

Keeping the Bastards Honest

Senator Rex Patrick, Ebony Bennett, Brill Browne

Ebony Bennett [00:00:03] Hi everyone, I'm Ebony Bennett, I'm deputy director at the Australia Institute, and welcome to our webinar series. I'd like to begin by acknowledging that I live on Nonlocal and Nebris country here in Canberra and acknowledge that sovereignty was never stated here. It always was and always will be Aboriginal land. And I pay my respects to elders past and present. We do do these webinars at least once a week, but the days and times do vary. For instance, today we're an hour earlier than we normally are Wednesday. So make sure you head on over to Australia Institute dot org. Are you to find all of our upcoming webinars and you can register for the mayor next Wednesday at 11 a.m. we'll be talking about Australia and climate pressure with journalist and author Marian Wilkinson and the Australia Institute chief economist Richard Denniss and the head of our international and Security Affairs programme, Alan Baim. They've all written essays for this issue of Australian foreign affairs. And coming up, we'll be speaking with activists Qantas about understanding consent, as well as with the former European Commissioner for Trade, Cecilia Malmström, on trading away Australia's climate ambition. Final days on Australia Institute. And just a few tips before we begin to help this all run smoothly. If you hover over the bottom of your screen, we've got a Q&A function. We should be able to type in questions for our panel. And you can also outvote questions from other people and comment on their questions as well. Please keep things civil and on topic in the chat or we'll put you out. And finally, a reminder that this event is both live, but also being recorded. And we will put up a copy of the video on our YouTube channel, Australia Institute DOT TV as soon as we can after this. So Patrick has been a senator for South Australia since twenty seventeen when he was appointed to fill Nick Xenophon's seat, originally a member of Centre Alliance. He left the party about this time last year to serve as an independent. Before his time in politics, Rex spent 11 years in the Navy, including serving on Oberon and Collins class submarines and working as an electronics technician. A bit of a different background compared to my stampings and senators. I think after leaving the Navy, he set up a small business training people in sonar and acoustics and wrote publicly on defence issues. And as a senator, he's really been a fierce advocate for his home state. His defence background has given him an edge when questioning ministers and public servants over the 90 billion dollar Future Submarines programme with thousands of South Australian jobs in the balance and also in challenging that iniquitous excuse for government secrecy, national security, Senator Patrick apparently spends weekends making and pursuing Freedom of Information request, and he boasts a score of Wrex Patrick, 11 governments one. And he's still awaiting a decision from the Administrative Appeals Tribunal that might bump up that tally to 12 to one. And obviously with the title today, Keeping the Bastards Honest, he's not keeping any secrets of his own. And today he'll be in conversation with Bill Brown. He's our senior research at our Democracy and Accountability Programme. And we're going to be touching today on how the powerful can be held to account through freedom of information laws, the Senate and even the Constitution. And I think today is a really timely webinar given the recent revelations about the capac rorting scandal complex. I think because Twitter has dubbed it hot on the heels of sports rorts and other maladministration of government discretionary grants. So thank you so much for joining us today. Senator Rex Patrick, welcome.

Senator Rex Patrick [00:03:46] Thank you. It's a great pleasure. I might just update you. My score is actually 11 zero now because I've appealed one. So that's a cabinet matter and it's important, but some important issues around that. So we'll just have to see how we go there.

Ebony Bennett [00:04:02] Yeah, excellent. I'm so just to kind of kick us all off, I wanted to ask for your overall assessment of the state of, I guess, accountability for the government at the moment. What is what does that picture look like?

Senator Rex Patrick [00:04:17] Well, in actual fact, there are many oversight mechanisms for government and unfortunately, many of them are being frustrated. If I just went through some of them, there is some oversight mechanisms that are funded by the taxpayer and in effect, are operated by government. And that includes things like the auditor general who does a fantastic job. We've also got people like the ombudsman, the inspector general of intelligence and security, who who has oversight or watchdog role in relation to intelligence and the privacy commissioner. Then then we have perhaps more formally or more independently, rather, is the Senate and the Senate can conduct oversight with a number of different tools given to us by six. Forty nine of the Constitution that allows us to do things like ask questions of ministers at question time, ask for ask questions of officials at estimate's conduct enquiries. Of course, in order to do that, you need 39 votes in the Senate. We have the ability to also order the production of documents. So we've got a number of tools in our in our toolkit in relation to oversight. Then, of course, is the judiciary. The judiciary has a supervisory role over government if they exceed their power. Of course, that can be difficult. It can be costly. One of the things about courts, they they can come up with orders that bind the government. So the government has to comply with court orders. But it takes a fair bit to actually get before a court, unlike a Senate enquiry where you could start with nothing and build up evidence with a court case, you've got to at least have some evidence, a sufficient body of evidence to at least commence proceedings. Then, of course, we have the media and the media keep an eye on the executive and on politicians and on the judiciary and on itself. So that's a that's a great arm. And of course, we've seen frustration there in relation to things like police raids and so forth, and also laws that seek to inhibit the freedom of journalists. Then we have another mechanism, which is what?

Senator Rex Patrick [00:06:32] Which is a great mechanism because every Australian citizen can do this. And that is to can to put an and if I make enquiry about a particular topic and the law as it stands, is that every Australian has a legally enforceable right for access to government information because that information belongs to the people. It's paid for by the people, it's generated for public purpose. That is being frustrated. And I'm sure we'll talk about that. And the final one that I want to talk about. Well, just briefly mentioned whistle blowing, whistle blowing is a great way of keeping accountability inside government, whereby if someone sees some misconduct, they can raise it and they can do so under under a protection. Now, many of these things are broken. So we've seen the auditor general, for example, being underfunded. We've seen the Senate not always exercising its powers fully and letting the government get away with things. We've seen issues with the judiciary and that it's hard to get access to to a judicial ruling, per, because it is quite an expensive proposition. We've seen the media being stifled by way of, as I mentioned before, police raids. We've seen FOIA being stifled because governments have a culture of making cavalier claims that then has to be fought. And finally, with whistleblowers, we've seen terrible situations where we've had people like Bernard Collaery Witness K blowing the whistle. David McBride in relation to Afghanistan, we've seen Richard Ball in relation to the ATO. All of them are being prosecuted or might say persecuted by government authorities for the very fact that they blew the whistle. So I don't think we're in a good state. We do have many, many

mechanisms and they all need to be fixed. And I might just end it by saying the big missing item we have is an ICAC and that unfortunately the government promised that we're going to get an ICAC. They're basically running out the clock. We won't see this side of an election.

Ebony Bennett [00:08:45] Yeah, and so many issues that you touched on there. And I think we'd like to come back to most of them. Bill, I know you do a lot of eyes for the Australia Institute. Do you have a question on that one?

Bill Browne [00:08:56] Yeah, well, in particular, you mentioned the beauty of an effort is that any citizen can do it. We've got hundreds of citizens watching today. I was wondering if you had some tips for people who've never put in an effort before. Kind of. How do you realise that there's something worth asking about? And how do you anticipate some of the ways that the government avoids answering those flies?

Senator Rex Patrick [00:09:22] OK, so working on the positive side of things first. Thank you, Bill. Citizens just need to learn these words. This is a request for the purposes of the act. Nineteen ninety two I seek access to and then dot, dot, dot. That's how easy it is to put a telephone. I and I ran across many constituents who said to me, I've been trying to get a government document, a document of government, and I've asked them many times and they keep promising, telling me they're going to consider when you use those magic words that I've just given to you and put. In an email to a government department, they are obliged to give the document to you and they were obliged to do so in the federal space within 30 days unless there is a justifiable exemption. So the default position is you have the right to see these documents. Unfortunately, what we see happening, however, is government departments make a range of

Senator Rex Patrick [00:10:25] very cavalier claims ranging from national security. We've seen national security claims being made in relation to health information recently with vaccines, but we see lots and lots of cavalier claims that may not be properly made out. And unfortunately, many citizens stop there and think this is too hard. I've found a few pursue things. You can almost always and as you mentioned, my score is one nil at the moment in terms of appeals. You can almost always get access to the documents. You just have to get it away from the department to an independent body, either the information commissioner or the Administrative Appeals Tribunal. And you'll generally find that you'll get access to at least more of the document that you were seeking and indeed, often all of the document that you are seeking. Unfortunately, there are huge delays in the information commissioner world. It can take two to three years to get and FOIA. By that time, the information may well and truly just be useless. And that is a huge problem that we have with FOIA to mine. And so there are some things that I'm doing and I'm actually considering, or almost certainly likely to lodge an application in the federal court in relation to my matters, using myself as the as the complainant to try to force the information commissioner to make decisions in a much more timely fashion.

Ebony Bennett [00:11:54] And I know you've got a big court case on at the moment surrounding national cabinet. Can you tell us a little bit about that?

Senator Rex Patrick [00:12:03] OK, so it's not strictly a court case, although it is being heard by justice. When Scott Morrison invoked national cabinet, that is, he called together himself and the premiers to enable them to talk about responses to covid. And I. I point out I have no objection to that at all. I think that's a worthy idea. Unfortunately, what he did was he then declared that that national cabinet was a subcommittee of the federal cabinet. And in doing so, he wrapped a

secrecy blanket over everything that national cabinet talks about. Now, noting that these the national committees talking about things like lockdowns, border closures, vaccines, restrictions of liberties, very important health issues. I think it's most unhelpful and it's, in fact, most unreasonable to impose a secrecy blanket as he did. And so I went for the jugular. I requested on the Freedom of Information laws, access to the minutes of a national cabinet meeting and indeed the notebooks of the national cabinet meeting, knowing full well that they would come back and say, sorry, that's cabinet in confidence when they did exactly what I thought they would do. I then appealed to the information commissioner saying, look, this is not a national cabinet. This is not a cabinet in in the terms or in the normal understanding of the cabinet. As per the FOIA act in the National Archives Act that was quickly escalated to the Administrative Appeals Tribunal, the government tried to keep up with the Information Commission, knowing that it would take two years to get through. Thankfully, the information commissioner said, well, this is a bit of a complex one that the prime minister, you know, now it's not it's not complex and it should be decided with the information commissioner. But as soon as we got to the IHT, the it decided to appoint a justice to hear the matter. Justice White, who's who doesn't strictly oppose a judge. He appears as a presidential member, but his decision will have great weight. And, of course, then the then the government appointed a QC noting how simple the matter was. And then I and then on my side, I have to give a big shout out to Geoffrey Watson, SC and to Diana Tang, who works in Jefferys Chambers for then offering pro bono to assist me. Knowing is a really important matter, basically going to the to the eytan, saying that the national cabinet has none of the essential features of a cabinet. Those features would be that it's a minister, it's a meeting of senior ministers. Of course, there was only one federal minister at national cabinet. That's the prime minister. All the rest of the premiers. There is no cabinet collective responsibility or solidarity. So we see cabinet meetings taking place and then we see press conferences by the prime minister, then all of the premiers all saying different things. And cabinets are not allowed to do that. If you disagree with cabinet, you are normal, you are required to resign. That, of course, is not occurring. So it doesn't have the characteristics of a cabinet. Now, I'm now awaiting the judgement of justice. What he's no doubt carefully pondering this because the the government have indicated already through their submissions that if they lose, they they intend to appeal. And that would be a matter that would have to go to the full federal court

Ebony Bennett [00:15:53] that it sounds like a really important case. And of course, Geoffrey Watson needs to be counsel assisting New South Wales ICAC so well state to engage in all kinds of matters of accountability. And so we await the outcome of that with great interest, because, of course, as you mentioned, national cabinet has just been making absolutely huge and consequential decisions for millions of Australians and far less transparent than its predecessor. Colleague Bill, might come back to you for your next question.

Bill Browne [00:16:27] Yeah, one thing we write a lot about at the Australian Institute is the Senate and its powers to hold the government to account. Of course, the House of Representatives has the same powers for the most part, but because it's controlled by the government is much less likely to exercise them. But your reference to needing thirty nine votes for the Senate to act as well made me think that maybe when I talk about the Senate's powers, hypothetically, I'm. Overestimating what it can do in practise because of those requirements. So I'm wondering if you could tell us, when has the Senate acted successfully to increase transparency, but also when is it been more hesitant than you think it should be?

Senator Rex Patrick [00:17:10] OK, so thank you for the question. Look, the Senate is an awfully powerful beast. It has all of the powers of the House of Commons, all the powers that they had

back in 1991, which are extensive. But as we've mentioned, you need 39 votes. The Senate has there are seventy six senators. We need to have at least half plus one to enable it to enact to pass. It's different to a judge, for example, who has tremendous powers to order things to occur. And he can he or she can do that unilaterally. But of course, they can only do it down a very narrow line. Dealing with the case that's before them is the Senate can actually say, look, we want to look at anything we want to. But again, you need a body of people to agree with you. And so that's kind of an interesting differences, difference in the powers. So it does create a difficulty. And this is a really important reason as to why you want to have a situation where no party has sole power in the Senate, because that would mean that, as you mentioned, the House of Representatives, which has all the same powers but never utilise them because the government always controls the vote. We don't want to ever see that in the Senate, if possible. Now, the Senate can order the production of documents. You can subpoena people to appear before. And it has all of the powers to enforce those to to enforce its will. But you have to get past the fact that sometimes the Labour Party, in this instance in opposition, look at things and say, you know what, if that occurred and we were in power, we wouldn't like it. And I face that all the time. The words they used to say, we are a party of government. So they expect to be in government at some stage. So they're not always willing. Look, there is back in the nineteen fifties, the House of Representatives. And it was a shameful act actually, because it was about journalists who are writing bad things about Prime Minister. The House of Reps put two journalists in jail in the Goulburn jail and that went to the high court and the high court said, yes, the house has the power to do that. And once we've established it's got the power to do that, we're not going to interfere with how it uses that power. So we have powers to be able to put people in jail if they don't comply with their orders. Stepping back from that, we can we can also issue a fine, the maximum fine being five thousand dollars under the Parliamentary Privileges Act. I think that needs to change. And in fact, right now there is a privileges matter before the privileges committee of the Senate dealing with the Defence Department's refusal to hand documents to the Senate. And it's going to be a bit of a test case. Normally what happens is if an order is not abide, you can sort of work with the opposition and other crossbenchers to frustrate the government in dealing with bills. One, you might recall, Jacqui Lambie at one stage got enough votes behind her to to make such that she could see into the the eye royal commission report and we could do those sorts of things. We can hold up legislation that's a political solution. But we also have formal contempt powers that that we can use. Again, you have to have the will of the Senate to be able to

Senator Rex Patrick [00:20:54] exercise those powers. I think the Senate has lost its lustre, a bit of its mojo. I know that two years ago the House of Commons was after some documents from Facebook. They had a gentleman come into the UK that had the documents because Facebook that sort of refused to hand them over to the UK parliament. A gentleman came into the UK with the documents in a briefcase. The sergeant of arms was sent to a hotel and basically said to the person, you've got to hand these documents over. He refused to he was arrested and taken to the taken to the parliament and basically told, look, you can hand the documents to us so you can not leave. And in the end, they got the documents. Now that there's the House of Commons exercising its mojo, we haven't seen that here in Australia for some time. And it becomes problematic if we don't exercise our contempt powers because we can end up with situations where, as some people think is the case now, where officials don't properly answer questions, the Senate could really give them a whack, but for whatever reason, it chooses not to.

Ebony Bennett [00:22:07] And we might come back to some of the. Things, but I did want to touch quickly on intelligence agencies, I know for a number of years you've been pushing for kind of more oversight. The Australia Institute has done a little bit of research a couple of years back

looking at how other countries, for example, have oversight, the USA, UK and Canada in particular. And they've got different and sometimes more effective ways. And certainly we seem a lot more limited in our oversight of intelligence agencies than a lot of other countries. What needs to change there and why is it important to have oversight of our intelligence committee

Senator Rex Patrick [00:22:46] so that we do have some oversight of our intelligence services? If I look at some of those mechanisms I talked about before, there is the inspector. The problem is the inspector general of intelligence and security, and that is a statutory position who has oversight of almost everything that the government or the intelligence services do. There are some carve outs and there are important caveats. In the case of Bernard Collaery, whilst the inspector general can look at

Speaker 3 [00:23:19] what the what the intelligence agencies do, they have now, the inspector general has no ability to question the orders of a of the national security of the National Security Committee of Cabinet, for example, if I if they direct something to occur, the inspector general can't question

Speaker 3 [00:23:39] that direction. So there are some limitations on what the inspector general can do. There's, of course, judicial powers. I seem to recall doing the things the Hilton bombing or might have been a right that took place on a hotel as part of a training exercise where judicially that was that was dealt with. ASIO tried to or ASIS tried to resist co-operation with the court and the court used its contempt powers or used its powers to enforce its ability to have oversight of that particular operation.

Senator Rex Patrick [00:24:20] The difficulty is that we have a a parliamentary committee, the the Parliamentary Joint Committee on Intelligence and Security. It's a committee that has a carve out in its legislation that says it can't talk about operational aspects. And that's a real problem. When we first started our intelligence services, they were relatively small, quite focussed, not a lot of money, not a lot of money involved. We now have a situation where there's something like seven thousand people employed in the intelligence domain, more than two billion dollars per annum being spent on intelligence. We need to spend the parliament's role in oversight. There's nothing constitutionally that stops the parliament having oversight of our intelligence services. The parliament itself chose to censor itself in relation to operations when it passed the PJCIS enabling legislation, which is the Intelligence Services Act.

Senator Rex Patrick [00:25:19] So we are on several occasions. In fact, every time an intelligence

Speaker 3 [00:25:24] related law has gone through the parliament, I have tried to amend the Intelligence Services Act to remove that censorship of the Parliament. Now, interestingly, the Labour Party have their own bill that seeks to do that. But on no occasion, on the many times that legislation has passed through the parliament have have the Labour Party ever backed by amendments, which which is just a little bit surprising, I will say

Ebony Bennett [00:25:56] we have that power to examine operational matters. Is that like Australian thing?

Speaker 3 [00:26:01] Yes, absolutely. So all of the five eyes countries can do that. Australia is an aberration in that respect. And can I just say I'm really supportive of our intelligence service. So I

think they perform a very important role. But as you give them more power and particularly powers that are exercised in secret, you have to enhance the oversight. And that has not been

Senator Rex Patrick [00:26:26] happening here in Australia.

Ebony Bennett [00:26:28] Did you have any other questions on intelligence agencies?

Bill Browne [00:26:31] Yeah, I'm glad you talked about that kind of trust angle, because one of your proposals is for background checks for incoming ministers. And I guess my concern there is always that historically security agencies have been overzealous in how they surveil activists and radicals and so on. On the other hand, I take the point that it's hypocritical that the people at the highest level avoid these checks and everyone else gets subject to them. So I was wondering how you'd weighed up those considerations.

Senator Rex Patrick [00:27:06] Alright, so constitutionally we can't. Have the executive refusing or basically stopping a senator or indeed a judge, the other two arms of of of our government under our Constitution from carrying out their duties so we don't security check judges and we don't security check MPs and senators. We are I am here by the will of the people. And the executive can't question that. However, in relation to ministers, ministers for a dual role, that they have two hats, one of them as is as a parliamentary representative. The other is as a member of the executive at the very top of the executive. So constitutionally there's no issue. And in fact, Canada has done this. They security check their ministers. Now, people might be surprised that our defence minister, our Attorney-General, the prime minister, the home affairs minister, all get briefings of the very most sensitive data, typically on a daily basis, and none of them have security checks. And that that, I believe, is a is a huge problem. And what my bill proposed was not to have the executive say like they do for a public servant, you can or can't have a security clearance, simply that when the prime minister appoints a cabinet minister, that the director general of security, that is the head of ASIO would be required to produce a report for the prime minister, it would be very tightly held. It would be an offence to provide it outside of a very select group of people. And the prime minister could read that report and then the prime minister could decide what he wanted to do. So it wouldn't be an executive decision or at least the the of government saying that that someone couldn't be a minister, that that would fall with the prime minister. And the bill had protections that said if there was a change of government or a change of prime minister, the previous prime minister couldn't look back to those reports except in circumstances where they wanted to reappoint a same minister. And obviously a an updated report could could come. So there were lots and lots of protections. It was my my bill was sort of modelled of what is done overseas and in Canada again. And I think it's really important that we do do background checks. We've seen situations where Sam Dastyari got himself tangled up with some Chinese players. And look, I know I know Sam. He made a mistake. The the

Senator Rex Patrick [00:30:00] and it cost

Senator Rex Patrick [00:30:01] him his job. But we've seen Aldi bags being handed over full of cash to politicians, a whole range of things taking place in the political space. We should not presume by by automatically that our that our parliamentarians are squeaky clean. In fact, we know there are many we've had some go to jail in the past and there's certainly been questionable judgement and conduct in relation to perhaps even some of the cabinet ministers that we have now.

Ebony Bennett [00:30:30] And we might go very soon to questions from the audience, and I'll just note that we've got about six hundred people on the line with us today. So much for tuning in. I can say a bunch of great questions here. But, Bill, very briefly, I think you had a question about freedom of expression and the Constitution before we get to those.

Bill Browne [00:30:50] Yes. You've brought a bill that would, I guess, trigger a referendum, amend the constitution to introduce a freedom of expression as a constitutional protection. I guess we can all think of recent events that might have prompted that. But in particular, is there something that triggered your decision to pursue that?

Senator Rex Patrick [00:31:15] So sometimes I wonder what's my bills that are doing a lot of these transparency things, I think it's a shame that that others are putting these things up because I think they are important that that excuse me, that bill that I put to the parliament. I did so just after the media raids that took place with the ABC News Corp, with Annika Medhurst and. What happened immediately after that was the PJCIS, the Intelligence Committee, struck up their own enquiry, looking at some aspects of media freedom and the effects of those raids, so to did the Senate, it struck up an enquiry into media freedom. And so what I did was I left my bill sitting on the on the back burner and I really only raised it when last month we had a justice of the high court. Justice should make a statement in a judgement that he was of the view that freedom of expression was not in the Constitution. So as black letter lawyer, he's he's looked at it and obviously decided that there is no freedom of expression or even from a political perspective written into the Constitution. Now, all be careful and say that I don't think Justice Stewart is someone who objects to freedom of expression. He's a judge and he looks at the law and he's just saying it's not there. He's not saying it's a bet that it's a bad thing to have. And so it's after that judgement, immediately after that judgement, it's timely that we've got a justice of the high court stating that we don't have freedom of expression or his view at least, and that the high court ought to consider this, that that's the point at which you say, well, ultimately, if if the high court says something, it's for the parliament to then act to to remedy any particular issue that that they may have with what a judicial officer say is now in this particular case, it's difficult because the the Constitution can only be changed by the people of Australia. That is a process we go through, which is both houses of parliament must agree to prospective change. And then, of course, the people will vote on it. And there is some other hurdles in relation to constitutional referendums. But, of course, then we get to the point where the people speak and then everyone below that, the parliament and indeed the high court and other courts of Australia fall into line. Now, the great benefit of my bill, if it were successful, is that many of the recommendations of both the PJCIS report and indeed the the freedom of the Medium Freedom Report would in fact be resolved through a constitutional change, because all of the existing laws would then have to be looked at through the lens of a freedom of expression and freedom of the press that set in our Constitution. So it's a great way of putting a broom through the whole arrangement. It would fundamentally change things and hopefully rebalance things, in my view.

Ebony Bennett [00:34:44] Hmm. Well, that luckily leads into our first question from the audience, which is from Stephen Masters. But before we get to that, I just wanted to plug our new book, *The Nordic Edge* from the Australia The Nordic Policy Australia Institute's Nordic Policy Centre. And I myself can't write a chapter on press freedom and media diversity. Looking at the example of the Nordic countries, which, as the senator has alluded to there, have much stronger protections for not only freedom of expression, but in particular press freedoms in their constitution, which is something that Australia lacks. And we've actually fallen down the rankings in terms of free press freedom while all the Nordic countries remain at the top. And part of the reason for that is not

only the raids on journalists, as we've touched on here, but also the prosecution of persecution of whistleblowers as rexes talked about as well. They are available in bookstores. But that takes us to the first question from Stephen Masters, which is, why hasn't Australia enacted a bill of rights? And he also asked about an integrity commission. But I have particular I think that aligns neatly with what you were just talking about, your constitutional changes in the Bill of Rights, what's needed for not just freedom of expression, but other freedoms as well.

Senator Rex Patrick [00:36:07] I absolutely think we should have a bill of rights. But I have a I have a Brett Whiteley painting of an elephant in my office in Parliament House. So that's not my place. It's the it belongs to the people that's on loan to me. But I look at it often and ask myself the question, how do you eat an elephant? And the answer, of course, is one bite at a time. The difficulty with a difficulty with a bill of rights. It is that it is very, very complex and you have lots and lots of differing views. And therefore, it is hard to get to the point where. Everyone agrees, and we saw that Andrew Wilkie raised a bill a couple of months ago, and the great difficulty is that and we see the difficulties when you have a clash of, for example, freedom of religion versus the the rights and reasonable expectations of the LGBT community, it's hugely problematic. So I think there ought to be a bill of rights. However, I'm trying to eat this elephant one bite at a time. And so I look at the situation that's going on in relation to attacks on the media and on its freedom and indeed things like what Justice Stewart has said. And I say, right, this is the bite we need to have. Just just narrow it down to something where we might be able to get an outcome.

Ebony Bennett [00:37:36] Yeah, excellent. And so I think we've just cracked 600 people on the line with this. Thanks so much for joining us. If you have just tuned in, you can put your questions for Rex in the Q&A function here. And just a reminder, you can upvote people's questions and comment on them as well. I'm seeing a lot of questions from blokes here. So if we could apply a couple of questions from women, that would make them a mate of mine. The next one is from Graham Tavey. He says, What do you think about Julian Assange being in jail and that case and how the government adding in my in here how the government has or hasn't supported him?

Senator Rex Patrick [00:38:13] It's a hugely important matter. I'm on record as saying that the government does need to intervene through government channels. There are many ways in which a court could be made and governments could have. Julian Julian Assange returned to Australia. This is a freedom of press issue.

Senator Rex Patrick [00:38:39] And, you know, it's unfortunate that and it is difficult in the context that we generally generally respect the judicial proceedings in other countries and the rights of other countries to to work with work around what they perceive to be criminal events. And so it's hard it is hard to intervene in these proceedings. But I think the government hides behind that a little too much. They can be there could be representations made that would that would put pressure on both the UK government and the US government to just back away. Look, Julian Assange, even if you don't like what he did and there are people that feel that he did the wrong thing, I'm not one of them. But even if you felt that way, he has gone through lots and lots of suffering as a result of what he did without ever being put before a court. He has suffered and I think the time for that suffering has ended.

Ebony Bennett [00:39:52] Hmm. Well said. And I've got a couple of people asking here for you to repeat those five magic words again. And we might also try and post them and send them around when we send people a link to the video. But just once again, those magic

Senator Rex Patrick [00:40:10] with the magic words. This email is a request for the purpose of the Freedom of Information Act. Nineteen eighty two. I seek access to dot, dot, dot. There's a couple of other legal requirements, so you need to identify, if you can, what it is that you are seeking so that the search is not too broad. But you and you also have to include your name and a contact address. But that's all pretty simple. In the federal space, there may be a fee that follows that will be decided upon depending on how voluminous and complex the task is. You will be consulted on that and have the ability to withdraw your application. If and if you're confronted with the proposition of paying several hundred dollars for an why, that becomes your choice. By law, the government are required to assist you. So if you put in an FOIA request, don't quite get it right. They are obliged in law to consult with you, to try and narrow down or better articulate what it is that you want. So very easy process. Instead of asking or complaining internally to yourself about the lack of information, everyone understands, they have a legally enforceable right for access to all government documents unless there is an exemption that can be applied to those documents.

Ebony Bennett [00:41:36] Thank you so much. The next question is from Sarah. She says after the UK MP's expenses scandal as an apology to the public. The petition system whereby after 100000 signatures, petitions are considered for debate in parliament was introduced, as well as the recall of MP, that in Australia the scandals keep coming and 85 per cent of voters think politicians are corrupt. But we haven't been given any of these mechanisms as an apology. A question is, why do you think employees in other countries actually feel they have to at least try and do better, whereas the ones here don't even seem to bother to try?

Senator Rex Patrick [00:42:11] OK, so look, that proposition

Senator Rex Patrick [00:42:14] of having a petition that invites a debate is one that I support is one that actually my my former employer, Nick Xenophon, actively sought out to do. So I'm on board. The difficulty again is, look, firstly,

Senator Rex Patrick [00:42:33] a lot of times when something occurs in in in in the public eye, that is wrong. Oppositions and independents

Senator Rex Patrick [00:42:44] will call for debate anyway. But I respect the right of an important right of people in a democracy to be able to cause a debate to occur. The problem is what flows from that. We end up back in that situation of the Senate being able to

Senator Rex Patrick [00:43:05] act on things,

Senator Rex Patrick [00:43:06] but only if there are thirty nine votes and only if there is, in effect, the will of the Senate. Sports rorts is a good example where people might recall went to the wire. One of the things that we wanted to do is get access to that report. The government claimed it was cabinet in confidence. The Senate has never accepted Cabinet in confidence as a reason not to have a document handed over that they might accept the threshold higher. And that's consistent with the courts. We can also get access if it is sufficiently important for the purposes of justice to have access to cabinet documents. We called for the sports document. When it wasn't handed over, I moved a motion. It was very interesting motion to have Mathias Cormann move from the table of the Senate side where he sits in the middle opposite Penny Wong to the front bench. So I just wanted to move on a couple of metres until such time as the documents handed over. I thought it would be nice visual signal that whilst he was sitting

Senator Rex Patrick [00:44:05] on the front bench, everyone will know the sports rorts document hadn't been handed

Senator Rex Patrick [00:44:09] over. There was a huge behind the scenes outcry if people were ever to see the conversations that took place via text and when from the tapes to me when that occurred, quite lengthy and legal

Senator Rex Patrick [00:44:27] and legally focussed discussions.

Senator Rex Patrick [00:44:30] But we actually got a motion signed by the leader of the opposition, Penny Wong, Larissa Waters, as leader of the Greens

Senator Rex Patrick [00:44:39] by

Senator Rex Patrick [00:44:41] Central Alliance, as I was a member of Then and One Nation.

Senator Rex Patrick [00:44:45] And Jacqui Lambie,

Senator Rex Patrick [00:44:46] we have the numbers to do it. But the government worked really hard behind the scenes and we lost two of the votes at the last minute and the motion failed. But again,

Senator Rex Patrick [00:45:01] if the Senate exercises its

Senator Rex Patrick [00:45:03] powers, we can we can do a lot. So I'm all in favour of a citizen and vote debate in the parliament. But we must also look at the back end to make sure that we can do things about it when when when issues arise.

Ebony Bennett [00:45:21] And the next question is from Fred team. He says, What can we do to protect whistleblowers and strengthen the public interest or their secrecy?

Senator Rex Patrick [00:45:30] OK, we do need to change to our whistleblower legislation. People might recall that in 2016. And this was a direct result, again, of my former employer, Nick Xenophon. There was an enquiry into whistleblowing after the ask the IPCC legislation passed through the Senate, Nick got a committee up that looked at whistle blowing. The committee came out with a bipartisan report. There was an agreement in place that the government would reform corporate whistleblowing laws. And I did that in the last parliament. I took the lead on that. And with Kelly O'Dwyer, who eventually ended up in a pretty good place, supported by people like the Australia Institute, people like AJ Brown up in Queensland, who's an expert on some of these integrity matters, whistleblowing matters. There was a last element that needed to be fixed, and that was whistleblower legislation, the Public Interest Disclosure Act, the federal act. It does not provide sufficient protection. Richard Boyle is a case in point. So, too, is broad. And of course, we've seen. Witness K and Kria as well, although they met up in some sense, predated the the Public Interest Disclosure Act of 2013, we have to change that act. I went and saw Mathias Cormann at the start of this parliament, reminded him of his obligation. Very shortly thereafter, Christian Porter made a statement saying they were going to change the whistleblower legislation. I've recently reminded Michaelia Cash of the government's commitment or promise, at least there. But it seems to be that it's going the same way as I expect and that the government is not

lending sufficient weight to those reforms. And it's the job of me and everyone to put pressure on government to meet its commitment that that was made.

Ebony Bennett [00:47:39] If there anything you'd like to add on how Australia approaches protection of whistleblowers.

Bill Browne [00:47:46] Just to reiterate what the senator said, I think we've yeah, we've seen the benefits that it can bring, you know, for the tax office and small businesses affected for estimates. Our relations with a country that we, you know, in the nineteen nineties sent soldiers over to, you know, to defend or to secure its independence. So, yeah, it seems so fundamental that we need to address it.

Senator Rex Patrick [00:48:20] Can I just add in the United States that have bounties for people who blow the whistle? So if you blow the whistle on your own corporation that is conducting a tax fraud or evading tax and the Internal Revenue Service will prosecute that person and they get back one hundred million dollars in tax, that they might give the whistleblower 20 million dollars and they might do so secretly. That whistleblower might my mind working in the tax office with his yacht from his mansion and all those other things. And that is it's not that we want to actually reward people with bounties. It's just the the idea that everyone in the in in a corporation, everyone in government looking over their shoulder saying, you know what, if I do something wrong, there's there's a financial incentive for people to double me. And the bigger my indiscretion, the bigger the the incentive these for people to dob to dob people in. I probably shouldn't use that word because it has negative connotations for you in Australia. But people who, by the way, are heroes, in my view,

Ebony Bennett [00:49:29] and the government certainly seems happy for Australians to dump on one another for breaches of welfare and all other kinds of things, but never at the highest levels and

Senator Rex Patrick [00:49:41] Dennis job.

Ebony Bennett [00:49:41] Kepa That's right. The next question is from Holly. Right. She says, How can the secretary of the prime minister and Cabinet refuse to submit documents to the Senate? I'm not quite sure what that refers to. Maybe, you know,

Senator Rex Patrick [00:49:57] OK, so there have been times where the Senate has called for the documents to be produced and the process is a three stage process. The first the first part of the process is that the Senate receives a motion or a motion is put before the Senate to order the government to produce a particular document that is voted on. If there are thirty nine votes or more, then the order is made and the government have to respond to that order. Now it is permissible. And this is stage two for the government to look at what the document is and decide that it is not in the public interest to release the document might be an intelligence document or might be is extremely sensitive from a commercial perspective, in which case they come back to the Senate in advance of public interest immunity. Now, often that's where it stops the Senate Dennis some people might complain, some senators might complain, but but then they let it rest. The next step and exercise this on a few occasions. The next step is to actually go back through a motion in the Senate to say that the Senate does not accept the public interest immunity. And that is the final word. And that doesn't always happen because some people look at what the government has claimed and say, well, that's fair enough. Now, on on a number of occasions and

I'll give you a couple of examples. One of them is tax related information. There are secrecy provisions in the tax law that prevent the tax office handing over documents to a minister, for example, so that the minister can go and pry into a company. Tax situation, but it's actually explicitly stated in the legislation that it had to be, but it explicitly put it in there that a committee of the parliament or the Parliament House of the parliament can call for those documents. Now, the tax office, the tax office resisted that order for production. I then took it to the next step, which was to have the Senate vote that they were required to hand it over. In the end, the the tax commissioner, Commissioner Jordan said said no, basically in the face of the Senate was in contempt. The Senate had another motion that was passed that reminded him that it was a contempt and they would take action. And with some also some arm twisting behind the scenes, the documents were eventually handed over. We've got a situation right now in relation to defence, where Defence has refused to hand over documents. There has been some arm twisting behind the scenes and there has been some some concessions made by the government. But nonetheless, the government, the Department of Defence has frustrated a committee of the Senate, and that matter is now before the privileges committee, which has taken submissions from the committee, from from the people who've been accused of favouring the Senate in its operation and indeed have made a submission to the committee, which is at this stage confidential. But hopefully it will be made public in due course.

Ebony Bennett [00:53:18] Thank you. The next question is from Rosemary Labor. There's a couple of other people who've asked similar ones, and it's on the proposed changes to the ACNC act governing not for profit and charities that many see as kind of an attempt to silence charities from engaging in advocacy and potentially risking their leaving their charity status. And the question is, as we rely on these organisations to investigate, inform, educate and advocate in a lot of situations that would not otherwise the public would not be aware of. Can you tell us where that legislation is that currently?

Senator Rex Patrick [00:53:58] Well, I understand this before the Senate, and I'm

Senator Rex Patrick [00:54:04] remiss I don't know whether or not it's gone to a Senate enquiry. I suspect it will have the my my position in relation to that particular bill is is is no.

Senator Rex Patrick [00:54:19] I would have to be persuaded by the government in some way. So I have a starting

Senator Rex Patrick [00:54:23] position of no. I think the government will have difficulty getting that through, getting that through the Senate. So the Greens are not supporting that Labour Party, not supporting the government's going to have to work on the crossbench. I'm highly unlikely to support that legislation.

Ebony Bennett [00:54:40] Thank you. A couple of other questions around the proposed federal ICAC, which, as you've mentioned, is nowhere at the moment in terms of some of the flaws with what the government is proposing. Could you just take us through separate from that? It's kind of on the backburner. There was some pretty serious flaws identified with the government's proposed model. Do you have concerns about that?

Senator Rex Patrick [00:55:06] Look, I do look, I understand that

Senator Rex Patrick [00:55:10] there are many people that do have concerns about ASX and there have been times when I have overstepped the mark. One of them was with Margaret Cunneen in New South Wales as a public prosecutor. The ICAC investigated her when they really shouldn't have. It was in relation to a matter that wasn't to do with her, with her role as a crown prosecutor. And the high court

Senator Rex Patrick [00:55:42] basically ruled that I had

Senator Rex Patrick [00:55:44] overstepped the mark. And so, like all bodies, we have to make sure that the right checks and balances in place. And there are people that are concerned about the reputational damage that has that is done through these ICAC. But as you mentioned before, Geoffrey Watson, SC was was lead counsel in relation to the Eddie Obeid matter, which has just been handed down the New South Wales courts that were where they were found guilty of the very thing that I had alleged. So final closure on that particular issue. The the the thing about ICAC and this is that this is something that people need to understand.

Senator Rex Patrick [00:56:28] The reason you set up an ICAC instead of I just have a police investigation is I generally have powers that I would otherwise be considered unreasonable powers that are designed to punch through the. Big, the big walls firewalls that the government departments sit behind, and it's for that reason that. These commissions may never find someone, anyone guilty of of corruption because they're not able to they're not a judicial body, but they also rely on evidence that would otherwise not be admissible in court. So people need to understand that iSEC is different to the police in terms of investigating because of the tremendous powers they have. That's that's recognised by saying that the cop can't judicially find someone has committed a crime. The matter then has to be referred to a court. And of course, some of the evidence that the act may have gathered phone taps, those sorts of things may not be admissible in a court. So all the corruption commission ever does is call someone out for having for being corrupt. And that is a reputational call and generally results in people resigning and possibly with people, with people then being charged. We have to find the right balance between making sure that there's no undue reputational damage, but that's all very achievable, making sure that we don't investigate publicly, at least until such time as there is a prima facie case. Those sorts of things can all be done. The current bill does not go far enough, doesn't allow for people to pick up the phone and say, hey, there's an issue. It simply doesn't allow for things like public public hearings. I think all of those are essential in various different circumstances. And you can make the legislation such that those sorts of public hearings only take place when the commissioner thinks it's appropriate. And so there's still the ability to have sort of secret hearings. Of course, there are always limitations with secret hearings that's sort of inconsistent with the principles of open justice that we haven't even Australia. There's lots and lots of parts to this. The Australia Institute has done a lot of work on this, so their model is a very good model and would, in my view, needs to be tweaked a little bit. But it's a great starting point. But actually, the most important thing is we've got to get the will of the government who simply are not motivated to have a commission against corruption. That's the fundamental problem we've got at the moment.

Ebony Bennett [00:59:24] That's an excellent summary. Thank you very much. And people can find that we've got our principles for the design of a federal Akec available on the Australia Institute, don't you? And some of those coercive powers that Rex was talking about there, because the nature of corruption is obviously that it's very secret. Sometimes it does involve people at the highest levels of government or the public service with the ability to cover up their crimes. And sometimes corruption isn't a crime or necessarily an illegal act, things like nepotism and things like

that. So there's very good reasons why had those coercive powers, but also why, as Rex alluded to, you can't necessarily always use it to build a criminal case against someone. I'm afraid we're going to have to wrap it up there. There was really fabulous questions in that I tried to get across a good cross-section of issues. But as always, I'm really sorry that we couldn't make it to all of them. Thanks so much for your participation today, Rex. We really appreciate your time.

Senator Rex Patrick [01:00:28] That's a topic I love.

Ebony Bennett [01:00:30] Excellent. And thank you, Bill, as well. I appreciate you coming on board. Thanks, everyone, for tuning in. Don't forget to subscribe to Australia Institute DOT TV and you can find all recordings of our previous webinars there. If you head on, either stay safe out there, particularly everyone who is in lock down. Take care of yourself. Thanks for tuning in today and hopefully we'll see you next week when we're discussing Australia's climate policy and all the ways in which we've screwed that up. Thanks so much for your time. Everyone will see Faithing.