04de0004129d536b1d0b70db22e92f0/Attorney-General+Guidelines_Dec2009.pdf?MOD=AJPERES (accessed 28 May 2010).

[30] OECD, *Ministerial Report on the OECD Innovation Strategy,* Executive Summary, p 13, May 2010, at http://www.oecd.org/dataoecd/3/14/45302349.pdf (accessed 30 May 2010).

[31] A good example of the adoption of open content (Creative Commons licences) as a central element of government informaiton policy, see *Queensland Government Enterprise Architecture: Guideline – Government Information Licensing Framework (Final),* March 2010, v1.0.0., at http://www.qgcio.qld.gov.au/SiteCollectionDocuments/Architecture%20and%20Standards/QGEA%202.0/GILF%20Guideline.pdf (accessed 28 May 2010).

Open content licensing of PSI in Australia has largely focused on the Creative Commons (CC) suite of licences.[32] From shortly after CC licences were first launched, their potential suitability for application to copyright-protected PSI was recognised.[33] Although they were not developed with any overt intention or expectation that they would be used on copyright-protected government materials or datasets, the potential for their application to such materials quickly became apparent to those who had been grappling with how to overcome the obstacles presented by cumbersome licensing practices.[34] Frustration with existing licensing arrangements caused attention to turn fairly quickly on whether CC licences could be applied to reduce impediments to reuse.[35]

By the time Creative Commons Australia was launched in 2005, there was a well-established appreciation of the advantages of open content licensing in the education sector[36] and a dawning awareness that a similar approach could play a role in facilitating access to government copyright materials.[37] Submissions to the Copyright Law Review Committee's inquiry into Crown Copyright (2004 – 2005) urged the Committee to go beyond simply considering whether an improved access regime required abolition of Crown copyright (entirely or in part) and to examine whether the objective could be attained by the adoption of more flexible, open, standardised licensing practices.[38] Immediately upon the launch of the Australian CC licences in 2005, spatial information professionals in the Queensland public sector who had been seeking to rationalise and streamline the licensing arrangements for spatial and statistical information turned their attention to the potential application of the new suite of licences in this context.[39] A project had been initiated in 2004 by the Queensland

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[32] In the education sector, the AEShareNet licences have also been used extensively and the National Education Access Licence for Schools (NEALS) was introduced in 2007 for use in the school education sector. See https://www.det.nsw.edu.au/tc/neals/index.htm (accessed 28 May 2010). See the Smartcopying website set up by the Copyright Advisory Group to the Schools Resourcing Taskforce of the Ministerial Council on Education, Employment, Training and Youth Affairs Taskforce on Copyright, at http://smartcopying.edu.au (accessed 28 May 2010).

[33] On the use of Creative Commons in the Australian government sector, see Anne Fitzgerald, Neale Hooper and Cheryl Foong, *Using Creative Commons 2.5 Australia Licences on Government Copyright Materials,* QUT, 2010, at http://eprints.qut.edu.au/32519/ (accessed 20 June 2010).

[34] In the United States, Paul Uhlir and Jerome Reichman urged the group that developed the CC licences to "expand its mission to include scientific research and take an international perspective". See David Bollier, Viral Spiral: How the Commoners Built a Digital Republic of their Own, 2008 at p 105, available at http://www.viralspiral.cc/download-book (accessed 10 December 2009).

[35] For discussion of the problems caused by licensing practices, see Australian Government, Office of Spatial Data Management, *Paper for the Government 2.0 Task Force: Improving Access to Public Sector Information – A Framework* (author Ben Searle), November 2009, at http://www.osdm.gov.au/Publications/Access+to+Public+Sector+Information/BarriersToAccessOf_PSI–A_Framework.pdf/?id=960 (accessed 28 May 2010).

[36] The use of standardised licensing in the education sector in Australia had been pioneered by AEShareNET. See further, B Fitzgerald, A Fitzgerald, M Perry, S Kiel-Chisholm, E Driscoll, D Thampapillai and J Coates, *Creating a Legal Framework for Copyright Management of Open Access within the Australia Academic and Research Sector* (OAK Law Report No 1), available at http://eprints.qut.edu.au/6099/1/Printed_Oak_Law_Project_Report.pdf (accessed 29 January 2010); B Fitzgerald, *Open Content Licensing (OCL) for Open Educational Resources*, presented at the OECD Expert Meeting on Open Educational Resources, 6 and 7 February 2006, Malmo, Sweden, 2005, available at http://eprints.qut.edu.au/3621 (accessed 29 January 2010).

[37] Digital Content Industry Strategic Industry Leaders Group, *Unlocking the Potential: Digital Content Industry Action Agenda Report,* March 2006, at pp 29, 46, 62, available at http://www.archive.dcita.gov.au/2007/12/unlocking_the_potential_digital_content_industry_action_agenda_report (accessed 29 January 2010); S Cunningham, T Cutler, A Fitzgerald, Neale Hooper, Tom Cochrane, Why Governments and Public Institutions Need to Understand Open Content Licensing in B Fitzgerald, J Coates and S Lewis (eds) *Open Content Licensing: Cultivating the Creative Commons,* Sydney University Press, 2007 at pp 74-92, available at http://eprints.qut.edu.au/6677/1/6677.pdf (accessed 2 February 2010).

[38] See the submission by Professor Brian Fitzgerald to the Copyright Law Review Committee at http://www.ag.gov.au/agd/WWW/clrHome.nsf/Page/Present_Inquiries_Crown_copyright_Submissions_2004_Sub_No_17_-_Professor_Brian_Fitzgerald

[39] For several years, these officers had been investigating ways of improving the flow of spatial information within the Queensland Government, and between the State and other levels of government and the private sector. They had recently viewed a video presentation by Professor Lawrence Lessig delivered at an event at QUT in 2004 to mark the launch of Creative Commons in Australia and immediately grasped the potential for CC licences to be applied towards achieving their objective of reducing impediments to the flow of spatial information.

Spatial Information Council (QSIC)[40] to address long-standing dissatisfaction with the perceived limitations of the prevailing legal arrangements and practices for data access and sharing, both within government and between government and the private sector.[41] Having seen the potential relevance of Creative Commons licences, from 2005 work proceeded collaboratively between QUT's Law Faculty (managers of the Australian Creative Commons project and licences), the Queensland Government's Office of Economic and Statistical Research (OESR)[42] and the Department of Natural Resources and Water (now Department of Environment and Resource Management).[43] This project, which developed the Creative Commons-based Government Information Licensing Framework (GILF) and investigated legal, policy and economic[44] aspects of access to PSI, provided input into the various reviews of this area and led the way towards the adoption of CC licensing in the government sector in Australia.

From the outset, the principal focus of the project was the development of a standardised information licensing model for PSI which could be recommended for use with all kinds of government copyright materials to enable enhanced, seamless, on-demand access to PSI. The project sought to actively counteract the tendency towards licence proliferation, taking a strong view on the importance of a standardised approach and seeking to avoid the complexities that would inevitability re-occur if different government agencies and different jurisdictions insisted on developing individual licensing templates for access to and reuse of their copyright content. Significantly, the project did not directly address information policy or the development of principles for PSI access and reuse. However, by focusing attention on the importance of removing barriers to access to and reuse of PSI caused by inadequate or inappropriate licensing practices, the project's findings and recommendations about the use of CC licences directly influenced the reviews of information access policies and practices by the federal government,[45] other State governments,[46] the New Zealand Government[47] and the United

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[40] Government Information Licensing Framework (GILF) Project website, http://www.gilf.gov.au; see also the Queensland Spatial Information Office (QSIC) website for background information about GILF, http://www.qsic.qld.gov.au/QSIC/QSIC.nsf/CPByUNID/6C31063F945CD93B4A257096000CBA1A accessed on 14 November 2009.

[41] Initial consideration of the applicability of CC licences to government copyright materials occurred in response to a request to examine this issue from Tim Barker, (then) Assistant Government Statistician and Director, Queensland Spatial Information Office, Office of Economic and Statistical Research (OESR), Queensland Treasury, Graham McColm, Principal Advisor, Department of Natural Resources and Water, Queensland and Rob Bischoff.

[42] The Office of Economic and Statistical Research (OESR) is in Queensland Treasury and throughout this time was managed by Dr Peter Crossman.

[43] The authors have been associated with the project since its inception in 2005. Other members of the team in the OESR that progressed the Government Information Licensing Framework (GILF) project from 2005 on included Jenny Bopp, Brendan Cosman, Cathy McGreevy, Trish Santin-Dore and Baden Appleyard. For a chronological account of developments, see the GILF project website at http://www.gilf.gov.au. From 2007 to 2010, the GILF project received financial support through the Cooperative Research Centre for Spatial Information (CRC-SI). See A Fitzgerald, *Open Access Policies, Practices and Licensing: A review of the literature in Australia and selected jurisdictions,* QUT, July 2009, available at http://www.aupsi.org/news/CompiledLiteratureReviewnowavailableinhardcopy.jsp accessed 14 November 2009.

[44] See J Cook, *A summary view of government cost recovery policies in Australia and New Zealand relating to the supply of public sector information,* QUT ePrints Working Paper, April 2010, at http://eprints.qut.edu.au/31609/ (accessed 15 June 2010) and J Cook, *Economic issues in funding and supplying public sector information,* QUT ePrints Working Paper, at http://eprints.qut.edu.au/27832/ (accessed 15 June 2010).

[45] See Siu-Ming Tam, Australian Bureau of Statistics, *Informing the Nation – Open Access to Statistical Information in Australia,* Siu-Ming Tam, paper presented to the United Nations Economic Commission for Europe Work Session on the Communication and Dissemination of Statistics, Poland, May 2009, at para 37, available at http://www.unece.org/stats/documents/ece/ces/ge.45/2009/wp.11.e.pdf and Venturous *Australia – Building Strength in Innovation, Review of the National Innovation System*, 2008, available at http://www.innovation.gov.au/innovationreview/Pages/home.aspx accessed on 11 June 2009.

[46] Victorian Parliament, Economic Development and Infrastructure Committee, *Inquiry into Improving Access to Victorian Public Sector Information and Data*, June 2009, available at http://www.parliament.vic.gov.au/edic/inquiries/access_to_PSI/final_report.html.

[47] The draft New Zealand Government Open Access and Licensing Framework (NZGOAL), released for comment in August 2009, proposes the use of New Zealand Creative Commons licences by government agencies and explicitly refers (at p 9) to consultations with the GILF project team and Creative Commons Australia. See http://www.e.govt.nz/policy/information-data/nzgoalframework.html (accessed 25 January 2010).

Kingdom government.[48] Team members actively advocated the benefits of adopting a CC-based licensing approach to federal and state agencies Australia-wide and urged a revival on interest in the task of developing a national information framework. Having firstly attracted the interested of the Queensland government's Chief Information Office, the project was ultimately reviewed and supported in principle by the Cross-Jurisdictional Chief Information Officers Committee (CJCIOC) and received the endorsement of the Ministerial Online and Communications Council (OCC) in 2007.

Research confirmed observations that the systems governing the collection and release of government information had developed in an ad hoc manner, resulting in a fragmented, inefficient and confusing system of contractual and statutory regulation of information access and reuse. A review of licensing practices and models in several Queensland Government agencies found there were significant problems with the current approach, including a lack of uniformity and clarity in licensing practices. The report, *Government Information and Open Content Licensing: An Access and Use Strategy*[49] ("the Stage 2 report"), published in October 2006, described the work undertaken during Stage 2 of the project and set out its findings and recommendations. The Stage 2 report identified the need for clear and succinct guiding principles for access, reuse and pricing and concluded that CC licences were the most the appropriate available open licences for use on PSI. It supported the introduction of a simplified system of open content licensing for the majority of the information made publicly available by the Queensland government and recommended:

> 2.1 That the Queensland Government establish a policy position that, while ensuring that confidential, security classified and private information collected and held by government continues to be appropriately protected, enables greater use and re use of other publicly available government data and facilitates data sharing arrangements.

> 2.2 That the Creative Commons open content licensing model be adopted by the Queensland Government to enable greater use of publicly available government data and to support data sharing arrangements.[50]

These recommendations were given effect in 2009-2010 through the enactment of the *Right to Information Act* 2009 (Qld) and the revised Queensland Government Enterprise Architecture framework 2.0 (QGEA 2.0)[51] issued by the Queensland Government Chief Information Office in the Department of Public Works.[52] One of the documents in the QGEA is the Government Information Licensing Framework policy (QGEA GILF Policy) which requires Queensland government departments to license PSI under one of the 6 Creative Commons licences or a restrictive licence developed from the template clauses in the model licence provided in GILF.[53] (See further at [5.1.4].)

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[48] See *Power of Information Taskforce Report*, Richard Allan (chair), February 2009 at pp 7 and 25, available at http://poit.cabinetoffice.gov.uk/poit/wp-content/uploads/2009/03/poit-report-final-pdf.pdf (accessed on 27 January 2010). In the December 2009 report, *Putting the Frontline First: Smarter Government*, (available at http://www.hmg.gov.uk/frontlinefirst.aspx) the UK Government indicated its intention to "establish a common licence to reuse data which is interoperable with the internationally recognised Creative Commons model". .

[49] Queensland Government, Queensland Spatial Information Council, *Government Information and Open Content Licensing: An access and use strategy* (Government Information Licensing Framework Project Stage 2 Report), October 2006, available at http://www.qsic.qld.gov.au/qsic/QSIC.nsf/CPByUNID/BFDC06236FADB6814A25727B0013C7EE accessed 22 May 2009.

[50] Ibid, pp 1-2.

[51] On the Queensland Government Enterprise Architecture (QGEA) generally, see http://www.qgcio.qld.gov.au/qgcio/architectureandstandards/qgea2.0/Pages/index.aspx The QGEA framework 2.0 document was published under a CC licence. The QGEA is explained as follows , at p ii:

> The Queensland Government Enterprise Architecture (QGEA) provides the decision making and management structures to support the development of better services for Queenslanders, more efficient and effective use of information and ICT in government and effective partnering with the private sector through the application of whole-of-Government, cross agency and agency information and information communications technology policies and practices.

[52] http://www.qgcio.qld.gov.au/qgcio/Pages/index.aspx (accessed 28 May 2010).

[53] Queensland Government Enterprise Architecture, *Government Information Licensing Framework (GILF),* March 2010, v1.0.0, at http://www.qgcio.qld.gov.au/SiteCollectionDocuments/Architecture%20and%20Standards/QGEA%202.0/GILF%20Policy.pdf (accessed 28 May 2010).

4. Australian Government developments

The issue of access to and reuse of government information and data has been considered by various government agencies and in reports commissioned by governments over the last 15 years. In the mid-1990s, the National Library of Australia was one of the first federal government agencies to realise the potential of the emerging internet to provide enhanced citizen access to government information in digital format.[54] The landmark 1994 report, *Commerce in Content: Building Australia's International Future in Interactive Multimedia Markets*, commissioned from Cutler & Company by the federal government made several recommendations as to how governments, at both federal and state level, could leverage off the cultural and content materials they created, owned or used, so as to accelerate the development of the digital content sector.[55] The recommendations included providing easy access to culturally significant data in digital form, as well as providing comprehensive access to nationally significant data, and promoting the development of standards for document and image digitalisation and archiving. Contemporaneously, the Australian Science and Technology Council's (ASTC) 1994 report, *The Networked Nation*, proposed that government should stimulate public interest in, and facilitate access to, government information via electronic networks. ASTEC noted the need for a coordinated approach by government and recommended the establishment of a Commonwealth Government Information Services Task Force to provide this coordination, to develop pilot programs, to investigate options for extending community access to networked information, and to develop a directory of government information publicly available over networks. However, 10 years later little progress had been made and the report commissioned by the federal government from the Digital Content Industry Strategic Industry Leaders Group, *Unlocking the Potential: Digital Content Industry Action Agenda Report,* (November 2005) pointed out the need for improved access to PSI to promote the growth of the digital content industry and recommended that open content licences, such as Creative Commons, be more widely adopted.[56]

In the absence of a general national or inter-governmental policy on access to and reuse of PSI, Australian activities relating to information access and reuse have been largely focused on two key areas: spatial data and publicly funded research outputs (whether in the form of publications or data). Much of the impetus for access to materials held or produced by government bodies has come from the spatial information[57] sector, in the context of longstanding efforts to establish spatial data infrastructures (SDIs) at the national and state levels. The most advanced policy in Australia on data access - and the only one operating at the national level - is the *Spatial Data Access and Pricing Policy*[58] adopted by the Australian government in 2001 (referred to as the "OSDM Policy").

Since 2008, there have been significant developments and initiatives at the federal government level, both with respect to policy support for access to and reuse of PSI and the adoption of CC licensing to

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[54] Tony Barry, *Caught in a Web .– Australian Government network policy*, paper presented at AUUG .'95 and Asia-Pacific World Wide Web '95 Conference.

[55] Cutler & Company, *Commerce in Content: Building Australia's International Future in Interactive Multimedia Markets*, A report for the Department of Industry Science and Technology, CSIRO, and the Broadband Services Expert Group, 1994, Part 8: The role and contribution of government, available at http://www.nla.gov.au/misc/cutler/cutler8.html (accessed 28 May 2010).

[56] Digital Content Industry Strategic Industry Leaders Group, *Unlocking the Potential: Digital Content Industry Action Agenda Report,* November 2005, at
http://www.archive.dcita.gov.au/__data/assets/pdf_file/0006/37356/06030055_REPORT.pdf (accessed 28 May 2010).

[57] "Spatial information" is used in the sense of the definition in the OSDM's *Spatial Data Access and Pricing Policy*:
"Spatial data is information about the location and attributes of features that are on, above or beneath the surface of the earth. In other words, it is data that can be mapped. The terms "land information", "geographic information" and "geospatial data" are also used to describe spatial data." See *A Proposal for a Commonwealth Spatial Data Access and Pricing Policy: The report of the Commonwealth Interdepartmental Committee on Spatial Data Access and Pricing,* June 2001, p 7, available at http://www.osdm.gov.au/OSDM/Policies+and+Guidelines/Spatial+Data+Access+and+Pricing/default.aspx accessed 28 May 2010.

[58] See http://www.osdm.gov.au/Publications/Policies+and+guidelines/default.aspx and
http://www.osdm.gov.au/OSDM/Policies+and+Guidelines/Spatial+Data+Access+and+Pricing/default.aspx (accessed 28 May 2010).

distribute government copyright materials. The evolution of the federal government's policy on PSI can be traced through a series of influential reviews and reports in 2008 and 2009, culminating with the work of the Government 2.0 Taskforce in the second half of 2009. Key federal government agencies covered by the OSDM Policy (Geoscience Australia, Australian Bureau of Statistics and Bureau of Meteorology) had already begun changing their practices by the mid-2000s, removing fees for access and abandoning restrictive licensing practices that prohibited or limited the use and reuse of PSI. Having already taken significant steps to implement the OSDM Policy[59], these agencies moved quite rapidly to adopt Creative Commons licensing when support for this approach was signalled in the *Venturous Australia* Green Paper in August 2008.[60]

4.1 Review of the National Innovation System Green Paper, *Venturous Australia. Building strength in innovation* (2008)

The need for a comprehensive national information policy framework was first raised during the review of the National Innovation System (NIS), chaired by Dr Terry Cutler, which was established in early 2008.[61] Information policy was a central concern of the members of the NIS review panel and was the subject of several strong recommendations in the Green Paper on the National Innovation System, *Venturous Australia. Building strength in innovation* ("the Cutler Report") published in August 2008. [62]

Chapter 7 of the Cutler Report, "Information and market design"[63] commenced with the acknowledgement that:

> **good information** is crucial to the efficiency of markets and to the ability of discerning consumers to drive innovation by providers. Governments can promote good information flows both by finessing the 'rules of the game' in markets and by ensuring that the information and other content that they fund is widely and freely available to be used by consumers, and to be reused and transformed into new value-added products by firms further down the production chain. [emphasis in original].[64]

The NIS review panel recommended that "Australia should establish a National Information Strategy to optimise the flow of information in the Australian economy", a fundamental aim of such strategy being to "maximise the flow of government generated information, research and content for the benefit of users (including private sector resellers of information").[65] Further, the panel recommended that "to the maximum extent practicable, information, research and content funded by Australian governments – including national collections – should be made freely available over the internet as

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[59] See Australian Government, Office of Spatial Data Management, *Paper for the Government 2.0 Task Force: Improving Access to Public Sector Information – A Framework* (author Ben Searle), November 2009, at
http://www.osdm.gov.au/Publications/Access+to+Public+Sector+Information/BarriersToAccessOf_PSI–
A_Framework.pdf/?id=960 (accessed 28 May 2010).
[60] Cutler & Company, *Venturous Australia – Building Strength in Innovation,* Review of the National Innovation System, Report for the Australian Government Department of Innovation, Industry, Science and Research, 29 August 2008, at
http://www.innovation.gov.au/innovationreview/Documents/NIS_review_Web3.pdf (accessed 28 May 2010)
[61] The Review of the National Innovation System was commissioned by Senator Kim Carr, Minister for Innovation, Industry, Science and Research on 22 January 2008, shortly after the election of the Rudd Labor government in November 2007. The review panel, chaired by Dr Terry Cutler, was asked to identify gaps and weaknesses in Australia.'s innovation system and recommend ways to correct them. The panel considered evidence of both market failure - where commercial incentives are insufficient to induce socially and economically desirable behaviour; and system failure - where the scope for innovation is limited by policy and institutional shortcomings. The panel released its final report (a 'Green Paper.'), *Venturous Australia - Building Strength in Innovation,* on 29 August 2008. See generally http://www.innovation.gov.au/innovationreview/Pages/home.aspx
[62] Ibid. The Cutler Report is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 2.5 Australia Licence (CC-BY-NC-ND).
[63] Chapter 7, "Information and Market Design" in Cutler & Company, ibid at p 81, at
http://www.innovation.gov.au/innovationreview/Documents/NIS_review-chapter7(1).pdf (accessed 28 May 2010).
[64] Ibid.
[65] Ibid, recommendation 7.7 at p 95.

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part of the global public commons"[66] and that "Australian governments should adopt international standards of open publishing as far as possible".[67] Significantly, for the first time in an inquiry commissioned by the federal government, it was recommended that "material released for public information by Australian governments should be released under a Creative Commons licence."[68]

On 12 May 2009, the federal government released the White Paper *Powering Ideas: An Innovation Agenda for the 21st Century*[69] in response to the *Venturous Australia* Green Paper. On access to and reuse of PSI, the White paper indicated broad agreement with the Cutler Report's recommendations and the government's intention to build on the foundational work already done by key federal agencies, including the Australian Bureau of Statistics, Geoscience Australia and the Bureau of Meteorology.[70] The government stated that it would "take steps to develop a more coordinated approach to Commonwealth information management, innovation and engagement involving the Australian Government Information Management Office and other federal agencies".[71]

4.2 Department of Broadband, Communications and the Digital Economy, *Australia's Digital Economy: Future Directions* (2009)

From mid-2008, the Digital Economy branch of the Department of Broadband, Communications and the Digital Economy (BCDE) investigated various issues relating to the digital economy, including open access to PSI. In late 2008, the Department conducted consultations and a workshop on collaboration to maximise online engagement. Its December 2008 consultation paper raised open access to PSI as a key issue, identifying the need for the Australian government to develop and implement a strategy for access to PSI and to adopt a single standard licensing approach to facilitate use and reuse.[72]

On 14 July 2009, the Department released the report, *Australia's Digital Economy: Future Directions* (the Digital Economy report)[73] which considers actions that can be taken by government, industry and the community to maximise the benefits of the digital economy in Australia. Open access to PSI ("subject to issues such as privacy, national security and confidentiality") was identified as a key area of focus for government in facilitating innovation.[74] Enabling open access to PSI was seen not only as a way of promoting public sector innovation but also as a means by which government can facilitate private sector innovation through more open information strategies and promoting a culture of commercialising digital innovation.[75] An open access approach to the release of PSI was seen as "a

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[66] Ibid, recommendation 7.14 at p 98.

[67] Ibid, recommendation 7.8 at p 95.

[68] Ibid.

[69] Australian Government, Department of Innovation, Industry, Science and Research, *Powering Ideas: An Innovation Agenda for the 21st Century,* 12 May 2009, at http://www.innovation.gov.au/innovationreview/Pages/home.aspx accessed 28 May 2010.

[70] Ibid, Chapter 6, "Public Sector Innovation", at p 53, at http://www.innovation.gov.au/innovationreview/Pages/home.aspx. Note that an earlier report commissioned by the federal government from the Digital Content Industry Strategic Industry Leaders Group, *Unlocking the Potential: Digital Content Industry Action Agenda Report,* November 2005 had recommended improved access to PSI and the more widespread adoption of open content licences, such as Creative Commons, but had not specifically recommended the use of Creative Commons licences for PSI. Available at http://www.archive.dcita.gov.au/__data/assets/pdf_file/0006/37356/06030055_REPORT.pdf (accessed 28 May 2010).

[71] Australian Government, Department of Innovation, Industry, Science and Research, *Powering Ideas: An Innovation Agenda for the 21st Century,* 12 May 2009, at p 7, at http://www.innovation.gov.au/innovationreview/Pages/home.aspx (accessed 28 May 2010).

[72] See Australian Government, Department of Broadband, Communications and the Digital Economy, *Digital Economy Future Directions: Consultation Paper*, 18 December 20008.

[73] See http://www.dbcde.gov.au/?a=117295 .

[74] *Australia's Digital Economy: Future Directions,* Department of Broadband, Communications and the Digital Economy, July 2009 at p 12, available at http://www.dbcde.gov.au/__data/assets/pdf_file/0006/117681/DIGITAL_ECONOMY_FUTURE_DIRECTIONS_FINAL_REPORT.pdf (accessed 28 May 2010).

[75] Ibid, p 11.

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logical response to the digital economy and innovation benefits that can result from new and emerging digital use and reuse" and such an approach was clearly supported by industry and the public.

The Digital Economy report states the Australian government's intention to explore policy initiatives, and work with State and Territory governments, to provide more open access to appropriate categories of PSI that do not raise issues such as privacy, national security and confidentiality. [76]   Consistent with the policy framework it lays out, the Digital Economy report is published under a Creative Commons Attribution-Noncommercial-No Derivative Works 2.5 licence (CC-BY-NC-ND).

4.3 Government 2.0 Taskforce, *Engage: Getting on with Government 2.0 (2009)*

In June 2009, the federal Minister for Finance and Deregulation, Lindsay Tanner, and the Special Minister of State, Senator Joe Ludwig, launched the Government 2.0 Taskforce ("Gov 2.0 Taskforce"). [77] The 15-member Taskforce[78], assisted by an international reference group[79], was chaired by Dr Nicholas Gruen, a long-time advisor to Australian governments on economic strategy. [80]

The Taskforce's Terms of Reference were crafted broadly and can be roughly divided into two main streams. Firstly, the Taskforce was required to advise the federal government on how to use web 2.0 technologies to facilitate online engagement and to initiate and fund projects that practically demonstrated the steps government could take to become accountable, responsive and efficient. The second stream of the Taskforce's reference required it to consider how to increase the openness of government through making PSI more widely available, to promote transparency, innovation and value-adding to government materials.

The Gov 2.0 Taskforce's terms of reference[81] required it to advise and assist the federal government to:

- make government information more accessible and useable – to establish a pro-disclosure culture around non-sensitive public sector information;

- make government more consultative, participatory and transparent – to maximise the extent to which government utilises the views, knowledge and resources of the general community;

- build a culture of innovation within government – to ensure that government is receptive to the possibilities created by new collaborative technologies and uses them to advance its ambition to continually improve the way it operates; and

- promote collaboration across agencies with respect to online and information initiatives – to ensure that efficiencies, innovations, knowledge and enthusiasm are shared on a platform of open standards.[82]

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[76] Ibid, p 14.
[77] See http://gov2.net.au/2009/06/22/speech-launch-of-the-government-2-0-taskforce/.
[78] The members of the Government 2.0 Taskforce were: Dr Nicholas Gruen (Chair), Ann Steward (Deputy Chair), Glenn Archer, Seb Chan, Adrian Cunningham, Professor Brian Fitzgerald, Mia Garlick, Peter Harper, Lisa Harvey, Martin Hoffman, Pip Marlow, Alan Noble, Dr Ian Reinecke, Dr David Solomon, Martin Stewart-Weeks. For information about the members of the Taskforce, see http://gov2.net.au/members/
[79] For a listing of the members of the International Reference Group, see http://gov2.net.au/blog/2009/10/23/inquiries-2-0-part-3-0/#irg
[80] See http://gov2.net.au/members/#gruen
[81] See the Government 2.0 Taskforce's website at http://gov2.net.au/about/
[82] See http://gov2.net.au/

The Taskforce was required to identify and/or trial initiatives to demonstrate how these objectives could be accomplished and to advise the government on barriers preventing and policies to promote greater information disclosure, digital innovation and online engagement. In doing so, it was tasked with working with the public, private, cultural and not-for-profit sectors to fund and develop seed projects promoting its objectives. To further advance the proposal by Dr Ian Reinecke in a report commissioned by the federal government, *Information Policy and E-governance in the Australian Government* (March 2009)[83], that a new Office of Information Commissioner (OIC) should be established, the Gov 2.0 Taskforce was required to identify policies and frameworks to assist the OIC and other agencies to:

- develop and manage a whole-of-government information publication scheme to encourage greater disclosure of PSI;

- extend opportunities for the reuse of government information, considering the terms of that use, to maximise the beneficial flow of information and facilitate productive applications of government information to the greatest possible extent;

- encourage effective online innovation, consultation and engagement by government, including by drawing on the lessons of the government's online consultation trials and any initiatives undertaken by the Taskforce.

After conducting extensive Australia-wide consultations (including by means of a blog), commissioning a range of projects to demonstrate the potential of proactive information disclosure and digital engagement, and running the Mashup Australia initiative and competition[84], the Taskforce delivered its final report, *Engage: Getting on with Government 2.0*, on 22 December 2009.[85]

The Gov 2.0 Taskforce made 13 recommendations covering a range of issues, including coordinated leadership, guidance, support and recognition for agencies and public servants engaging online, accessibility and security. The federal government formally responded to the *Engage* report on 3 May 2010, generally agreeing to 12 of the Taskforce's 13 recommendations.[86] Significantly, the government's response was in a document licensed under a CC-BY licence.

4.3.1.1 Declaration of Open Government

The Taskforce's central recommendation (recommendation 1) was that, accompanying the federal government's policy response to the Gov 2.0 Taskforce's report, a declaration of open government should be made at the highest level, stating that:

- using technology to increase citizen engagement and collaboration in making policy and providing services will help achieve a more consultative, participatory and transparent government;

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[83] Ian Reinecke, *Information Policy and E-governance in the Australian Government: A report for the Department of the Prime Minister and Cabinet,* March 2009 (updated to 31 July 2009), Executive Summary, p 1. Dr Reinecke was commissioned by the Department of Prime Minister and Cabinet to provide specialist advice and report on information management issues, including information policy and e-governance.

[84] See http://mashupaustralia.org/

[85] N Gruen (chair), *Engage: Getting on with Government 2.0 – Report of the Government 2.0 Taskforce,* 22 December 2009, at "http://www.finance.gov.au/publications/gov20taskforcereport/doc/Government20TaskforceReport.pdf (accessed 22 May 2010).

[86] The only recommendation which was not accepted in full or in principle related to the tax deductiblity of "information philanthropy". Consideration of this issue was deferred for consideration in the contextt of a broad-ranging review of the Australian tax system and a report on the contribution of the not-for-profit sector. The government's response is at http://www.finance.gov.au/publications/govresponse20report/index.html

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- PSI is a national resource and that releasing as much of it on as permissive terms as possible will maximise its economic and social value to Australians and reinforce its contribution to a healthy democracy;

- online engagement by public servants, involving robust professional discussion as part of their duties or as private citizens, benefits their agencies, their professional development, those with whom they are engaged and the general public.

This recommendation was accepted outright. The government's response expressly stated its commitment to the principles of openness and transparency in government and its intention to affirm those principles through a Declaration of Open Government.[87]

The Declaration of Open Government was issued by Lindsay Tanner, Minister for Finance and Deregulation, on 16 July 2010 on behalf of the Australian Government. It declares the Government's commitment to "open government based on a culture of engagement, built on better access to and use of government held information, and sustained by the innovative use of technology". The Declaration sets out 3 key principles underlying the Australian government's support for openness and transparency in government:

- **Informing**: strengthening citizen's rights of access to information, establishing a pro-disclosure culture across Australian Government agencies including through online innovation, and making government information more accessible and usable;
- **Engaging**: collaborating with citizens on policy and service delivery to enhance the processes of government and improve the outcomes sought; and
- **Participating**: making government more consultative and participative. [88]

Launching the Declaration of Open Government, Minister Tanner said that it "lays an important foundation in implementing our Government 2.0 agenda":

> [I]t acknowledges that the internet holds a crucial role in realising a more open and transparent form of government in this country. The Declaration is about making more government information available to the public online, and encouraging reuse of that information in new, valuable and potentially unexpected ways. It is about giving Australians more of a say in forming the policy and delivering the services that have an influence on their lives. It is about enabling government agencies and individual public servants to be more innovative and more responsive to input and feedback, while still maintaining the high ethical and professional standards we expect.[89]

4.3.1.2 Open access policy and principles

The Gov 2.0 Taskforce's recommendations set out principles underpinning a general policy that PSI should be "open accessible and reusable":

- by default PSI should be:

  - free
  - based on open standards
  - easily discoverable
  - understandable

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[87] Federal government's response to the Government 2.0 Taskforce's report, *Engage: Getting on with Government 2.0,* 3 May 2010, at p 3, at http://www.finance.gov.au/publications/govresponse20report/index.html (accessed 22 May 2010)

[88] *Declaration of Open Government,* Lindsay Tanner, Minister for Finance and Deregulation, issued 16 July 2010, at http://agimo.govspace.gov.au/2010/07/16/declaration-of-open-government/ (accessed 16 July 2010).

[89] Ibid.

- o machine-readable
- o freely reusable and transformable (recommendation 6.1);

- PSI should be released as early as practicable and regularly updated to ensure its currency is maintained (recommendation 6.2);

- Any decision to withhold the release of PSI (unless there is a legal obligation to withhold release) should only be made in accordance with policies endorsed by the [Office of the Information Commissioner] and consistent with the government's FOI policy (recommendation 6.8). In the case of structured data, agencies are required to "exhaust options to protect privacy and confidentiality" before seeking an exemption from the general pro-disclosure policy (recommendation 6.8.1).

- Agencies are to "proactively identify and release, without request, such data that might reasonably be considered as holding value to parties outside the agency" (recommendation 6.8.2).

- To ensure that "effective and consistent" access to PSI is implemented in accordance with the principles described in these recommendations, the Gov 2.0 Taskforce recommended that they be given "due consideration" in guidelines issued by the Office of the Information Commissioner under the amended *Freedom of Information Act* (Cth) (recommendation 6.15).

All these recommendations were accepted by the federal government. The government's response notes that the FOI reforms and the *Information Commissioner Bill* would create a new framework through which government information is published and managed, and establish the new statutory position of Information Commissioner who would be responsible for reporting to the Cabinet Secretary on information policy. The principles are to be addressed in the guidelines on the Information Publication Scheme that will be issued by the Information Commissioner under the *Freedom of Information Act* (Cth).[90]

4.3.1.3 Open content (Creative Commons) licensing of copyright-protected PSI

Several of the Taskforce's recommendations dealt specifically with licensing of copyright-protected PSI. To give effect to the principle that PSI should be openly accessible, freely reusable and transformable and distributed under internationally standardised, machine-readable licences, the Gov 2.0 Taskforce recommended that "PSI should be licensed under the Creative Commons BY standard as the default" (recommendation 6.3).[91] More restrictive licensing arrangements should be used only in "special circumstances", in accordance with general guidance or specific advice provided by the Office of the Information Commissioner (recommendation 6.4). So that these recommendations about the default licence for copyright-protected PSI can be implemented with respect to already existing PSI, the Gov 2.0 Taskforce recommended that the Office of the Information Commissioner should develop policies to enable it to be relicensed CC-BY (recommendation 6.5). The Taskforce envisaged that a large amount of published PSI (government reports, legislation, records etc that are already accessible to the public) could be automatically designated CC-BY or that applications could be made requesting that it be relicensed in this way.[92] The Gov 2.0 Taskforce recommended that the default rule that PSI be released under a CC-BY licence should apply where the rights are owned by the government (recommendation 6.6). In cases where the PSI is owned by, or shared with, another party, the government should negotiate with the owner to secure the rights required for release under a

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[90] Federal government's response to the Government 2.0 Taskforce's report, *Engage: Getting on with Government 2.0*, 3 May 2010, at p 10, at http://www.finance.gov.au/publications/govresponse20report/index.html (accessed 22 May 2010).
[91] Government 2.0 Taskforce, *Engage: Getting on with Government 2.0 – Report of the Government 2.0 Taskforce*, Department of Finance and Deregulation, 2009, at p xv, at http://gov2.net.au/report (accessed 28 May 2010).
[92] Ibid, recommendation 6.5, at pp xix and 58.

CC-BY licence.[93] All new contracts entered into between the government and other parties should clearly state the federal government's obligation to publish PSI under a CC-BY licence.[94]   The Taskforce recommended that agencies should apply policy guidance or seek advice on a case-by-case basis on the licensing of PSI either before its release or in administering licences after publication (recommendation 7.1).[95]

The federal government accepted these recommendations. On the acceptance of CC-BY as the default licence, Dr Nicholas Gruen – who headed the Gov 2.0 Taskforce – has commented:

> Now the government has accepted our recommendation that CC be the default, and indeed that the default be one of the most permissive licences CC-BY which allows complete freedom to reproduce, and remix subject only to the acknowledgement of the original source.

> So having advocated what I used to see as no more than a small commonsensical change, I'm pleased to see that it's been adopted, with the response to the Government 2.0 Taskforce being one of the first cabs off the rank to be licensed CC-BY. Australia will be one of the first governments in the world with such a policy. For me the change is also emblematic of the bigger picture.[96]

The Taskforce recommended that, upon becoming available for public access under the *Archives Act* 1983 (Cth), Crown copyright works should be automatically licensed under a CC-BY licence (recommendation 6.7).[97] The federal government agreed to a slightly modified version of this recommendation. It accepted the import of the Taskforce's recommendation, agreeing that, when federal records held in archives become available for access, they should be licensed under an "appropriate open attribution licence". However, rather than accepting the Taskforce's nomination of CC-BY licences as the most appropriate licence for archival materials upon release, the government said that the selection and use of an open attribution licence preferred to leave it to individual agencies to determine which licence to apply, on a case-by-case basis.[98]

4.3.1.4 Information publication scheme

The Taskforce recommended that, in developing, managing and implementing a government information publication scheme, the Office of the Information Commissioner should take into account the findings and recommendations of the report on this issue that was commissioned by the Taskforce (recommendation 8.1).[99] The Taskforce supported the model for the publication scheme set out in the *Freedom of Information Amendment (Reform) Bill* 2009 and recommended (recommendation 8.2) that information publication schemes be developed with the aims to:

> **8.2.1** provide an overall and consistent statutory framework for information publication by all agencies

> **8.2.2** encourage the widest disclosure of useful government information consistent with the public interest, and thereby greater trust in government

> **8.2.3** guide agencies in overcoming attitudinal, technological and legal barriers to optimal information disclosure and use, and to improved public engagement

> **8.2.4** provide a planning framework to assist agencies in their overall information management

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[93] Ibid, recommendation 6.6, at pp xix and 58.
[94] Ibid.
[95] Government 2.0 Taskforce, *Engage: Getting on with Government 2.0 – Report of the Government 2.0 Taskforce,* Department of Finance and Deregulation, 2009, at pp xx and 60, at http://gov2.net.au/report (accessed 28 May 2010).
[96] N Gruen, *Guest Post: Now for the main event – you!,* 5 May 2010, at http://agimo.govspace.gov.au/2010/05/05/now-for-the-main-event-you/
[97] Ibid at p 59.
[98] Federal government's response to the Government 2.0 Taskforce's report, *Engage: Getting on with Government 2.0,* 3 May 2010, at p 10, at http://www.finance.gov.au/publications/govresponse20report/index.html (accessed 22 May 2010).
[99] Eric Wainwright and Dagmar Parer, *Whole of Government Information Publication Scheme: Government 2.0 Taskforce, Project 7,* available at http://gov2.net.au/projects/ (accessed 25 June 2010).

8.2.5 provide an integrated and simplified guide for agencies to meet their information publication and reporting obligations

8.2.6 provide clear and understandable guidance to the public on their rights to, and methods of, accessing and using government information, leading to improved service delivery and public engagement in policy development

8.2.7 enable the proposed OIC to monitor schemes, and encourage agencies towards achieving government pro-disclosure objectives through reference to exemplars, and reporting of unsatisfactory progress**.**

In responding, the government noted the Taskforce's recommendations and stated that the new Information Commissioner would take all these issues into account in issuing guidance on and monitoring the Information Publication Scheme (introduced in s 8 of the *Freedom of Information Act 1982 (Cth)*).[100]

4.3.1.5 Administrative arrangements

The Gov 2.0 Taskforce recommended that responsibility for Crown copyright and licensing be removed from the Attorney-General's Department and placed with either the Office of the Information Commissioner or the lead agency responsible for Gov 2.0 (recommendation 7.2). However, the federal government did not agree, expressing the view that "these functions are best performed by, and should remain with, the Attorney-General's Department" and rejected this recommendation.[101]

In 2007, the Attorney-General's Department published a *Statement of Intellectual Property Principles for Australian Government Agencies* (known as the "IP Principles)[102] which establish the broad policy framework for management of intellectual property by Australian government agencies. All agencies governed by the *Financial Management and Accountability Act* 1997 (Cth) were required to comply with the IP Principles by 1 July 2008, including developing an agency-specific IP policy. Principles 11 and 12, under the heading "Sharing, Commercialisation, Disposal and Public Access to IP", state:

> 1. *Agencies should encourage public use and easy access to copyright material that has been published for the purpose of :*
>
>   - *informing and advising the public of government policy and activities;*
>   - *providing information that will enable the public and organisations to understand their own obligations and responsibilities to Government;*
>   - *enabling the public and organisations to understand their entitlements to government assistance;*
>   - *facilitating access to government services; or*
>   - *complying with public accountability requirements.*
>
> This includes all materials which agencies are generally obliged to publish or otherwise allow free public access to. It does not necessarily include materials that have been published for commercial purposes. Nor does it cover materials which are of a sensitive nature, such as information that impacts on national security or information which would destroy the possibility of subsequently obtaining patent protection where such protection is necessary to achieve public benefit.

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[100] Federal government's response to the Government 2.0 Taskforce's report, *Engage: Getting on with Government 2.0,* 3 May 2010, at p 12, at http://www.finance.gov.au/publications/govresponse20report/index.html (accessed 22 May 2010).
[101] Federal government's response to the Government 2.0 Taskforce's report, *Engage: Getting on with Government 2.0,* 3 May 2010, at p 11, at http://www.finance.gov.au/publications/govresponse20report/index.html (accessed 22 May 2010).
[102] Australian Government. Attorney-General's Department, *Statement of Intellectual Property Principles for Australian Government Agencies,* 2007, at
http://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright_CommonwealthCopyrightAdministration_StatementofIPPrinciples forAustralianGovernmentAgencies (accessed 28 May 2010).

Permission for public use and reuse of such material should generally be given on a non-exclusive basis. Exclusive licence to use such materials should only be given in exceptional circumstances.

2. *Australian Government agencies should be mindful of opportunities to share IP for which they are responsible with other agencies.*

IP in the custody of an agency which does not have a legal identity separate from that of the Commonwealth, may be useful to other Australian Government agencies. Agencies should therefore maintain an awareness of opportunities to share IP.

Where it is the expectation that IP that is procured will be shared with other Australian Government agencies, then agencies should make this clear to potential suppliers in the procurement process. Agencies should be mindful of potential savings from obtaining licences to IP which might preclude sharing it with other agencies.[103] [emphasis in original]

When the IP Principles were initially published, it was intended that the Commonwealth Copyright Administration branch of the Attorney-General's Department would also prepare supplementary advice and guidance for federal government agencies in the form of an *IP Manual for Australian Government Agencies* ("IP Guidelines"). While the IP Guidelines were distributed in draft form to selected government agencies for comment in 2008, they have not yet been finalised or publicly released. The Gov 2.0 Taskforce recommended that the Attorney-General's Department ensure that its IP Guidelines do not impede the implementation of its recommendation (recommendation 6.3) that, by default, PSI be licensed under a CC-BY licence.[104] The federal government's response to the Gov 2.0 Taskforce's recommendations on licensing makes it clear that the default CC-BY licensing of PSI is to be reflected in the IP Guidelines prepared by the Attorney-General's Department for the guidance of federal government agencies. Further, the Attorney-General's Department is to review the IP policy to encourage the use of open licensing.[105]

Overall responsibility for developing and implementing the Government 2.0 work program is to be given to the Department of Finance and Deregulation ("Finance"), in consultation with the Government 2.0 Steering Group, membership of which will comprise representatives from the Department of the Prime Minister and Cabinet (PMC), the Office of the Information Commissioner (OIC), the Australian Public Service Commission (APSC), National Archives of Australia (NAA), Australian Bureau of Statistics (ABS), the Department of Broadband, Communications and the Digital Economy (DBCDE), the Department of Human Services (DHS), the Australian Taxation Office (ATO) and the Attorney-General's Department (AGD).[106]

4.3.1.6 Intergovernmental cooperation on a national information strategy

The Gov 2.0 Taskforce's review and recommendations were specifically concerned with the federal level of government. However, as many of the benefits of Gov 2.0 will be achieved when the principles described in the Taskforce's recommendations are implemented Australia-wide[107], the Taskforce recommended that the federal government take a leadership role in engaging with other States and Territories through the Council of Australian Governments (COAG) to work with the lead agency "to learn from each other and promote their successes in the development of Government 2.0 strategies" (recommendation 2.2) and to develop "a national information policy agreed between all levels of government: federal, state, territory and local" (recommendation 6.9).

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[103] Ibid, at p 5.

[104] Federal government's response to the Government 2.0 Taskforce's report, *Engage: Getting on with Government 2.0,* 3 May 2010, at p 10, at http://www.finance.gov.au/publications/govresponse20report/index.html (accessed 22 May 2010).

[105] Federal government's response to the Government 2.0 Taskforce's report, *Engage: Getting on with Government 2.0,* 3 May 2010, at p 11, at http://www.finance.gov.au/publications/govresponse20report/index.html (accessed 22 May 2010).

[106] Federal government's response to the Government 2.0 Taskforce's report, *Engage: Getting on with Government 2.0,* 3 May 2010, at pp 3-4, at http://www.finance.gov.au/publications/govresponse20report/index.html (accessed 22 May 2010).

[107] Ibid at p xv.

The federal government agreed, stating that "engaging with other levels of Government will not only provide opportunities for learning, innovation and promotion of best practice, but also for collaborative efforts in the area of Government 2.0".[108]

4.3.2 Mashup Australia

Among the most prominent of the projects supported by the Gov 2.0 Taskforce was the Mashup Australia initiative consisting of a series of events that brought individuals together to innovate with government data sets, creating new applications, comparisons, visualisations and demonstrations of how PSI can be used. The Mashup Australia competition challenged members of the public to demonstrate how public sector data can be most creatively assembled and made available online.[109] To support the Mashup competition, the Gov 2.0 Taskforce arranged for the release of datasets[110] from over 15 federal government agencies as well as some State and Territory governments.[111] via a newly created beta data directory, data.australia.gov.au.

4.3.3 Data.australia.gov.au and data.gov.au

The federal government set up the data.australia.gov.au site (in beta form) in 2009 for the Gov 2.0 Taskforce's Mashup Australia competition[112], as the portal from which competition entrants could obtain access to datasets and databases contributed by federal, State and Territory governments. Many of the datasets available on data.australia.gov.au are licensed under the Creative Commons Attribution 2.5 Australia licence. The Gov 2.0 Taskforce recommended (recommendation 6.10) that:

> In order to accelerate the adoption of Government 2.0, in addition to any distribution arrangements they wish to pursue, agencies should ensure that the PSI they release should be discoverable and accessible via a central portal (data.gov.au) containing details of the nature, format and release of the PSI.

The Government accepted this recommendation in its response to the Taskforce's report.[113] To give effect to this recommendation, the Australian government has committed to redeveloping the site as data.gov.au, which is intended to be the primary point of contact for obtaining access to PSI. AGIMO in the Department of Finance and Deregulation is to be responsible for developing data.gov.au and agencies are to ensure that PSI they release is also made available through this central portal. Information posted on data.gov.au should contain metadata, consisting of details about the nature, format and release of the information.[114]

4.3.4 Australian Gov 2.0 Showcase and AGIMO blog

To continue the online conversation between government and the public that began with the Gov 2.0 Taskforce's extensive use of "new collaborative technologies"[115] for its consultations, as a first step in

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[108] Federal government's response to the Government 2.0 Taskforce's report, *Engage: Getting on with Government 2.0,* 3 May 2010, at pp 3-4, at http://www.finance.gov.au/publications/govresponse20report/index.html (accessed 22 May 2010).
[109] For instance, one team combined data from the Australian Bureau of Statistics, New South Wales Crime Data, Powerhouse Museum Collection, the State Records Office of New South Wales and the State Library of New South Wales to create an application called "Know where you live". After entering your postcode or zipcode, you are presented with a rich collection of information, images, and comparative data about your suburb.
[110] See http://mashupaustralia.org/data-sources/
[111] The State and Territory governments that provided datasets were the Australian Capital Territory, New South Wales, the Northern Territory, South Australia, Queensland and Victoria.
[112] See http://mashupaustralia.org/ (accessed 28 May 2010).
[113] See http://www.finance.gov.au/publications/govresponse20report/doc/Government-Response-to-Gov-2-0-Report.pdf (accessed 28 May 2010).
[114] See http://www.finance.gov.au/publications/govresponse20report/doc/Government-Response-to-Gov-2-0-Report.pdf (accessed 28 May 2010).
[115] The Government 2.0 Taskforce's Terms of References required it to "advise and assist the government to...[inter alia] build a culture of online innovation within government — to ensure that government is receptive to the possibilities created

implementing the Gov 2.0 Taskforce's recommendations, in May 2010 AGIMO[116] commenced a public blog.[117] In the same month, the government launched the Australian Gov 2.0 Showcase[118] which allows "people from all tiers of Australian government to submit examples of how they are using web 2.0 tools to engage with citizens and deliver better services". The Showcase is intended as a forum for displaying Gov 2.0 case studies and for the sharing of ideas and lessons so that government employees can learn from each other's experiences. Anyone in a government department, agency or office - at any level of government - can submit a Gov 2.0 case study to the Showcase, all submissions being licensed under a Creative Commons Attribution 2.5 Australia licence.[119]

4.4 Other federal government developments

Prior to the *Venturous Australia* Green Paper (2008) and the Gov 2.0 Taskforce's inquiry (2009), key federal agencies covered by the *Spatial Data Access and Pricing Policy*[120] (the OSDM Policy) adopted by the federal government in 2001 had already taken steps to implement the policy by opening access to their PSI. From the mid-2000s, Geoscience Australia, the Australian Bureau of Statistics and the Bureau of Meteorology had progressively removed restrictions on access to and reuse of their PSI and all had adopted Creative Commons licenses more than a year before the Gov 2.0 Taskforce's report (December 2009) recommended CC-BY as the default licence for PSI.

4.4.1 Australian Bureau of Statistics (ABS)

In November 2005, the Australian Bureau of Statistics (ABS) abandoned the restrictive licensing practices it had previously applied in licensing its datasets, which had seen it charge fees for access to data and prohibiting or restricting commercial downstream use by the licensee and/or others.[121] Since then the ABS has eliminated virtually all charges for data and restrictions on downstream use of their data (that is, both access and reuse), whether commercial or otherwise.[122] Following the lifting of fees, the number of hits and downloads of ABS publications increased dramatically; downloads of

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by new collaborative technologies and uses them to advance its ambition to continually improve the way it operates". See N Gruen (chair), *Engage: Getting on with Government 2.0 – Report of the Government 2.0 Taskforce,*22 December 2009, Appendix A, p 87, at http://www.finance.gov.au/publications/gov20taskforcereport/doc/Government20TaskforceReport.pdf (accessed 28 May 2010).

[116] AGIMO is an agency in the Australian Government Department of Finance and Deregulation, see http://www.finance.gov.au/agimo/index.html (accessed 28 May 2010).

[117] See http://agimo.govspace.gov.au/ (accessed 28 May 2010).

[118] See http://showcase.govspace.gov.au/ (accessed 28 May 2010).

[119] See http://showcase.govspace.gov.au/copyright/ (accessed 28 May 2010).

[120]   See   http://www-ext.osdm.gov.au/osdm/policy/accessPricing/SDAP.pdf   and   generally http://www.osdm.gov.au/OSDM/Policies+and+Guidelines/Spatial+Data+Access+and+Pricing/default.aspx.

[121] Commencement of the use of the CC-BY licence for ABS materials was accompanied by the following statement of purpose on the ABS website:
 The Australian Bureau of Statistics (ABS) has introduced Creative Commons (CC) licensing for the bulk of the content on this website. This will lessen the restrictions on the use of free data from the website considerably by changing the copyright from "all rights reserved" to "some rights reserved". In effect, what the ABS is asking is only that it be acknowledged as the source of the data. People are free to reuse, build upon and distribute our data, even commercially. This makes a wealth of data readily available to the community, researchers and business, facilitating innovative research and development projects based on quality statistics, and promoting the wider use of statistics in the community, which is one of our core objectives. (http://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/8b2bdbc1d45a10b1ca25751d000d 9b03?opendocument?utm_id=HPI)

[122] Similar inhibitory outcomes from the adoption of restrictive licensing practices by government agencies were clearly identified in the 2001 Canadian report delivered by KPMG Consulting. The authors, in Recommendation 5 (at pp 24-25) identified the need to minimize the inhibiting impact of government agencies using restrictive licensing and copyright practices to prevent redistribution and the broader use of government geospatial data, in order to protect pricing policies. The authors pointed out this operational outcome was directly at odds with the stated government goals of maximising data use, with the identified resulting benefits. See Recommendation 5 in the Executive Summary at pp 24- 25, available at http://www.geoconnections.org/programsCommittees/proCom_policy/keyDocs/KPMG/KPMG_E.pdf (accessed 9 November 2009).

electronic publications increased from 91,000 in 2000/01 to more than 650,000 in 2005/06, while the number of page views doubled from the end of 2005 to the end of 2007.[123]

Nevertheless, even after the relaxation of licensing practices in 2005, any significant redistribution of information obtained from the ABS website still had to be licensed by the ABS. Although the ABS allowed broad use of its website content, often at no cost, the licensing process itself was seen as potentially acting as a barrier to those wishing to reuse significant amounts of data. Following discussions with the open access community[124] and relevant government departments, in mid 2008 ABS decided to make information on its website freely and openly available for access and reuse. This decision was consistent with ABS's philosophy of access to information, as well as Recommendation 7.8 of the *Venturous Australia* Green Paper.[125] On 18 December 2008, the ABS implemented CC licensing on its website and began making an extensive range of its statistical information products available online under a Creative Commons Attribution 2.5 Australia licence. Implementation involved adding to the footer on every page of the ABS website an updated Copyright Statement, Disclaimer notice, CC symbols, information on how to attribute material sourced from the ABS website and a hyperlink to the CC licence. In effect, ABS makes its website material openly available, on condition that users acknowledge ABS as the source of the data.[126]

The background to the ABS's adoption of CC licences is explained by senior executive ABS officer Siu-Ming Tam in *Informing the Nation – Open Access to Statistical Information in Australia,* presented to the United Nations Economic Commission for Europe (UNECE) in 2009.[127] It outlines the sequence of funding, economic and information policy and practice developments leading up to the current position. In explaining the reasoning behind the adoption of CC licences, Siu-Ming Tam emphasises the importance of a simple, easily understood licensing model to facilitate enhanced and innovative reuse such as through mash-ups in which different layers of information are combined:

> 33. The recent advent of Web 2.0 technologies increases the potential to use, share and 'mix and match' ABS data sets to add value to ABS information. 'Mash ups' are an excellent example of how the value of a product may be significantly enhanced by including different layers of information with statistical information. To facilitate this, and other innovative uses of ABS data, the ABS needs to have an internationally recognised licensing framework for accessing, using and reusing its statistical information.
> ....
> 49. One of the hallmarks of a democracy is freedom to choose one's own affairs. Choice requires decisions and in turn good decision making requires information. Therefore, open access to statistical information is fundamental to a democracy.
> …..
> 52. Most recently, the introduction of Creative Commons licences, an internationally recognised licensing framework, onto the ABS website provides clarity on responsibilities and obligations on users of ABS statistics when using, sharing and reusing ABS information. It is our belief that this initiative will facilitate an environment for creativity, innovation, and the development of value added products, all of which will lead Australia to be a better place for its citizens.[128]

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[123] Siu-Ming Tam, Australian Bureau of Statistics, *Informing the Nation – Open Access to Statistical Information in Australia,* paper presented to the United Nations Economic Commission for Europe (UNECE) Work Session on the Communication and Dissemination of Statistics, Poland, May 2009, at paras 27 – 29 and 31, available at http://www.unece.org/stats/documents/ece/ces/ge.45/2009/wp.11.e.pdf.

[124] Throughout this period, senior ABS officers consulted extensively with the Queensland Government-QUT project group that developed the Creative Commons-based Government Information Licensing Framework.

[125] *Venturous Australia - Building Strength in Innovation,* report on the Review of the National Innovation System, Cutler & Company for the Australian Government Department of Innovation, Industry, Science and Research, 29 August 2008, available at http://www.innovation.gov.au/innovationreview/Pages/home.aspx.

[126] Note that the ABS does not use CC licences on jointly authored publications for which it does not own copyright. Such publications carry their own copyright statement.

[127] Ibid.

[128] Ibid, at paras 33 and 52

Ongoing work in ABS involves the development of "injector" software which will enable CC licences to be inserted into downloadable files, so that users can view the licensing conditions in files they have downloaded from the ABS website.[129]

4.4.2 Geoscience Australia (GA)

Geoscience Australia (GA) was an early adopter of CC, being the first Australian government agency to implement CC licences on its datasets in October 2008.[130] Earlier that year, in response to requests from clients for easier access to GA's information products and clearer statements of the terms of use and reuse, GA undertook an analysis and internal trial of CC licences on a representative sample of its datasets to ascertain whether open content licensing would meet the organisation's desired operational outcomes.[131] Following successful completion of the CC licensing trial, in 2008 the Spatial Data Management Group, which had formed a Working Group to address the use of CC licensing, endorsed the use of CC licences for spatial data.[132] GA's Moderate Resolution Imaging Spectroradiometer (MODIS), the Australian Atlas of Mineral Resources,[133] the GeoMAP 250K dataset, digitised Bureau of Mineral Resources records and educational material about tsunami were among the first materials distributed under CC licences. In announcing its decision to apply CC licences to key mapping and other information products, GA emphasised that the use of the "easy to understand, royalty-free, modular, off the shelf [CC] licences" would make it easier for visitors to GA's website to use and access information. In November 2009, GA began licensing all the material on its website, and the OzCoasts website[134] which it hosts, under the Creative Commons Attribution 2.5 Australia licence (CC-BY).[135] In June 2010, following the launch of version 3.0 of the Australian Creative Commons licences, GA's website was updated to state that, unless otherwise noted, all GA material on the site is licensed under the Creative Commons Attribution 3.0 Australia licence (CC-BY).[136] During 2010, GA began releasing processed satellite data which shows change in tropical forest cover in South East Asia and is used to calculate the rate and impact of climate change, under CC licences.[137]

4.4.3 Bureau of Meteorology (BoM)

The *Water Act* 2007(Cth) expanded the role of Bureau of Meteorology (BoM) to include management of water information, with the establishment of the Australian Water Resources Information System (AWRIS).[138] BoM is required to collect water information from a range of sources and to disseminate it for widespread reuse, including by publishing a National Water Account and periodic reports on water resource use and availability.

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[129] Ibid, at para 48.

[130] See entry "New product licence improves customer access" at http://www.ga.gov.au/news/archive/2008/dec/. GA's adoption of CC licensing predated the implementation of CC licences by the Australian Bureau of Statistics by two months.

[131] Outlined in the presentation by Jeff Kingwell, Head, Project Management Office, Information Services Branch, Geoscience Australia at the Open Access and Research Conference, hosted by the Open Access to Knowledge Project (OAK Law), in Brisbane in September 2008. See http://www.oaklaw.qut.edu.au/node/61 (accessed 28 May 2010).

[132] Australian Government, Office of Spatial Data Management, *Australian Government Spatial Data Activities 2009: A report of the Spatial Data Management Group,* 2010, at p 5, available at http://www.osdm.gov.au/SDMG-AR=2009.pdf?ID=1043 (accessed 28 May 2010).

[133] See the Atlas of Mineral Resources, Mines and Processing Centres (the "Australian Mines Atlas") at http://www.australianminesatlas.gov.au.

[134] See http://www.ozcoasts.org.au/.

[135] Note that some datasets such as MapConnect and GADDS could not be made available immediately under CC licences because the OSDM registration was embedded in these products.

[136] See the Copyright statement on the GA website at http://www.ga.gov.au/copyright.jsp (accessed 25 June 2010).

[137] Correspondence with Jeff Kingwell, Project Manager, SE Asia Satellite Data for IFCI Project, by email, 4 June 2010. GA has also encouraged its project collaborators to release their data under Creative Commons licences.

[138] See: http://www.bom.gov.au/waterjobs/awris.htm.

To ensure that water information provided to BoM under the *Water Regulations* 2008 can be widely reused, BoM sought the support of the States and Territories for the adoption of a CC licensing framework for copyright-protected water datasets and databases.[139] BoM recommends that each of the 260 data suppliers that are obliged to provide information to it under the *Water Regulations* 2008 should apply CC licences – and, specifically, the Creative Commons Attribution Australia 2.5 Licence (CC-BY) – to all the data they provide to AWRIS, so that it can be reused by anyone on condition that the original data supplier is acknowledged.[140] In mid-2010, it is estimated that close to 80% of data suppliers that are required to report to BoM have adopted CC licences.[141]

An account of BoM's approach towards the licensing of information and data is set out its August 2008 submission to the Victorian Parliament's Economic Development and Infrastructure Committee's inquiry into Improving Access to Victorian Public Sector Information and Data.[142] In response to the Committee's invitation to comment on whether "the use of open source and open content licensing models, including CC, would enhance the discovery, access and use of Government information", BoM answered:

> 26. At present, the Bureau has formal licensing procedures in place for most of its cost-recovery products and services, and for secondary distributors, in the form of a written Access Agreement. All information on the Bureau web site contains a copyright statement and incorporates a link to the Bureau's copyright notice. However as new products and services become available and new technology opens up new and innovative ways of working, these arrangements must evolve. A more robust and transparent licensing scheme needs to be developed to reflect both the specific characteristics of Bureau products and modern mechanisms of data exchange and use.

> 27. The Creative Commons licensing framework provides a method, based on copyright law, of making data and information freely available while retaining some rights for the data owners and licensors. Use of Creative Commons licensing is increasing worldwide and its use by government agencies for data sharing is also becoming more common. This "open content" approach to licensing is gaining favour as it maximises the social benefits of public information, encourages the use and reuse of data and information, and provides a simpler, legally robust licensing framework replacing existing data sharing arrangements which are often complex, expensive to administer, unresponsive to user needs, or legally untested.

> 28. In Australia, the Working Group on Data for Science report to the Prime Minister's Science, Engineering and Innovation Council (PMSEIC) in December 2006 includes a recommendation that "the principle of open equitable access to publicly-funded scientific data be adopted wherever possible and that this principle be taken into consideration in the development of data for science policy and programmes", while a report on the open access to public sector information (PSI) summit held in July 2007 concludes that "a broad consensus emerged in favour of the benefits to be derived from government implementing an open access policy … and the use of Creative Commons (CC) open content licences for the majority of PSI which is unaffected by privacy or other restricting factors".

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[139] See www.parliament.vic.gov.au/edic/inquiries/access_to_PSI/submissions/PSI_Sub_17_Bureau_Meteorology.pdf.
[140] See http://www.bom.gov.au/water/regulations/dataLicensing/ccLicense.shtml (accessed 7 July 20`10). See also, Australian Government, Office of Spatial Data Management, *Australian Government Spatial Data Activities 2009: A report of the Spatial Data Management Group,* 2010, at p 12, available at http://www.osdm.gov.au/SDMG-AR=2009.pdf?ID=1043 (accessed 28 May 2010).
[141] Australian Government, Office of Spatial Data Management, *Australian Government Spatial Data Activities 2009: A report of the Spatial Data Management Group,* 2010, at p 12, available at http://www.osdm.gov.au/SDMG-AR=2009.pdf?ID=1043 (accessed 28 May 2010).
[142] See *Inquiry into Improving Access to Victorian Public Sector Information and Data: Submission by the Bureau of Meteorology*, 18 August 2008, available at http://www.parliament.vic.gov.au/edic/inquiries/access_to_PSI/submissions/PSI_Sub_17_Bureau_Meteorology.pdf accessed on 23 July 2009. See also the oral submission by Dr L Minty, Assistant Director, Water Analysis and Reporting, Water Division, Bureau of Meteorology, available at http://www.parliament.vic.gov.au/edic/inquiries/access_to_PSI/transcripts/EDIC_080908_BOM.pdf accessed on 23 July 2009.

29. The Water Regulations associated with the Water Act came into force on 30 June 2008 and Bureau staff are currently working with State and Territory water agencies to ensure the smooth provision of water information. The Bureau is actively seeking support from States and Territory jurisdictions for the use of a Creative Commons framework and has recently written to all Departments of Premier and Cabinet alerting them to the Bureau's intention to use Creative Commons Attribution as the licensing regime for water data.[143]

At the 6th meeting of the Jurisdictional Reference Group on Water Information (JRGWI)[144] in July 2009, BoM presented an Item Paper entitled "Creative Commons Licensing" outlining its support for and intention to implement Creative Commons licensing within AWRIS. The Item Paper states:

> Under Section 123 of the *Water Act* 2007, the Director of Meteorology may publish any water information that the Bureau holds without the need to obtain agreement from any provider to do so, unless he/she believes that it would not be in the public interest to do so.
> ......
> The utility of Australia's water information will be maximised by making it freely available for use by all persons, including uses for commercial purposes. However, as discussed above, the Bureau is restricted in its right to apply any licence to that information or to confer any rights on third parties to use that information. We have therefore elected to promote and actively support the application by data owners of the Creative Commons Attribution licence to the water information they supply. The Creative Commons Attribution licence, known as the "By Licence", merely requires users to attribute the data owner when they use the data for any purpose not covered by the Water Act 2007 provisions.
> ….
> The Bureau has been working actively with the lead water agencies to promote the uptake of CC licensing and will provide on-line and other support to enable data givers to understand and apply a CC license easily.
> ….
> Use of CC licensing should be attractive to organisations as it provides a simple and effective way to open up access to data, whilst retaining some rights, and promises to reduce the administrative burden for data providers in maintenance and communication of licensing conditions.
> ......
> [T]he Bureau will continue to actively promote the use of CC licensing to organisations providing data under the Water Regulations 2008. In late 2009, the Bureau will explicitly ask each data supplying organisation to agree or not agree to use of a CC license for their water data. Users of AWRIS will be able [to] identify information that is provided with a CC licence or, where information is not so licensed, to ascertain the contact details of the data provider so that they may seek any licence conditions that apply.[145]

4.4.4 Parliament of Australia

In June 2010, the Parliament of Australia announced that the Parliamentary website and the documents it contains (bills, explanatory memoranda, committee reports, Hansard and so on)[146] are to be licensed under a Creative Commons 3.0 Attribution-Noncommercial-NoDerivatives Australia (CC-BY-NC-ND) licence. The official announcement stated:

> The Parliament of Australia is committed to open access to the resources it publishes to support a vibrant democracy. Recognising the important of ensuring access to its resources published on the website the parliament has approved publication under a Creative Commons 3.0 Attribution-NonCommercial-NoDerivs license (http://creativecommons.org/licenses/by-nc-nd/3.0/au/)... Full implementation will occur when the new web site is released in late 2010. .

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[143] Ibid, see www.parliament.vic.gov.au/edic/inquiries/access_to_PSI/submissions/PSI_Sub_17_Bureau_Meteorology.pdf.
[144] This meeting was held in Melbourne on 23 and 24 July 2009.
See http://www.austlii.edu.au/au/legis/cth/num_reg_es/wr2008n106o2008275.html.
[145] For further details, see BoM's website at http://www.bom.gov.au/water/regulations/cc/disseminating.shtml
[146] The Australian Parliamentary website is at http://www.aph.gov.au (accessed 28 May 2010).

Creative Commons licences were added to the Parliamentary website on 9 June 2010 and other materials on the site will be CC-licensed when it is re-launched later in 2010.[147]

5. State and local government initiatives

There have also been numerous significant developments at State and local government level, and in major cultural institutions, which have as their objective open access and generous reuse rights through the use of CC or open content licensing. As well as providing direct access to their information products through State-specific sites, several State governments contributed numerous datasets (many licensed under CC licences, usually CC-BY) to the portals established for the purpose of the mashup and remix competitions run by the federal government and their own jurisdiction.[148]

5.1 Queensland

Having taken the lead in the current phase of FOI reform by appointing the FOI Independent Review Panel, headed by Dr David Solomon[149]in 2007, the Queensland government wasted little time in responding to the Review Panel's final report *The Right to Information*[150]after its release in June 2008. The Government's response[151] in August 2008 accepted all but two of the committee's recommendations. In 2009 the Queensland government enacted the *Right to Information Act* 2009 (Qld) and established a new Office of the Information Commissioner, headed by Julie Kinross.[152] The Office of the Information Commissioner has published various guidance documents on its website including, for example, how Queensland government agencies can develop an Information Publication Scheme in accordance with the requirements of the RTI Act.[153]

5.1.1 Statement of Right to Information Principles for the Queensland Public Service

Shortly after the *Right to Information Act* 2009 was enacted the Queensland Premier, Anna Bligh, issued a *Statement of Right to Information Principles for the Queensland Public Service.[154]* While the Right to Information Principles do not, in themselves, have any legal effect, they provide a clear statement of the government's commitment to the effective implementation of the RTI reforms:

> Information is the lifeblood of democracy. To reach its full potential, a State like Queensland needs citizens who are informed and a government that is open and responsive.
>
> My Government firmly believes that making more information available to the community contributes to informed and useful debate on issues. The free flow of information enables the public to genuinely

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[147] See the Copyright statement at http://www.aph.gov.au/legal/copyright.htm (accessed 15 June 2010).

[148] The federal government portal at http://data.australia.gov.au contains datasets contributed by State governments; see also http://www.data.vic.gov.au and http://www.information.nsw.gov.au (accessed 28 May 2010).

[149] The other members of the FOI Independent Review Panel were Simone Webbe and Dominic McGann. For further background to the review, see http://www.thepremier.qld.gov.au/initiatives/foi_review/index.aspx (accessed 22 May 2010).

[150] David Solomon, Simone Webbe, Dominic McGann, *The Right to Information: Reviewing Queensland's Freedom of Information Act,* Queensland Department of Justice and Attorney General, 10 June 2008, available at http://www.foireview.qld.gov.au/documents_for_download/FOI-review-report-10062008.pdf (accessed 22 May 2010).

[151] The government responded in August 2008.

[152] The Office of the Information Commissioner website is at http://www.oic.qld.gov.au/ (accessed 28 May 2010). The Office of the Information Commissioner is responsible for the administration of the *Right to Information Act* 2009 (Qld) and the *Information Privacy Act* 2009 (Qld). Julie Kinross previously held positions as Assistant Commissioner, NSW Health Care Complaints Commission and Queensland Commissioner for Fair Trading.

[153] The Office of the Information Commissioner's Publication Scheme is provided as a model for other Queensland government agencies, at http://www.oic.qld.gov.au/files/PublicationScheme/OIC%20Publication%20scheme%20%20-%2001-07-09.pdf (accessed 28 May 2010).

[154] Available at http://www.rti.qld.gov.au/downloads/Right%20to%20Information%20Principles.pdf (accessed 28 May 2010).

engage with government in the policy development processes, as well as going some way towards helping the public to better understand how government works.

....

The processes of government should operate on a presumption of disclosure, with a clear regard for the public interest in accessing government information. The Queensland public service should act promptly and in a spirit of cooperation to carry out their work based on this presumption.

Government information must be valued as a public resource that contributes to an open and participatory democracy and improves government decision-making.

It is the Queensland Government's expectation that the Queensland public service recognises and respects that Government is the custodian of information that belongs to the community, and will:

- Maximise the public's access to government information by administratively releasing information where ever possible, so that recourse to the Right to Information Act 2009 and Information Privacy Act 2009 is a matter of last resort.

- Recognise, respect and maintain the community's trust in government to appropriately and securely collect, store and use their personal information.

- Act to process requests for information rapidly and fairly, rendering all possible assistance to the community in responding to their requests for information.

- Continually improve systems, processes and skills to maximise access to government information and the protection of personal information.

- Use innovative ways to ensure information is available to all sectors of the community.

5.1.2 Queensland Government Information Management Strategic Framework

In accepting the majority of the FOI Independent Review Panel's recommendations in the *The Right to Information* report[155], the Queensland government acknowledged the need for a whole-of-government information management strategic framework.[156] Responsibility for developing the framework was given to the Queensland Government Chief Information Officer (QGCIO)[157] who proceeded to develop it in collaboration with Queensland State Archives, the Information Commissioner, the Strategic Information and ICT Council Information Management Sub-committee and other stakeholders.[158]

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[155] David Solomon, Simone Webbe, Dominic McGann, *The Right to Information: Reviewing Queensland's Freedom of Information Act,* Queensland Department of Justice and Attorney General, 10 June 2008, available at
http://www.foireview.qld.gov.au/documents_for_download/FOI-review-report-10062008.pdf (accessed 22 May 2010).
The Queensland Government's response is in the document entitled, *The right to information – A response to the review of Queensland's Freedom of Information Act*, 20 August 2008, available at
http://www.thepremier.qld.gov.au/initiatives/foi_review/index.aspx (accessed 22 May 2010) and Press Release, Premier of Queensland, the Hon. Anna Bligh, *Public to gain greaer access to Cabinet documents,* 20 August 2008 at
http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=59777 (accessed 22 May 2010) .
[156] See *The right to information – A response to the review of Queensland's Freedom of Information Act*, p 4.
[157] The Queensland Government Chief Information Officer's website is at
http://www.qgcio.qld.gov.au/qgcio/Pages/index.aspx (accessed 28 May 2010).
[158] The Information Management Strategic Framework was approved by the Queensland Government Chief Information Officer, Mal Grierson, on 28 September 2009. See
http://www.qgcio.qld.gov.au/qgcio/info/highlights/Pages/QueenslandGovernmentInformationManagementStrategicFrameworkapproved.aspx (accessed 28 May 2010).

The *Queensland Government Information Management Strategic Framework* (QGIMSF) was approved in September 2009. It consists of a complex suite of cross-referenced documents, including:[159]

- *The Queensland Government Information Principles*: This document sets out guiding principles governing the Queensland government's values and approach to information, its use and management[160], as follows:

  - **Transparent:** The public has a right to information.
  - **Trustworthy:** Information is accurate, relevant, timely, available and secure.
  - **Private:** Personal information is protected in accordance with the law.
  - **Equitable:** Information is accessible to all.
  - **Valued:** Information is a core strategic asset.
  - **Managed:** Information is actively planned, managed and compliant.

- *The Queensland Government Information Policy:* This document establishes the overarching requirements of agencies and the government as a whole. It states:

  > The Queensland Government values information as a core strategic asset and must govern and manage it accordingly throughout its lifecycle, in a manner that enables open, accountable and participatory government. This includes exploiting information to its fullest extent via methods such as routine and proactive disclosure to the community and the provision of opportunities for reuse.

  To achieve these objectives, Queensland government agencies are required to formally implement information governance, routinely and proactively disclose information and ensure that their information policies and procedures align with *The Queensland Government Information Principles.*

- *The Information Management Action Plan:* This document, published as part of the *Queensland Government Information Management Strategic Framework*, contains actions directed at achieving the goals set out in the Strategic Framework. Relevant actions include:

  1. A clear governance, authorising and accountability environment for information
  ....
  1.2 Develop guidance on information governance best practice, and on our information management legal, regulatory and ethical responsibilities.
  ....
  3. Improve access to and use of our information
  3.1 Update relevant Information Standards and policy covering information access, pricing, metadata and privacy.
  3.2 Endorse and promote the Government Information Licensing Framework (GILF) to encourage reuse of government information.
  .....
  4. Treat information as a valued asset
  ....
  4.2 Develop and implement an Information Standard on the use of copyright materials.

- *Information Management Policy Framework:* Specific and detailed policies, information standards and supporting materials covering various aspects of information management are

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[159] All these documents are available from the QGCIO's website at http://www.qgcio.qld.gov.au/qgcio/architectureandstandards/qgea2.0/Pages/Information.aspx (accessed 28 May 2010).
[160] http://www.qgcio.qld.gov.au/qgcio/architectureandstandards/qgea2.0/Pages/Information.aspx (accessed 28 May 2010).

required to supplement the *Queensland Government Information Principles* and *Information Policy*. This document identifies the various areas which contribute to effective information management and provides an organising framework for ensuring appropriate policy coverage.

5.1.3 Information Standard 33 (Information Access and Use)

In January 2010, the Queensland Government Chief Information Officer (QGCIO) issued a revised Information Standard 33 – Information Access and Use.[161] This Information Standard (IS) relates to the Information Asset Access and Use Domain in the Information Layer of the Queensland Government Enterprise Architecture (QGEA) and applies to all departments and public authorities as defined by the *Right to Information Act* 2009 (Qld). IS33 requires Queensland government agencies, when providing access to and use of information, to ensure that:

- information is provided to the public to the maximum extent possible;
- information is exchanged between Queensland Government agencies and other governments;
- information is provided to the maximum extent possible free of charge;
- information is provided with transparent conditions for use.

The Information Standard contains mandatory advice, implementation advice and toolboxes. The mandatory principles of IS33 are:

Principle 1: Information is provided to the public to the maximum extent possible

The Queensland Government recognises the importance of providing information to the public.

Agencies must maximise the public's access to government information by:

- taking all reasonable steps to make government information easily available, including those who are disadvantaged geographically, socio-economically or because they have a disability

- releasing information administratively where ever possible so that formal application under the RTI Act or the IP Act is a last resort

- meeting their obligations to provide information under the conditions in agency specific acts and other legislation, such as the RTI Act and the IP Act

Principle 2: Information is exchanged between Queensland Government agencies and other governments

Accurate and complete information is essential for governments to provide the efficient delivery of public services. To achieve this, there are essential elements that need to be in place before government information can be shared and exchanged openly, easily and cost effectively.

Agencies must:

- develop the necessary governance models as a mechanism for exchanging information

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[161] Information Standard 33 is available on the Queensland Government Chief Information Officer's website at http://www.qgcio.qld.gov.au/qgcio/architectureandstandards/informationstandards/current/Pages/InformationAccessandUse.aspx (accessed 28 May 2010). IS33 will be reviewed on a biennial basis, the next review date being October 2011. IS33 has been distributed under a Creative Commons Attribution 2.5 Australia (CC-BY) licence. Note also Information Standard 46 (Use of Copyright Msterials), v1.0.0, January 2009, at http://www.qgcio.qld.gov.au/qgcio/architectureandstandards/informationstandards/current/Pages/Useofcopyrightmaterials.aspx (accessed 28 May 2010).

- ensure that relevant legislation is taken into account when exchanging information, i.e. *Information Privacy Act 2009*

- ensure that they adhere to standardised approaches to information sharing (i.e. National Government Information Sharing Strategy) to support the delivery of government services and foster greater access by Australian governments to relevant and accurate information on issues such as national security and water.

Principle 3: Information is provided to the maximum extent possible free of charge

The Queensland Government aims to provide access to information at the lowest cost for the community and business to maximise the innovative use of government information across the community.

Agencies must:

- ensure that information that is easily accessible is provided free of charge where it relates to the processes of government and where the Government has the objectives of informing the public and securing public cooperation and community engagement

- provide information which is being shared between Queensland Government agencies and other governments at no cost or minimal cost if there are significant reasons for a charge to be made for the information

- ensure that, if a charge is being made for information:

  – a charging policy is developed and regularly reviewed which sets out a transparent and consistent charging regime with the criteria for pricing decisions
  – a register is maintained of those information assets where charges apply.

- ensure that relevant charges are made when information is supplied to meet statutory duties and standards of service set out in an Act or associated regulation

- ensure that if the agency identifies an opportunity for an information product (an enhanced means of accessing government information), the agency

  – does not derive unfair commercial advantage from having custody of the information on which it is based
  – provides access to this same original information to the private sector and public sector information providers on the same terms and conditions.

Principle 4: Information is provided with transparent conditions for use

There is an expectation by the public with the emergence of new communication technologies that government information will be made accessible more readily and that this information will be available to be used and in many cases reused.

Agencies must:

- ensure that government information to be released is licensed with one of the Government Information Licensing Framework (GILF) licences or a licence (restrictive) which supports the GILF policy[162] benefits

- ensure that their government websites continue to display copyright notices and statements and link to the appropriate GILF licences so the conditions of use are provided at the point of access.

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[162] The QGEA GILF Policy is discussed below.

Principle 4 of IS33 directly incorporates Creative Commons licences into the policy framework for access to and reuse of Queensland government information. In ensuring that government agencies make their information available with transparent conditions of access, use and reuse, they are required to release it under a Government Information Licensing Framework (GILF) licence or some other (restrictive) licence that is consistent with the GILF Policy. As previously noted, GILF consists of the 6 standard Creative Commons Australia licences, together with a model licence containing various template restrictive clauses. The result is that Creative Commons licences are effectively incorporated by reference into the policy framework, for use as a mechanism to ensure the transparency of conditions of use of PSI. The advice on implementation of Principle 4 provides further information on GILF and how it is used.

The toolbox for IS33 includes the Queensland Government Enterprise Architecture guideline document, *Determining the ex ante release status of information*[163], Information Policy[164] and Information Position.[165]

5.1.4 Queensland Government Enterprise Architecture Guideline – Government Information Licensing Framework (QGEA GILF Policy)

The Queensland Government Enterprise Architecture framework 2.0 (QGEA 2.0)[166] includes the Government Information Licensing Framework (QGEA GILF Policy)[167] which was issued by the Queensland Government Chief Information Office in March 2010.[168] This policy, developed by the Office of Economic and Statistical Research in Queensland Treasury[169], aligns with the intent of the *Right to Information Act* 2009 (Qld) and complements other information management requirements, including Information Standard 33 (Information Access and Use) and the QGEA Information Management Policy Framework.[170]

The GILF Policy relates to all domains in the information layer of the QGEA. It establishes GILF as a "single consistent information licensing framework" for all copyright-protected government information (including data and information assets).[171] When making government information

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[163] Queensland Government Chief Information Office, *Queensland Government Enterprise Architecture Guideline: Determining the ex ante release status of information,* December 2009, at
http://www.qgcio.qld.gov.au/SiteCollectionDocuments/Architecture%20and%20Standards/QGEA%202.0/Determining%20the%20release%20status%20of%20information.pdf (accessed 28 May 2010).
[164] Queensland Government Enterprise Architecture, *Information Policy,* September 2009, at
http://www.qgcio.qld.gov.au/SiteCollectionDocuments/Architecture%20and%20Standards/QGEA%202.0/Information%20Management/Information%20policy.pdf (accessed 28 May 2010).
[165] Queensland Government Enterprise Architecture, *Information Position,* September 2009, at
http://www.qgcio.qld.gov.au/SiteCollectionDocuments/Architecture%20and%20Standards/QGEA%202.0/Information%20Management/Information%20position%20paper.pdf (accessed 28 May 2010).
[166] On the Queensland Government Enterprise Architecture framework 2.0 (QGEA 2.0) generally, see http://www.qgcio.qld.gov.au/qgcio/architectureandstandards/qgea2.0/Pages/index.aspx The QGEA Framework 2.0 document was published under a CC licence. See also the QGEA Information Position at http://www.qgcio.qld.gov.au/SiteCollectionDocuments/Architecture%20and%20Standards/QGEA%202.0/Information%20Management/Information%20position%20paper.doc (accessed 28 May 2010).
[167] Queensland Government Enterprise Architecture, Government Information Licensing Framework GILF), March 2010, v1.0.0, at
http://www.qgcio.qld.gov.au/SiteCollectionDocuments/Architecture%20and%20Standards/QGEA%202.0/GILF%20Policy.pdf (accessed 28 May 2010).
[168] http://www.qgcio.qld.gov.au/qgcio/Pages/index.aspx (accessed 28 May 2010).
[169] The Government Inormation Licensing Framework project was developed through a collaborative intiative between the Office of Economic and Statistical Research (OESR) in Queensland Treaury, the Department of Energy and Natural Resources (formerly the Department of Natural Resources and Energy) and QUT's Law Faculty, from 2005/
[170] Other information management requirements that it complements are the Queensland Public Sector Intellectual Property Principles, Information Standard 34 (Metadata), Information Standard 44 (Information Asset Custodianship) and Information Standard 46 (Copyright Use).
[171] As defined in the QGEA glossary: "Government information includes all reports, documents, data sets and information that Queensland Government departments collect or produce for statutory purposes or business needs. Government information may be stored in a number of information formats. This includes presentation in electronic (digital), print,

publicly available, departments are required to select and apply one of the licences in GILF and to explicitly inform users about the use and reuse they can make of it. The GILF Policy requires Queensland government departments to incorporate GILF into their departmental policies and ensure that their employees understand it, and license their PSI under one of the 6 Creative Commons licences or a licence based on the GILF restrictive template model clauses, applying the least restrictions on use that are "legally and operationally applicable to the government information to be licensed".[172] Queensland government departments are required to ensure that information about GILF is available to users so they understand how the government uses GILF, the Creative Commons suite of licences and the GILF restrictive licence and recognise the licence badges and markings.[173]

The Position Statement accompanying the QGEA GILF Policy establishes timeframes for achievement of implementation milestones. Departmental policies are to incorporate GILF by 30 September 2010; websites are to be updated to include GILF licences and all newly released information is to be licensed with a GILF licence by 31 March 2011; and existing information generated electronically (on demand) is to be released under a GILF licence by 31 March 2010.[174] Departments are required to report on:

- the manner in which the GILF policy has been integrated into departmental policies;
- compliance of department websites with GILF policy requirements; and
- what government information is released by the Department on a licence other than one of the 6 Creative Commons licences.

Assistance in understanding GILF, the Creative Commons licences and the restrictive licence template is provided in the Queensland Government Enterprise Architecture Guideline – Government Information Licensing Framework.[175] Practical assistance in choosing licences is provided through an interactive, web-based licensing options tool that guides decision-making about which of the 6 Creative Commons licences or restrictive licence template clauses should be used for a particular information product or materials.[176]

5.1.2 Other Queensland initiatives

The Department of Environment and Resource Management (DERM), the custodian of some of the State's most significant environmental and spatial information datasets and databases[177], contributed several important datasets (including the Property Boundaries Annual Extract (Lite DCDB)[178]) to the Gov 2.0 Taskforce's Mashup Australia competition under CC-BY licences and provides its Surface Water Database to the federal government's Department of Meteorology under a CC-BY licence. Following publication of the QGEA GILF Policy by the Queensland Government Chief Information Officer in March 2010, DERM began reviewing all the datasets under its management with the

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audio, video, image, graphics, cartographic, physical sample, textural or numerical form." See
http://qgcio.qld.gov.au/qgcio/resources/glossary/Pages/glossaryg.aspx (accessed 28 May 2010).
[172] These obligations are set out in Policy requirement 1: Apply GILF licence to government information.
[173] These obligations are set out in Policy requirement 2: Make explicit to users the legal uses that can be made of government information.
[174] Queensland Government Enterprise Architecture, *QGEA Position: Government Information Licensing Framework (GILF)*, Final, March 2010, v 1.0.0, at
http://www.qgcio.qld.gov.au/SiteCollectionDocuments/Architecture%20and%20Standards/QGEA%202.0/GILF%20Position.pdf (accessed 25 June 2010).
[175] *Queensland Government Enterprise Architecture Guideline: Government Information Licensing Framework* (Final), March 2010, v1.0.0., at
http://www.qgcio.qld.gov.au/SiteCollectionDocuments/Architecture%20and%20Standards/QGEA%202.0/GILF%20Guideline.pdf (accessed 28 May 2010).
[176] See http://www.gilf.gov.au.
[177] DERM is the custodian of datasets across the themes of elevation, imagery, location, cadastre (land and marine) and transport.
[178] See http://data.australia.gov.au/152. The Digital Cadastre DataBase (DCDB) is the spatial representation of the property boundaries and the related property descriptions of Queensland. The dataset made available on data.australia.gov.au is a fortnightly copy of the DCDB and is downloadable as an ESRI Shape File.

objective of releasing them, wherever possible, under a Creative Commons Attribution (CC-BY) licence. Each of these datasets will be made available via Queensland Government Information Services and it is intended that most will be provided free of charge. The first dataset to be approved for release under the GILF Policy is the Locality Boundaries dataset for Queensland.

The Office of Economic and Statistical Research has released statistical information products on its website under a CC-BY licence, together with case studies of the decision processes followed in determining whether CC licences should be used.[179] The Queensland Museum releases photographs from its collection on Wiki Commons[180] under a CC BY SA licence.[181] Aged Care Queensland published its *eMentoring Handbook* (on CD Rom) – designed to assist aged care workers with training and mentoring advice and opportunities – under a CC BY licence.[182]

5.2 Victoria

Unlike other jurisdictions, the Victorian government has not legislatively overhauled the *Freedom of Information Act* 1982 (Vic) but, acting on the recommendation of the Victorian Ombudsman, in December 2009 the Attorney-General (Rob Hulls MP) issued revised guidelines on the operation of the Act to ensure that it is interpreted consistently with its "terminology, intention and purpose".[183] The *Attorney-General Guidelines on the Responsibilities and Obligations of Principal Officers and Agencies* set out principles that underpin the management of FOI responsibilities by relevant officers. The first of the principles, "Access to Government Information", states:

> Freedom of Information should be a means of last resort to gain access to information on the policies and activities of government. Agencies are encouraged to consider ways of providing information outside the FOI process and on a regular proactive basis rather than in response to an inquiry. Publications and communications policies should reflect the intention of s.16 of the FOI Act[184] which supports the provision of access to documents outside the formal FOI process.[185]

In September 2009, a Proactive Publication Scheme was announced, to promote the publication of information commonly sought under FOI without the need for a formal request

5.2.1 Victorian Parliament's Economic Development and Infrastructure Committee (EDIC), Inquiry into Improving Access to Victorian Public Sector Information and Data

The Report of the Victorian Parliament's Economic Development and Infrastructure Committee (EDIC), *Inquiry into Improving Access to Victorian Public Sector Information and Data* (EDIC

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[179] *Queensland Government Population Projections to 2056: Queensland and Statistical Divisions 3rd Edition,* 2008, see: http://www.gilf.gov.au/queensland-government-population-projections-to-2056-3rd-edition-2008; and *Gender in Queensland (Census 2006 Bulletin 1)* see: http://www.gilf.gov.au/gender-in-queensland-census-bulletin-1.

[180] See http://commons.wikimedia.org/wiki/Main_Page (accessed 25 January 2010).

[181] See for example, digitized images of the A E Roberts collection at http://commons.wikimedia.org/wiki/Category:A_E_%22Bert%22_Roberts_plate_glass_photo_collection (accessed 25 January 2010).

[182] See http://www.acqi.org.au and http://www.creativecommons.org.au/node/247

[183] Victorian Attorney-General, *Attorney-General Guidelines on the Responsibilities and Obligations of Principal Officers and Agencies*, December 2009, at http://www.foi.vic.gov.au/wps/wcm/connect/f04de0004129d536b1d0b70db22e92f0/Attorney-General+Guidelines_Dec2009.pdf?MOD=AJPERES (accessed 28 May 2010).

[184] Section 16 of the FOI Act ("Access to documents apart from Act") states: (1) Ministers and agencies shall administer this Act with a view to making the maximum amount of government information promptly and inexpensively available to the public. (2) Nothing in this Act is intended to prevent or discourage Ministers and agencies from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

[185] Ibid at p 6.

Report), was tabled in the State parliament on 24 June 2009.[186] The Committee had been asked to report on the benefits and costs of maximising access to and use of PSI for commercial and non-commercial purposes and to consider how flexible licensing arrangements would facilitate reuse of PSI.[187]

The EDIC Report is significant because this was the first formal inquiry by an Australian government on the issue of access to PSI and the Committee's deliberations and findings provided valuable guidance for other governments. The key economic recommendation in the report was that the Victorian Government establish a comprehensive Information Management Framework (IMF), with open access to PSI at no or marginal cost as the default position and the development of specific guidelines to deliver with policy outcome.[188] The Committee formed the view that the economic and social benefits arising from the release of Victorian Government information at no cost far outweigh the benefits of treating it as a commodity.[189]

Specific key recommendations in the report included:[190]

> *Recommendation 1:* That the Victorian Government release a public statement indicating that it endorses open access as the default position for the management of its public sector information.
>
> *Recommendation 2:* That the Victorian Government develop a whole-of-government Information Management Framework (IMF) with the following key features:
>
> - that the object of the IMF is to promote and facilitate increased access to and reuse of Victorian public sector information (PSI) by government, citizens, and businesses;
>
> - that the default position of the IMF be that all PSI is made available;
>
> - that the IMF define and describe criteria under which access to PSI may be restricted, or released under licence;
>
> - that PSI made available under the IMF be priced at no cost or marginal cost; and
>
> - that the IMF establish a systematic and consistent whole-of-government methodology for categorisation, storage and management of PSI.
> ……
> *Recommendation 14:* That the Victorian Government adopt the Creative Commons licensing model as the default licensing system for the Information Management Framework.
>
> *Recommendation 15*: That the Victorian Government adopt a hybrid public sector information licensing model comprising Creative Commons and a tailored suite of licences for restricted materials.
> .....
> *Recommendation 20*: That the Victorian Government enhance its role as an information provider as a means to improve social benefits and facilitate commercial activity in the private sector.

In responding to the EDIC Report in February 2010[191] - in a document licensed under a Creative Commons licence[192] - the Victorian Government expressed full support for 32 of the 46

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[186] Victorian Parliament, Economic Development and Infrastructure Committee, *Inquiry into Improving Access to Victorian Public Sector Information and Data (Final Report)*, June 2009, available at http://www.parliament.vic.gov.au/edic/inquiries/access_to_PSI/final_report.html (accessed 2 February 2010). The main recommendations are summarised in the accompanying media release, *21st Century Approach to Government Information: Committee calls for improved access to government information*, Economic Development and Infrastructure Committee, 24 June 2009, available at http://www.parliament.vic.gov.au/edic/inquiries/access_to_PSI/PSI_Inquiry_Media_Release.pdf (accessed 2 February 2010).
[187] EDIC adopted a broad definition of PSI, but excluding software: EDIC Report, at p 1.
[188] EDIC Report, Recommendation 16.
[189] EDIC Report, para 2.4, p 19.
[190] EDIC Report, pp xxv - xxvi.

recommendations. It gave in-principle support to the remainder, which are issues requiring further consideration at the time the IMF is developed and implemented. Recommendations 1, 14, 15 and 20 received unqualified support while recommendation 2 – relating to the development of a whole-of-government Information Management Framework - was supported in principle.

The Victorian Government endorsed the Committee's "overarching recommendation that the default position for the management of PSI should be open access" and committed itself to "the development of a whole-of-government Information Management Framework (IMF) whereby PSI is made available under Creative Commons licensing by default with a tailored suite of licences for restricted materials".[193] It stated:

> Open access to PSI represents an important opportunity for the Victorian Government to increase its engagement with the community and to realise a range of social and economic benefits. The government is committed to improving access to PSI and will seek to bring current activities into a more consistent and comprehensive framework for the release of PSI to ensure it is addressing the varied needs and interests across the community….Open access to PSI has the potential to provide a range of benefits for government and citizens on policy issues, social benefits to citizens through availability to increased information on matters as diverse as health or recreation, and economic gains by the State through creative or enterprising use of PSI by the public and private sectors.[194]

The Victorian Government stated that implementation of an IMF to improve access to PSI[195] would provide the State with the opportunity to play a leading role in the development of policies and practices for access to government information and data in Australia, and enable it to realise significant economic and social benefits.[196] While supporting in-principle the recommendation (in recommendation 2) that the default position should be that all PSI be made available, the government noted that "there may be instances where legislation (especially legislation dealing with privacy or confidentiality), licensing or other contractual arrangements or an overriding public interest (including security concerns) prevent information from being publicly released".[197] The government stated that it would consider the issues raised by the Committee and work undertaken in other jurisdictions in defining the circumstances in which "access to PSI may be restricted, or released under licence". Another element of recommendation 2 that was supported in-principle was the recommendation that "PSI made available under the IMF be priced at no cost or marginal cost". Although supporting making PSI available at no cost or marginal cost,[198] the government noted that "this pricing structure may not be appropriate in all instances", such as "where revenue generated covers the cost of collecting or producing the information and data".[199] It indicated that, in developing the IMF, the nature and costs of servicing current and future information needs would be addressed and that it was likely that a range of pricing models would have to be adopted.[200]

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[191] Government of Victoria, *Whole of Government Response to the Final Report of the Economic Development and Infrastructure Committee's Inquiry into Improving Access to Victorian Public Sector Information and Data,* February 2010, available at http://www.diird.vic.gov.au/diird-projects/access-to-public-sector-information (accesssed 28 May 2010).

[192] The Victorian government's response was licensed under a Creative Commons Attribution-Noncommercial-No Derivatives 2.5 Australia licence (CC BY-NC-ND).

[193] Ibid, at p 8.

[194] Ibid, at pp 11 – 12.

[195] The steps involved in the first stage of development of an IMF are described as follows: "specifying the scope of PSI to which the IMF applies; obtaining further legal advice about the release of PSI and use of appropriate licensing arrangements including use of Creative Commons licensing, where appropriate, as the default licence; identifying and categorising datasets created and maintained by the Victorian Government; developing a hybrid licensing system that uses Creative Commons as the default licence; developing pricing models with no cost/marginal cost as the default; defining and describing criteria under which access to PSI may be restricted, or released under licence; and developing governance and funding arrangements for the implementation of the IMF. Ibid, at pp 8 – 9.

[196] Ibid, at p 9.

[197] Ibid, at p 12.

[198] Ibid, at p 8.

[199] Ibid, at p 12.

[200] Ibid, at pp 8 and 12.

5.2.2 data.vic.gov.au and AppMyState

In the first half of 2010, the Victorian government ran the AppMyState competition[201], which focused on mobile and web applications. For the competition, the government set up the data.vic.gov.au portal where raw datasets and data tools can be accessed. The 100 or so datasets contributed for the competition by Victorian government agencies were available for direct download, under a Creative Commons Attribution 2.5 Australia (CC-BY) licence, unless otherwise specified.[202] For example, the Department of Sustainability and Environment, which has vast amounts of spatial data about Victoria, contributed data about railway lines, waterways and postcode boundaries to AppMyState in KML format.[203]

5.3 South Australia

South Australia was the first Australian jurisdiction to formally decide (by Cabinet decision) to apply Creative Commons to licences to the State's PSI. The lead agency in South Australia, the Office of the Chief Information Officer, became involved in considering the use of CC licences through the Cross Jurisdictional Chief Information Officers Committee (CJCIOC). On 5 November 2008, the South Australian government's ICT Board – the State's governance and strategic leadership body for whole-of-government ICT services and initiatives – endorsed a recommendation to Cabinet that the government support the adoption of the Government Information Licensing Framework (GILF) model. This recommendation was approved by Cabinet in December 2008 and implementation of the South Australian GILF Program began in June 2009 with the establishment of a Working Group of government agencies and support of agency chief executives.

5.4 New South Wales

The NSW government overhauled its FOI laws in 2009, in response to the recommendations of a review by the State Ombudsman[204], enacting the *Government Information (Public Access) Act* 2009 ("GIPA")[205] and the *Government Information (Information Commissioner) Act* 2009. The GIPA authorises and encourages the proactive public release of government information, unless it is sensitive personal information or there is an overriding public interest against disclosure.

The GIPA provides for release of government information in four sets of circumstances:

- *Mandatory disclosure of open access information*: Agencies must publish certain information on their website, free of charge (s 6). "Open access information", which must be published, consists of:
  - information about an agency's policies, structure and functions;
  - documents tabled in Parliament on the agency's behalf;
  - policy documents;
  - general details of unpublished open access information;
  - publication guide;
  - disclosure log;
  - register of government contracts (s 18).

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[201] See http://www.premier.vic.gov.au/app-my-state.html (accessed 28 May 2010). Entries closed on 21 May 2010 and the winners were announced by the Victorian Premier, John Brumby MP, on 21 June 2010; see http://www.premier.vic.gov.au/app-my-state/the-winners.html (accessed 25 June 2010).

[202] See the Copyright page at http://data.vic.gov.au/cms/copyright/39

[203] See Blog post "Data accessibility", posted by Information Victoria, 5 March 2010, at http://data.vic.gov.au/blog/data-accessibility/159

[204] Bruce Barbour (NSW Ombudsman), *Opening up government: Review of the Freedom of Information Act 1989 – A Special Report to Parliament under s. 31 of the Ombudsman Act 1974,* February 2009, at http://www.ombo.nsw.gov.au/publication/PDF/specialreport/Opening%20up%20government_Review%20of%20FOI%20Act%201989.pdf (accessed 20 June 2010).

[205] The *Government Information (Public Access) Act* 2009 (NSW) entered into force on 1 July 2010.

- *Proactive release*: Agencies are encouraged to proactively release as much government information as possible, in an appropriate manner and free of charge or at the lowest reasonable cost (s 7(2)). Any government information can be proactively released, unless there is an overriding public interest against disclosure (s 7(1)). The Act establishes a presumption that government information can be released unless there is an overriding public interest to the contrary (s 5).

- *Informal release*: Agencies are encouraged to release information in response to a request without the need for a formal application, unless there are good reasons to require one (s 8).

- *Formal access application*: In limited circumstances, access to information will require a formal access application. There is a right to access information this way, unless the Act provides a reason to withhold the information (s 9).

In April 2010, the NSW government appointed Deidre O'Donnell, the former Telecommunications Industry Ombudsman and Ombudsman for Western Australia, as the NSW Information Commissioner.[206]

5.4.1 information.nsw.gov.au and Apps4nsw

In 2009, as part of its commitment to fostering "open government", the New South Wales government established the information.nsw.gov.au portal to provide open access to NSW government information and initiated the apps4nsw competition to encourage citizens to create apps with NSW data.[207]

5.4.2 Centre for Learning Innovation and Smartcopying

The Centre for Learning Innovation (CLI) in the New South Wales Department of Education and Training has released several of its learning resources under CC licences.[208] The CLI produces learning resources and provides leadership in the use of technology in education and training. Among the resources distributed under a CC licence is "Dynamic Calculus", a collection of interactive learning objects for teaching calculus.[209]

5.4.3 Mosman Municipal Council

In April 2009 the Mosman Municipal Council – the local government authority for the northern shores of Sydney Harbour – adopted a new Community Engagement Strategy which was released under a Creative Commons Attribution 2.5 Australia (CC-BY) licence. By adopting the Strategy, the Council intended to "inform", "consult" and "involve" their residents in genuine participatory government of their local area, and to promote the objectives of transparency and accountability in government. As

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[206] See the Office of the Information Commissioner website at
http://lawlink.nsw.gov.au/lawlink/oic/ll_oic.nsf/pages/information_commissioner_index (accessed 25 June 2010).
[207] Winners in the apps4nsw competition were announced on 24 June 2010, see
http://www.information.nsw.gov.au/apps4nsw (accessed 25 June 2010).
[208] See http://www.smartcopying.edu.au/scw/go/pid/921.
[209] See
http://www.smartcopying.edu.au/scw/go/cache/offonce/pid/939;jsessionid=B82C2B3E2A4E5F1A63A7878C586F5ACD.
This interactive resource is licensed under a Creative Commons Attribution-Noncommercial-Share Alike 2.5 Australia Licence.

part of the Strategy, the Council is committed to adopting best practices in use of new technologies to engage with citizens, including:[210]

- using blogs, wikis and other social network and social media platforms "where two-way communication between Council and the community is encouraged and nurtured";

- developing appropriate guidelines for the use of these technologies by the Council "to ensure on-line discussions are appropriate, intelligent and lawful";

- encouraging community contribution of local knowledge to collaborative spaces including Wikipedia and OpenStreetMap;

- releasing Council materials, where possible, under a Creative Commons licence "to promote the use and dissemination of Council's materials while retaining Council's rights of authorship";

- releasing Council materials, where possible, in open format and as open data; and

- building of an application programming interface (API) to that information.

6. Cultural sector

Australia's cultural institutions are increasingly seeking to engage with their audiences in ways that capitalise on the distributed and collaborative networking models available in the Web 2.0 environment. Digital technologies have dramatically changed the landscape of creating, collecting and providing access to cultural materials. In this environment, Australian museums and archives are exploring the potential of open access distribution models.

6.1 Powerhouse Museum (Sydney)

Sydney's Powerhouse Museum has adopted open access practices and commenced releasing a large amount of material under Creative Commons licences, to "enable rich research and encourage innovation".[211] Materials available include the museum's photo of the day project,[212] downloadable pdf files from its Play program[213] and the museum's general collection information and data.[214] Since April 2009, all online descriptions of objects held by the museum have been available under a Creative Commons Attribution-Non-Commercial 2.5 Australia (CC-BY-NC) licence whilst the database of information about objects in the collection is available for download under a Creative Commons Attribution-ShareAlike 2.5 Australia (CC-BY-SA) licence.[215] In addition, the museum

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[210] See http://mosmanroundtable.net/ces/ (accessed 25 June 2010). For comment, see http://creativecommons.org.au/node/255 and the case study at http://wiki.creativecommons.org/Case_Studies/Mosman_Municipal_Council (accessed 25 June 2010).

[211] See, under the heading Open Licensing and Collections, the comments by Paula Bray, the Manager Image Services, at the Museum, in the context of developing business models based on the Commons project on Flickr: http://www.archimuse.com/mw2009/papers/bray/bray.html.

[212] http://www.powerhousemuseum.com/imageservices/. The CC licence used is CC BY-NC-ND (Attribution, Non-Commercial, No Derivatives).

[213] http://play.powerhousemuseum.com/. The CC licence used is CC BY-NC-ND (Attribution, Non-Commercial, No Derivatives).

[214] http://www.creativecommons.org.au/node/225.

[215] See "Collection download" at http://www.powerhousemuseum.com/collection/database/download.php (accessed 28 May 2010). Note that the CC licence covers only the database information, not the actual images, which are excluded from the CC licence.

makes public domain photographs (that is, photos in which copyright has expired) available for public download through the Commons on Flickr.[216]

6.2 Australian Broadcasting Corporation's "Pool"

Pool is an initiative of the Australian national broadcaster, the Australian Broadcasting Corporation, through ABC Radio's Multiplatform and Content Development department, in collaboration with QUT's Centre for Creative Industries and Innovation (CCi), QUT's Open Access to Knowledge (OAK) Law project, Creative Commons Australia, the Royal Melbourne Institute of Technology (RMIT) and the National Library of Australia.[217] It is an online space based on user-led innovation where the ABC and citizens, community groups, government and educational organisations can collaborate using open software and licensing frameworks[218]. The ABC website describes Pool as:

> [A] space for people to upload and download, create profiles, share, remix and build communities. ..... Pool is an open platform for conducting research in action at the intersection of conventional broadcast media and participatory media. Pool is a predictive project exploring this new territory asking the question: "how does a traditional broadcaster make sense of participatory media culture?"[219]

As well as inviting members of the public to upload their material to Pool, the ABC releases archival audio and video material for public reuse under a Creative Commons Attribution Noncommercial 2.5 Australia (CC-BY-NC) licence.[220]

6.3   Dictionary of Sydney

The Dictionary of Sydney is an online project containing information about all aspects of life in the Sydney basin, from the earliest human habitation of the area to the present day.[221] It covers historical information on a wide range of topics (engineering, society, and culture, economics, archaeology, literature, geography, etc.) in a variety of formats (text, images, maps, sound, music, oral history, film and so on). All the content in the Dictionary is provided by contributors who include academics, professional historians, heritage specialists, local studies experts, genealogists, enthusiasts, volunteers and readers.   Many individual contributors to the Dictionary license their contributions under a Creative Commons Attribution Share-Alike 2.5 Australia (CC-BY-SA) licence.

6.4 National Library of Australia

Trove, an initiative of the National Library of Australia, is a search engine which enables the resources in a range of formats held by numerous many Australian cultural institutions to be search simultaneously. Where the material has been digitized (such as newspapers, maps, photos etc), it will be retrieved and displayed.[222]

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[216] This material may never have been protected by copyright or the term of copyright has expired. For an overview of the Powerhouse Museum's rights and permissions practices see
http://www.powerhousemuseum.com/imageservices/?page_id=157.
[217] See http://www.pool.org.au (accessed 28 May 2010).
[218] Pool is based on the free and open source content management system Drupal. Users license their contributions to Pool under Creative Commons licences.
[219] Ibid.
[220] See http://www.pool.org.au/users/abc_archives (accessed 28 May 2010); see also
http://showcase.govspace.gov.au/100/abc-pool/ (accessed 28 May 2010).
[221] See http://www.dictionaryofsydney.org (accessed 28 May 2010).
[222] See http://trove.nla.gov.au/

7. Conclusion

Recent developments in Australia show that the importance of enabling access to and reuse of public sector information is now widely recognised. This is evidenced by the Australian Government's Declaration of Open Government (July 2010) which clearly states the federal government's commitment to the pursuit of an open, transparent and participatory democracy, "built on better access to and use of government held information, and sustained by the innovative use of technology".

Governments across Australia have taken significant steps in developing the framework of laws, policies and information management practices required to give effect to this objective. Despite this progress, in a federation consisting of a national government, eight States and Territories and local government a major challenge is to develop a truly national information system so that information can flow among and across all levels of government, and between government and the general community. The need for intergovernmental cooperation to develop and implement a national information policy was recognised in the Government 2.0 Taskforce report *Engage: Getting on with Government 2.0*, which recommended that such cooperation be undertaken through the Council of Australian Governments (COAG) on which each of the jurisdictions is represented. The challenge ahead, in further developing the legal, policy and practice framework for access to and reuse of PSI, is to proceed on the basis that PSI is indeed a national resource and to develop strategies designed to ensure that its social and economic benefit is maximised.