Speech by

Hon. R. WELFORD

MEMBER FOR EVERTON

Hansard 1 November 2001

FREEDOM OF INFORMATION AMENDMENT BILL

Hon. R. J. WELFORD (Everton—ALP) (Attorney-General and Minister for Justice) (3.02 p.m.), in reply: We have had a very long, fruitful, informative and enjoyable debate. I am most grateful for the enthusiastic efforts of all members, both government and opposition. I accept that the opposition does not propose to support these amendments. In the context of the politics of the time, I can understand why it would take that position, regardless of what it actually thought. The member for Stafford said enough. I will not descend into politics except to say that the member for Stafford was right in pointing out that freedom of information and the lofty principles that underlie it have never been a matter of great importance to the conservative parties. That is a simple fact.

I might digress very briefly to refer to the allegations about cabinet secrecy made in the opposition's contribution to the debate, even though it has nothing to do with this bill. This seems to be a matter of concern to members of the National Party in particular, yet they had two full years to remedy it when they were in government and they did not do so. They applied the law then as our government applies the law now. They really cannot complain if they believe the spirit of the law is being abused. Obviously, we do not concede that. It seems that this as a matter of law is something to which they object, yet they had ample opportunity to address it in government and they did not do so. Let us dispense with that issue. It is not a matter that is the subject of this legislation in any event. However, that is the point the member for Stafford was making, and I think it is an entirely valid one.

I had hoped to be able to respond to every member who spoke. Had the opposition chosen to exercise at least some restraint on this issue yesterday or today, I would be able to do that. Regrettably, we came back here today to experience a filibuster. I do not propose to further expend the time of the House by trying to respond to every detail from every speaker. However, I will respond to the main points and in particular those of the opposition spokesperson, the member for Southern Downs.

Firstly, let me state quite categorically that our government unequivocally subscribes to the principles of open government to which members referred in relation to the comments by Justice Thomas. I have the highest regard for Justice Thomas, a member of the Court of Appeal, and the paper he delivered in which he pointed out that openness of government is fundamental to true democracy. It represents a foundational set of principles to which our government subscribes absolutely. That is why it was Labor that introduced freedom of information laws and it is also Labor that wants to make them work in the public interest. I will explain in a moment why what we are doing with these amendments will ensure that the public interest continues to be preserved.

The basis for this legislation is very simple. A number of things have happened since freedom of information was introduced. Firstly, every other jurisdiction in Australia applies time charging for the search and retrieval of freedom of information documents. Secondly, the cost to Queensland taxpayers of administering our FOI system has blown out from approximately $3 million half a dozen years ago to almost $8 million now. We do not propose by any measure in this bill to restrict the lawful access to legitimately available documents under the current Freedom of Information Act in any way whatsoever. But we also believe that it is important that the financial management of that scheme be exercised responsibly and have regard to the many priorities and demands that the community expects government to deliver. That means that, in circumstances where those who have the capacity to pay initiate freedom of information inquiries which are extensive, time consuming and costly to the taxpayer,

at least some contribution to that cost should be met by that applicant who has the capacity to pay. I fail to see how anyone can argue with that principle. And that is all we have sought to achieve.

For the assistance of honourable members, I can refer to comments by members of the National Party and the Liberal Party in the past about the enormous burden that some applications impose upon the public purse. When speaking in this place in July 1997 in relation to an extensive FOI application by a journalist by the name of Sanderson, the then member for Tablelands, Mr Gilmore, a member of cabinet at the time, stated—

In July 1995, as part of the FOI mediation process, a meeting was arranged by the Information Commissioner between Sanderson and a senior manager from Mount Isa Mines. The manager duly flew from Mount Isa at company expense and arrived for the meeting, accompanied by a solicitor, retained also at MIM expense. Sanderson never fronted, never phoned and never apologised. On another occasion, boxes of documents were transported at taxpayers' expense from Rockhampton to Brisbane for Sanderson to examine under one of his FOI applications, but he never bothered to come and inspect them. Numerous phone messages and letters failed to elicit a response from him. Ultimately, the documents were returned to Rockhampton. Some time later, however, Sanderson lodged the same application and the process started all over again.

It was recently estimated by my department that providing responses to requests by Sanderson for information has taken the equivalent of one officer working full time for more than three months. It has taken up much of our environmental officers' time in preparing material for him.

In June 1997 Mr Quinn, who I understand was then a cabinet minister, had this to say in this place—

Last financial year we had 173 applications for access to documents. Those applications involved more than 33,000 documents. There were 84 personal applications and 89 non-personal, 4 amended, 38 in written internal review and 14 external. Most of the effort goes into a small number of people or organisations asking for information. We provided full or partial access to 26,000 documents. This is an extremely time-consuming task for the department. We have two people allocated full time on the task, and it consumes about $138,000 in resources each financial year.

As I said before, the applications are made by a limited number of people. So a small proportion of the applicants are generating the vast majority of the work, which seems to be the trend in applications these days.

To give honourable members a feel for the types of applications that are made, I point out that Mrs Sheldon, the member for Caloundra, made an application for access to documents relating to assessments or advice on the adequacy of the public hospital system in Queensland for the financial year 1992-93 and the next two financial years—a general broad-brush fishing expedition application. She was granted access to 931 documents and refused access to some 43 documents. A total of 1,287 documents were considered for the application, but the cost was especially high because it involved all 13 regional health authorities then in existence at the time, and there was a significant coordination role and a lot of work for each of the health authorities in collating and forwarding the relevant documents. The conservative costs of collating those documents for Mrs Sheldon was $18,500, and Mrs Sheldon did not even access the documents in relation to her application.

More recently the Deputy Leader of the Opposition made an application this year for 'work rosters and/or other documentation detailing the number of, and hours worked by, all health service providers rostered on all shifts in the obstetrics and gynaecology wards and birthing clinics at the Nambour Hospital'; in other words, every name, number, address, roster, timetable—every detail—for those two wards in the hospital. Fortunately, the adviser in the Deputy Leader of the Opposition's office was willing to negotiate to try to refine that search. Honourable members would understand that a search of that scale would involve literally hundreds and hundreds of documents, many of which would not be of assistance to the applicant because they would be held in a form that would be fairly meaningless, such as in the form of database codes and so forth, but great expense would be incurred for very little benefit to the applicant in many cases.

That is why the government in this case has done two things to help focus the effectiveness of the system: firstly, create a built-in incentive for people to focus specifically on what they want to get so as not to incur unnecessary costs and, secondly, impose an obligation on public officials which did not previously exist—occasionally it was done out of generosity or discretion, but it did not previously exist as an obligation—to assist the applicant to refine the terms and scope of their search so as to provide an effective provision of documents at the least cost.

If honourable members want an example of how absolutely obscene some fishing expeditions can become, they need only to resort to the sorts of applications made by the former member for Clayfield, Mr Santoro. His applications represent the pièce de résistance of all abuse of the FOI process. Much of our focus in the context of what FOI is designed to deliver in terms of accountability in government is obviously focused on the risk of government maladministration, poor decisions or abuse of process. However, Mr Santoro represents a classic example of how an applicant can abuse the FOI process in unrestrained circumstances. Listen to this for the scope of a series of applications—

1. All documents relating to matters for the minister's attention.
2. All documents relating to question time briefs.
3. All documents relating to the Jobs Policy Council.

4. All documents relating to the industrial relations task force.
5. All documents relating to the employment task force.
6. All documents relating to the building and construction industry.
7. All documents relating to the workers compensation task force.
8. All documents relating to the other strategic projects task force.
9. All documents relating to VETEC, Commissioner for Training, Division of Training.
10. All documents relating to the business development division.
11. All documents relating to public sector industrial relations.
12. All documents relating to private sector industrial relations.
13. All documents relating to workplace consulting.
14. All documents relating to the strategic communications unit.
15. All documents relating to workplace health and safety.
16. All documents relating to TAFE Queensland.
17. All correspondence from unions.

And here is the punchline—every one of those applications was made on the one day, 23 March 1999. If ever there were an argument for principled management of the FOI system, that is it.

Our government is not about constraining anyone's right to legitimately scrutinise the decision-making process of the government and access documents relating to themselves or government decisions—on the contrary. The primary purpose of FOI legislation is to ensure that every individual has access to government documents that relate to themselves, and we will provide those documents free of charge. Secondly, in relation to the access to documents for maintaining government accountability, that access remains as unconstrained as it ever was under the existing FOI laws subject to legitimate exemptions. The only difference is that we will now provide more assistance than ever to help people get the right information that is effective at the least cost to the taxpayer and the applicant. That is what these amendments are about. That is what these amendments are designed to achieve.

Let me just deal briefly with some of the other points that were made. To the extent that there is any risk that people will incur higher costs than previously, we understand that risk with this charging regime. We are open to looking further at alternative options and combinations of charging regimes that at least make some contribution to the cost and that do not run up an $8 million a year bill for taxpayers while there are pressures for budgetary allocations in other areas such as schools, nurses, police and other vital services.

We accept that FOI is a fundamental responsibility of government. We accept that. We do not pretend for a minute that the charging regime we propose in this legislation—the lowest in the country—will cover the full cost of providing the accountability system that FOI represents. All we say is that we need a fair system. Firstly, that fairness is entrenched by ensuring that people are assisted and that there is a positive obligation in the legislation on bureaucrats to assist people to get the documents they need and to refine their inquiry to address their concerns specifically rather than broad-brush applications that generate thousands of documents, many of which are not useful for the purpose.

Secondly, we acknowledge the issue of hardship in relation to community groups and other individuals who legitimately seek information but who would suffer financial hardship if required to pay the full fees. For that reason, we have made provision for the first three hours to be free of search fees or to waive all fees in cases of financial hardship, the details of which are to be published in established, publicly available guidelines in the same or similar terms as those which exist in New South Wales and other jurisdictions currently. Sure, those guidelines are not detailed in full in the legislation, but they are extensive. They provide a whole range of situations where legitimate claims in the public interest by community organisations and individuals can legitimately be founded on a criteria of financial hardship. But we will spell that out and make those guidelines public and open for everyone to see and apply for.

A number of members raised the issue of consultation and the letter addressed to me and addressed in the same terms to the chair of the relevant parliamentary committee. I am more than happy for the Information Commissioner to make suggestions from time to time about how FOI laws can be better administered. The primary mechanism for that, of course, is in the annual reports of the Information Commissioner. I accept that from time to time the Information Commissioner, as a matter of policy, may have views that do not stand on all fours with the views of the government. I entirely expect that someone in the position of the Information Commissioner would advocate for the maximum unfettered availability of documents under FOI. One would expect him or her to advocate that position.

Our government is not secretive about the purposes for which we are proposing this legislation; on the contrary, we are open and we are prepared to debate the very sound public policy principles on which we are making the change that we are making, change which reflects the changes made in every

other jurisdiction and which we are prepared to stand by and be accountable for making because we believe that there are sound and legitimate grounds for making them.

It is not automatic that the Information Commissioner would be consulted before legislation is tabled in this House any more than we would consult the court and opposition in every case of legislation brought forward. The Information Commissioner is an independent, external review agency much like a tribunal or a court. For that purpose, we are happy to make legislation available to those parties, as we are to make it available to the public at large. The Information Commissioner, along with everyone else, is perfectly welcome to make contributions and suggestions, as indeed the commissioner has done. I welcome those suggestions, some of which I will certainly give further consideration in the context of the review being conducted by the parliamentary committee.

I am particularly sympathetic to an objects clause, in terms not unlike those proposed by the Information Commissioner in his letter, to emphasise—which we believe our bill does anyhow—that the act should be administered in a way that facilitates and promotes promptly and at the lowest reasonable cost the disclosure of information to applicants who seek it. On advice from parliamentary counsel, we do not believe that the particular terms of the draft provision from the Commonwealth act that the commissioner has drawn on is directly applicable to our act. But I am prepared to take on board that suggestion and, in the context of considering the further issues that arise out of the report of the parliamentary committee, look at future amendments.

I accept that a matter raised by a number of members, including the member for Gladstone—namely, the issue of personal affairs—is somewhat unclear. This matter was also raised by the Information Commissioner. I must say that I was surprised to some extent to learn of the level of distinction drawn between some personal information and other personal information which may relate to a person's employment or industry. We may need to look at that. My general view would be that where a document held refers to an individual, then prima facie they should have access to that document as a document relating to their personal affairs.

On the other hand, I do not think it should be automatic that a person who gains access to documents that may mention their name but gains access for the purpose of legal action that may or may not be against the government should necessarily benefit from the subsidised FOI system when there are proper court processes for getting access to such documents. That is not to say that they should be excluded rights of access under FOI, but it may not be the case that every document that mentions an individual's name automatically qualifies as something they can access because it is considered as personal information. Again, I am prepared to take on board what appears to be some measure of uncertainty about the definition of the term 'personal affairs' and look at that in the context of recommendations that arise from the parliamentary committee.

Opposition members need not try to make too much of a letter from the Information Commissioner. It represents the opinion of the Information Commissioner, an opinion which the commissioner is entirely and legitimately entitled to express. I thank the Information Commissioner for taking the opportunity to review the legislation that has been tabled in this House and give me the benefit of any suggestions in that regard. I will respond to the Information Commissioner in due course. I understand that there is a matter in committee which the Leader of the Opposition—there is a Freudian slip.

Mr Springborg interjected.

Mr WELFORD: We are all there for you, Lawrence. We are there for you. I understand that the shadow minister will raise the issue of alleged retrospectivity during the committee stage. I have indicated to the opposition spokesperson that we will confirm the outcome he seeks in that regard. There are of course a number of other matters of detail that I could go into, but in essence all the government is trying to do is ensure that the costs of administering an open and accessible system of freedom of information is fairly distributed and that that system is made to work and is not constrained by lack of resources or anything else. We want the system to work. We want people to have access to the documents that they are entitled to, and we want that to occur at the least cost to taxpayers and applicants. That is why we have made specific mention in this legislation of the obligation to assist applicants and of the concessions on fees and charges that are available in cases of financial hardship, the full details of which will definitely be made publicly available at the time the regulation is made.

Frankly, I do not think one can put the case for this legislation any more clearly than that. The same frustrations that have justified this legislation on behalf of government generally are frustrations that were expressed by members of the opposition who were previously in cabinet and who now sit on the opposition benches. While members of the opposition enjoy the luxury of disputing just about anything government does, including this, the reality is that in government they saw how the system operated and knew that it needed to be addressed.

We do not believe—and I do not really believe that members on the opposition benches believe—that people with the capacity to pay, particularly commercial enterprises such as media outlets,

should be subsidised by taxpayers to produce the material for their daily news reporting and profit making. Publicly subsidised freedom of information systems should not be the capital on which the private sector generates its profit. If it wants to generate a profit from public information, it should pay for that public information. That is what this new regime will achieve and it will do it in a way that is fair and that respects the needs of those who do not have financial capacity and who would suffer financial hardship. It does it in a way that ensures that a discipline is applied to the provision of information so that the right information is given in a prompt and cost-effective way and at a cost that is the lowest of any system of its kind anywhere in Australia.

We commend this legislation to the House. We do not resile from our confident advocacy of this proposal. We reject absolutely the shallow rhetoric of the opposition that somehow this represents an elevation of a secret state. On the contrary, this is about making the system work better. This is about making FOI a proper and legitimate process for individuals to be aware of what government records about them and what government is doing on a day-to-day basis for accountability.