

## USING TRANSPARENCY TO ACHIEVE EQUALITY

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**CONVENORS:** Emerita Professor Margaret Thornton  
Dr Dominique Allen  
Associate Professor Alysia Blackham

**The conjunction of transparency and the publication of information and data represent a radical model of promoting equality in public life.**


However, there is a need for more critical scholarship to explore the link between transparency and equality, to evaluate existing programmes and to help better balance individual privacy with the social importance of transparency. We will consider how the collection of information and data and increased transparency might advance the equality agenda across all areas of public life, and how best to manage the risks of this emerging strategy. Drawing on interdisciplinary perspectives and the insights of policy-makers, this workshop seeks to develop new principles to guide government and organisational activity to better achieve equality.

Transparency offers radical potential to transform the way governments and organisations operate. In the court system, openness and transparency of legal decision-making is fundamental to the rule of law. This manifests in practice in the need for 'reasoned and public' judicial decisions and the open-court principle. Transparency in government is also increasingly seen as being fundamental for democratic accountability, and is being secured through freedom of information reforms and whistleblower protection. At an organisational level, transparency is seen as essential for corporate social responsibility and building investor and consumer confidence.

The broader push for transparency is being aided and encouraged by social media, which has democratised the publication and transmission of information.

While transparency is increasingly recognised as facilitating the public good, it has been rarely considered in relation to the ability to identify and address systemic discrimination and promote equality. Indeed, where jurisdictions primarily rely on the individual enforcement of equality law to address discrimination, equality law has more often focused on confidential settlement of claims, to the exclusion of transparency and public accountability. In this context, confidentiality is seen as fundamental for ensuring the effective resolution of claims, by facilitating the willingness of parties to participate in dispute resolution processes. This risks relegating discrimination claims to the private, individualised sphere, and fails to address the structural or systemic aspects of discrimination and inequality.

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As we increasingly recognise that discrimination is systemic, embedded, and pervasive, confidentiality is increasingly being seen as counterintuitive to the goal of achieving equality, including through growing scrutiny and criticism of non-disclosure agreements. It has therefore become important to move beyond traditional, confidential mechanisms for addressing discrimination. This, then, focuses attention on the radical potential of moving away from confidentiality, to its counterpoint: transparency.

Transparency and data collection are already being built into some government and organisational programs, in a bid to address discrimination and promote equality. Businesses are being encouraged (or compelled) to collect and report on data about their workforce and customer base as a means of addressing discrimination, including through reporting to the Workplace Gender Equality Agency and voluntary programmes like Athena SWAN. However, this is a very limited form of transparency, being mandatory only in the employment context for large organisations, and only in respect of sex discrimination. In contrast, in the UK, public sector organisations are required to fulfill some reporting requirements as part of the specific duties under the Public Sector Equality Duty, but similar duties have not yet been adopted in Australia.

Despite the limited transparency currently existing in this area, technological advances, including the digital collection and storage of data, mean it is becoming easier to obtain and share data, including between government agencies.

However, there are substantial risks to individuals in government agencies handing over or sharing information, particularly where de-identified data can unintentionally become identifiable. This may also lead to under-reporting, particularly in regard to disability, as people do not want to self-identify as possessing these attributes for fear of reprisal. Such risks are currently managed through the Australian Privacy Principles (APPs) and Privacy Act 1988 (Cth), and similar frameworks at State level.

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However, there has been limited consideration of how these principles can be reconciled with the use of transparency to promote equality, and whether the APPs remain appropriate given the shifts in the way information is gathered, processed and used.

This workshop seeks to explore how the tension between privacy and transparency can be overcome in the attempt to achieve equality across all areas of public life. Drawing on interdisciplinary perspectives, and the practical insights of policy makers and agencies charged with obtaining data, the workshop seeks to find new ways of balancing the need for transparency with privacy and confidentiality, and to develop new principles to guide government and organisational activity in the pursuit of equality.

