Speech by

Hon. R. WELFORD

MEMBER FOR EVERTON

Hansard 6 December 2001

FREEDOM OF INFORMATION AMENDMENT REGULATION [No. 1] 2001

Hon. R. J. WELFORD (Everton—ALP) (Attorney-General and Minister for Justice) (6.15 p.m.), in reply: I thank all honourable members for their participation in this debate. In particular, I thank opposition members for giving us the benefit of a recitation of their arguments on the original bill. Nothing new has been presented by opposition members tonight which is any more persuasive than their previous arguments. They even acknowledged that they had run most of the arguments in the previous debate on the bill. Frankly, nothing that they raised in respect of the amendments tonight has any more force than their previous arguments.

Mr Seeney: What about the committee's report?

Mr WELFORD: I note that the member for Callide referred to the Scrutiny of Legislation Committee's report. Frankly, without the Scrutiny of Legislation Committee's report members of the opposition would have been utterly without a single scintilla of argument tonight. It was an extraordinarily poor effort by the opposition to address the detail of the regulation. That is what the opportunity was tonight. I am grateful to the member for Callide for providing gratuitous advice to government members about what they should be able to do tonight. But if I might reciprocate, perhaps members of the opposition could have addressed their arguments specifically to the detail of the regulation rather than simply re-running the arguments they ran on the substantive bill, then we would have been a little more enlightened. Much of what members of the opposition had to say was rhetoric. But in fairness to them, however, I should respond briefly to some of the comments that were made. I will then turn to the Scrutiny of Legislation Committee's comments and address each of them comprehensively.

The Opposition Leader used quite provocative language in relation to what the government has done, referring to the government as having a jackboot mentality and alleging that this was part of a cover-up. Of course, he was backed up by his deputy, who talked elegantly—or perhaps inelegantly—of a secret state. How can one say that there is anything in the nature of a cover-up in relation to this issue when the opposition has time and time again had an opportunity to raise this and hold the government accountable for the policy decision it is making in this forum?

The Opposition Leader himself referred to the fact that the opposition raised concerns about this when the Premier first made comments expressing concern about the way in which some applications by the *Courier-Mail* had put the government to great expense and that he would have to look at it. The opposition then made allegations that a new pricing regime might be contemplated, and that turned out to be right. But there was no effort on our part to conceal any of that. On the contrary, we brought in legislation promptly to give effect to the concerns that the Premier had raised and addressed those concerns. We gave opposition members ample opportunity in that debate to put forward arguments—as they did—about whether the policy issue was justified.

Now we have introduced a regulation to provide for the pricing regime or the charging regime for the new system. Again, all members of the parliament, including the opposition, have an opportunity to argue the case and hold the government accountable in a public forum—the parliament—and in the media, if they so choose, on the detail of the regulation in relation to cost. There is hardly anything in the nature of a secret state about that process. The process is entirely open and gives all members an opportunity to participate openly in that debate.

The Leader of the Opposition also referred to the legislation having been introduced in a way that was never designed to cover the full cost of providing the service. I think that is absolutely right. Twenty dollars an hour is never, ever going to cover the full cost of providing FOI access to those organisations that seek access to voluminous documents. However, that regime remains the cheapest in the country. The regime we have introduced has been brought in at the most modest level, in comparison with every other jurisdiction in Australia, because we acknowledge the sentiment members of the opposition have raised—that, by and large, people should have access to information and documents in the possession of government bureaucracies at the least possible cost. But we have to balance that against the imposition of the cost of FOI in certain applications upon government's ability to provide the core and primary services that government is here to deliver.

That is why access to personal affairs information is still absolutely free. That is why the first two hours of any search—that probably accounts for over 80 per cent of all applications made—still remains absolutely free. That is why voluntary organisations, unincorporated associations or incorporated associations representing community organisations will have access to documents absolutely free, by virtue of the hardship provisions that are specifically provided for in this legislation.

There is no clearer way to distinguish between those who may be able to afford to pay and those who cannot than the provision of a concession card issued by the federal government for social security benefit recipients. I think that provides the most clear, accountable and transparent process possible for distinguishing between those who should pay and those who should not. However, should experience indicate to us that there are better ways to define those distinctions—better ways to determine who should have access and who should not, fairer ways to provide access to people who should be able to get access—then our government is prepared to revisit this issue.

The member for Gladstone sits there looking greatly concerned about this. She expressed a view that the exemptions are not wide enough. I welcome submissions from the member for Gladstone in due course on any experiences she has of individuals who she thinks should have access to information at some lower cost than they might incur, and I will be prepared to give consideration. Neither the member for Gladstone nor anyone else in the opposition tonight put forward an alternative set of arrangements that would do better than the ones presented in this regulation.

The government has put forward a set of arrangements, and I believe the arrangements in this first cut are as fair as they can reasonably be and as clear as they should be. We will use the experience of their implementation to refine them if necessary in due course. Ordinary people, by and large, want access to documents that affect their personal affairs. Ordinary people will continue to have access to documents of that kind.

The member for Gregory raised the question of who will assess the charge and so forth. The whole point of the new arrangements is to be up front with people—to indicate to people what the likely cost will be for them to access the documents they are seeking but, more importantly, to assist people in refining or being more specific about the nature of the documents they want so as to minimise that cost—if there is any at all, remembering that the first two hours of the search will be absolutely free.

The member for Gregory then made the bold commitment that the opposition, if ever it was returned to government, would give an unequivocal undertaking—that was the phrase he used—to abolish this fees regime. I would not hold my breath waiting for the National Party to commit itself to open government. Not only did the National Party never introduce FOI; it made a similar commitment before it got into power in 1996. Its commitment was that it would roll back the cabinet exemption. It sat in government for almost two and a half years, yet not once did it lift a finger to expand the ambit of FOI—not once. I have to say that the prognosis is not good. If we are waiting on the National Party to open up FOI, we should not hold our breath. The experience of its past performance is enough evidence of that.

I have already addressed some of the matters raised by the member for Gladstone, in particular the exemptions being too narrow and the confusion about when something is personal affairs information and when it extends to personal information that does not fall within that personal affairs exemption. I actually think the member for Gladstone has a legitimate concern in that regard. I have already raised this with my department. We will monitor it closely.

What I am concerned not to do, however, is encourage people, as some people do, to use the FOI process as a surrogate for normal legal processes. Some people embark upon legal proceedings—Industrial Court proceedings or industrial relations proceedings—regarding their contract of employment or other matters of a commercial nature in which they are involved. They want access to government documents that may shed light on the nature of the commercial transactions in which they are involved. They happen to relate to them personally, but there is another forum in which they should access any material, through subpoenas or whatever. They should not be using a publicly subsidised process of the government to gain access to documents that relate to their commercial or employment activities.

That is the difficulty we have. We need to look at that a bit more closely. My inclination is to support the concern that the member for Gladstone raised; that the personal affairs exemption has been interpreted quite narrowly. I am prepared to have a look at that. As I have already indicated, the member for Callide had nothing to say other than what the Scrutiny of Legislation Committee had to say. I will deal with that in a moment.

Thank goodness for the members for Southport, Mudgeeraba and Springwood, who made an enlightened contribution to the debate. They alone addressed the real points of interest to the parliament and to the public, put forward a compelling and comprehensive argument in favour of the regulation the government has introduced, and comprehensively refuted the weak and misdirected arguments of the opposition.

The member for Cunningham—this is a useful introduction to the points made by the Scrutiny of Legislation Committee—made a couple of points. I refer to the thousands of documents relating to the Goodwill Bridge that he says were covered up. He says that they included many insignificant documents of departments that may have had something to do with the Goodwill Bridge. That is precisely the point, my good honourable member, because it is those thousands of insignificant documents that we do not want people trawling for. It is those thousands of insignificant documents that are precisely the documents that should not be, at public expense, trawled through when they are not useful to the person who wants them. The whole point of the new regime is to encourage both the applicant and the bureaucracy to focus their minds on precisely what documents are required and refine the search to minimise taxpayer expense in the process.Insignificant documents are precisely the ones that should not be the subject of unnecessary searching. That is what this is all about.

The member for Cunningham mentioned how grateful he was to have an honest committee, including honest members of the government. I can assure the honourable member that members of the government are always honest. We can only thank ourselves that members of the government are actually on the Scrutiny of Legislation Committee because without them we would be very unlikely to get an honest report.

However, honesty and accuracy are not necessarily the same thing. Even honest members of the Scrutiny of Legislation Committee are entitled to fall into error. Many good people have honest but mistaken beliefs. I now address the very genuine concerns of the honest members of the Scrutiny of Legislation Committee. The member for Springwood responded to the argument for a regulatory impact statement in relation to this regulation. There are arguments for both sides—as the committee itself acknowledged—in relation to whether a regulatory impact statement should be provided.

Technically, given that a charge regime exists, the extension of the charge regime is not necessarily captured by the requirements of the Statutory Instruments Act for a new regulatory impact statement. It is not altogether clear how that regulatory impact statement would quantify the impact of the new arrangements. What will be interesting—and this will be reported on, I am sure, by the Information Commissioner—is the difference between the current cost of providing information and the cost once these new arrangements are in place. Once we have those actual costs, we will have a better idea of what impact, if any, it has.

The committee also stated that the ministerial announcements of the proposed changes did not provide sufficient detail of how the charges would apply. While meeting the requirements of section 46 of the regulatory impact statement is more easily achieved if more detail is outlined in advance of the regulation being brought in, section 46 does not require that every detail of the new regime be outlined in public statements in order to avoid having to have a regulatory impact statement. It only requires that the amendment be consistent with announced government policy.

Members on both sides of this House would acknowledge that material elements of the charging regime and its policy rationale were clearly outlined in public statements when the Freedom of Information Bill was introduced. The committee's report acknowledges a number of those. For example, the general policy about the standard $20 per hour charging regime, the exemptions for applications that take only a few hours, and the waiver on the grounds of financial hardship were all well publicised. There is nothing in the nature of this regulation that extends beyond what was already well known and would, therefore, require a regulatory impact statement to expand upon it.

The committee has sought confirmation that a refund will be paid to applicants in two circumstances; namely, when the deposit taken exceeds the total charge and when the total time taken for processing and supervision of inspection is two hours or less. I confirm to the House that a refund will be paid in those circumstances.

The committee made a comment in relation to the open-ended nature of the charges. I simply draw the committee's attention to the arrangements in operation in every other time based charging regime in other jurisdictions around Australia. I do not know how else one has a time based charging regime unless the charges accurately reflect the amount of time taken. However, it needs to be monitored to ensure that the regime does not work injustice in any sort of systematic way.

The committee notes that individuals will only be exempt from charges if they have a concession card. The purpose of the new charges is to ensure that applicants for this type of information who can afford to pay, do so. I have already made sufficiently clear the distinction between those who have a concession card and those who do not is about as clear a distinction that one can have as to who should have access and who should not. There are almost a million people in Queensland alone who meet this criteria. With a population of between 3.1 million to 3.5 million, nearly a third of the people in this state will get an exemption for any information that they seek.

The member for Robina mentioned that between those in corporations who are seeking large-scale commercial applications and those at the bottom end who are protected by their concession card, there is a vast range of people who will be affected. What the member for Robina did not address is how many of those people will actually apply.

Time expired.