

Submission No 165  
Spec 1.4

Reference: A3/00.02

15 May 2000

Mr G B Fenlon MLA  
Chairman  
Legal Constitutional and Administrative Review Committee  
Parliament House  
BRISBANE Q 4000

Dear Mr Fenlon

I refer to your committee's Discussion Paper No.1 on *Freedom of Information in Queensland*, and thank you for drawing this committee's attention to Discussion Point No. 13.

At its meeting held on Monday 10 April 2000, this committee resolved to forward to you the following submission on Discussion Point No. 13.

### Background

This committee's major area of responsibility, under section 22 of the *Parliamentary Committees Act 1995*, is to examine all Bills and subordinate legislation and assess their level of compliance with "fundamental legislative principles".

Section 4(2) of the *Legislative Standards Act 1992* specifies two major categories of fundamental legislative principles, one of which is that legislation has sufficient regard to "rights and liberties of individuals". Section 4(3) lists a number of specific examples of this fundamental legislative principle.

Discussion Point No. 13 queries whether a further specific example should be added to the section 4(3) list, namely, whether legislation has sufficient regard to "the right to access government-held information". This could appropriately be described as a "freedom of information principle".

### The committee's experience with freedom of information issues

Since the Scrutiny of Legislation Committee commenced its scrutiny of bills and subordinate legislation in October 1995, it has interpreted the concept of "rights and liberties" referred to in section 4(2) in an expansive manner. The committee has always considered that it encompasses not only established common law rights, but also rights (such as privacy) which

are only partly recognized under common law, and even on occasions rights which are attributable to Australia's international treaty obligations.

Accordingly, whilst there is no common law right of citizens to access government-held information, and whilst the only general rights of that nature currently conferred on citizens derive from the *Freedom of Information Act 1992* ("the *FOI Act*"), a review of the committee's Alert Digests tabled since 1995 shows that the committee has commented on freedom of information-related issues on a number of occasions.

At this stage the committee observes that, in its experience, the general secrecy provisions often included in bills do not usually affect the processes of the *FOI Act*, as such provisions commonly exempt releases of information which are "required by law" or the like. For the *FOI Act* to be displaced, an express reference to it is usually required.

The review of Alert Digests reveals that a number of bills have either restricted or completely cut off access to the *FOI Act*. They have done so by:

- (a) completely excluding the application of the *FOI Act* to particular bodies, for example, "corporatised corporations" established by local governments and "transport GOC"s (in respect of the latter's commercial operations); or
- (b) providing that the *FOI Act* does not apply in relation to particular types of documents held by particular government departments or agencies; or
- (c) providing that the confidentiality provisions contained in particular Acts shall continue to apply despite the *FOI Act*, thereby preventing access to the *FOI Act*.

The committee's comments on freedom of information issues have mostly been in respect of "outsourcing" (to which category (a) above usually relates). The committee has repeatedly queried whether private or semi-private entities authorised by bills to conduct particular activities for the State are to be subject to the usual public sector accountability mechanisms such as judicial review and freedom of information.

The review of Alert Digests indicates that the committee has commented only relatively infrequently on provisions of types (b) and (c) above.

In hindsight, this is most likely due to the following:

- entitlements to access government-held information are an entirely statutory concept (introduced *via* the *FOI Act*), and are not based on any established common law right
- the right to access information *via* the *FOI Act* is, moreover, far from unqualified, as that Act contains a very extensive range of exemptions and restrictions
- whilst the committee considers section 4(2) provides it with scope to comment on freedom of information issues in appropriate cases, the "right" which the committee may thereby recognize cannot be regarded as unconditional (for example, whilst a person may have a right to access personal information about themselves, no one would seriously argue such a right would generally extend to accessing personal information about other persons)

- although the committee has regularly commented on provisions (including provisions about “outsourcing”) which raised general questions about access to the *FOI Act*, the committee has seldom encountered specific issues about freedom of information which appeared to it to merit comment.

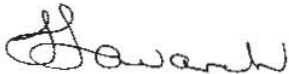
**The committee’s position on Discussion Point No. 13**

The committee’s position on the suggestion in Discussion Point No. 13 may therefore be summarised as follows:

- the committee considers section 4(2) of the *Legislative Standards Act* currently provides it with scope to comment, where appropriate, on issues related to access to government-held information
- however, except in the context of bills which authorise the “outsourcing” of government activities (with consequent possible loss of access to usual public sector accountability mechanisms), the committee has seldom encountered provisions which appeared to it to require comment
- in the circumstances, the committee does not consider there is a pressing need for insertion of the provision mentioned in Discussion Point No. 13
- even if such a provision were to be inserted, it should not be framed in unqualified terms.

On behalf of this committee, I thank you once again for the opportunity to contribute to discussion of this aspect of the freedom of information laws of this State.

Yours sincerely



Linda Lavarch MLA  
Chair