Speech by

John-Paul Langbroek

MEMBER FOR SURFERS PARADISE

Hansard Tuesday, 2 June 2009

RIGHT TO INFORMATION BILL; INFORMATION PRIVACY BILL

Mr LANGBROEK (Surfers Paradise—LNP) (Leader of the Opposition) (12.29 pm): I rise to contribute to the debate on the Right to Information Bill 2009 and the Information Privacy Bill 2009. At the outset I wish to indicate the Liberal National Party's support for the bills and commend the Premier for introducing these much-needed reforms to Queensland's freedom of information laws. The Liberal National Party will support any move to improve government accountability in Queensland. It is something that I believe has been severely lacking in this state in spite of the existing right to information legislation or freedom of information legislation and a colourful history that illustrates the importance of open and accountable governance.

Freedom of information laws were introduced nationally in 1982 by the Fraser coalition government. They were one aspect of the major reforms occurring in the area of administrative law around that time. The concept of freedom of information had bipartisan support, as it has today, though a review of Commonwealth *Hansard* from 1982 suggests there were different ideas and interpretations of how freedom of information laws should apply, as indeed we will see here today. In April 1976 then Prime Minister Fraser stated—

If the Australian electorate is to be able to make valid judgements on government policy it should have the greatest access to information possible.

It marked a significant shift in the approach to official information. Prior to the introduction of freedom of information, the prevailing attitude was that governments owned information and that there was no public right to information, even where it concerned individuals. Yet the Commonwealth Freedom of Information Act 1982 signified a new way of thinking: the government no longer owned information; rather, the government held information on behalf of the people. The government became the trustee of information for the Australian people. This position is reflected in the Right to Information Bill before the House. Section 1 of the preamble states—

Parliament recognises that in a free and democratic society—

…

(b) information in the government's possession or under the government's control is a public resource ...

The preamble goes on to state that a right to information is fundamental to democracy. It is also fundamental to our constitutionally guaranteed right to freedom of political communication. In order to engage in open discussion of public affairs, it is vital that people have access to the information that will allow them to develop an informed view. The Premier stated as much in her second read speech when she said—

Public release of information about government policies and decisions enables informed debate, scrutiny and public participation. Without information, people cannot exercise their rights and responsibilities or make informed choices.

I find this a rather interesting statement from the Premier. On the one hand the Premier rightly thinks Queenslanders are unable to make informed choices without information about government policies, yet on the other hand we heard no mention of a fuel tax, electricity price rises or asset fire sales during the

election. The Premier was completely silent about classifying someone who works just one hour a week a breadwinner for the purposes of her 100,000 breadwinners for 100,000 families promise.

The Premier, who is walking away from her election promises, now concedes that 'without information, people cannot exercise their rights and responsibilities or make informed choices'. There was no informed debate, scrutiny or public participation about the Bligh government's plans to introduce a fuel tax or give away the state's assets in a fire sale during the election campaign. Queenslanders have a right to feel duped. The Premier ran to an early election because she said she needed a mandate. She said she had a plan to tackle the global financial crisis but she needed a mandate. Now we discover the Bligh government has no plan. The Premier does not have a grand plan for saving jobs and getting out of debt. Instead, she wants to raise revenue by hitting Queensland families doing it tough by adding an extra $300 to their fuel and electricity bills.

In his submission to the Solomon review, the editor of the *Courier-Mail*, David Fagan, said that 'culture must be demonstrated from the top'. That means that if the Premier is serious about improving accountability she must show leadership. Like Mr Fagan, I hope that this is the beginning of a renewed interest in accountable government under which the public can have greater access to information. Since FOI was introduced into this country almost three decades ago, the founding principles have been eroded and a culture of secrecy has become entrenched in governments and the Public Service.

As I mentioned earlier, one of the achievements of the Right to Information Bill is a shift in attitude towards FOI applications. Part 5 sets down the default position for determining the outcome of access applications. The prodisclosure bias outlined in clause 44(1) states that when deciding whether to grant access to information a decision maker must start from a presumption of disclosure unless giving access would be contrary to the public interest. In the past there has been a tendency to view FOI applications from a position of nondisclosure unless there was an overriding interest in granting access.

The original Commonwealth FOI Act was based on a balance between the public's right to know and the government's legitimate interest in keeping some information secret. The secrecy provisions, exclusions and exemptions were designed to capture official information that should not be disclosed such as information on national security, intergovernmental relations or the deliberations of cabinet. Some of those exclusions and exemptions are necessary for protecting our nation. I think all Australians would agree there is a strong public interest in shielding Defence information from the reaches of FOI laws. I say this in spite of my interest in Queensland's history. Despite reading a number of historical accounts of Australia's role in World War II and a visit to the MacArthur Chambers in Edward Street, I have never been able to substantiate claims of the existence of the Brisbane Line. Whilst gaining access to strategic information would make for a good story, it is not in our national interest to divulge information that could put at risk the lives of the brave men and women who are overseas fighting for our country.

In Queensland, similar exemptions were contained in the old FOI Act, at division 2. For example, section 42 provides an exemption for matters that could reasonably be expected to compromise law enforcement or public safety. This included information that could potentially identify confidential sources or people under witness protection. I am pleased to see that this exemption has been retained in the bill, in schedule 3.

One of the key changes this bill effects is that it has reduced the number of blanket exemptions. Schedule 3 sets out the secrecy provisions—that is, information that will continue to fall outside the right to information laws. Those exemptions include some cabinet matter, Executive Council information, blue books and red books for incoming ministers, sovereign communications, information that would constitute contempt of court or parliament, information subject to legal professional privilege, information that would found an action for breach of confidence, national or state security information, law enforcement and public safety information, Investment Incentive Scheme information and disclosures that are prohibited by another act such as the Child Protection Act 1999 and the Taxation Administration Act 2001. I wish to make a few comments about some of those exemptions.

The cabinet exemption has arguably been the most contentious and certainly the most abused provision in freedom of information laws in this country. The cabinet exemption was originally designed to protect the deliberations of cabinet so as to encourage full and frank discussion of all the issues. Yet rather than being a provision to maintain responsible government, the cabinet exemption has become a farce. Section 36 of the current freedom of information regime has become a safe haven for ministers wanting to avoid taking responsibility for their actions.

We know that the cabinet exemption has been abused by governments of both creeds. Members would be well versed on the old practice of wheeling into cabinet rooms boxes full of documents that would never be read but would attract the FOI exemption by virtue of the fact that they had been to cabinet. Clearly this was not the intention of the original FOI laws. The Fitzgerald inquiry exposed how the cabinet exemption was being manipulated to serve the political interests of governments and recommended Queensland enact its own FOI laws to reiterate its commitment to accountability.

It was actually the near 'father of the House', the member for Murrumba, who introduced Queensland's first FOI laws. In bringing the bill before parliament as the then Attorney-General, the member pledged that it would change the whole culture of government in this state. That was in 1992. In 2005 the Queensland Public Hospitals Commission of Inquiry, headed by the honourable Geoffrey Davies QC, uncovered this government's abuse of FOI laws. Giving evidence to the Davies inquiry, a top Beattie bureaucrat exposed how the Labor government meddled with FOI applications to hide embarrassing information from the public. I quote from the transcripts of evidence. He stated—

I have a clear recollection of going to some trouble to obtain the use of a fridge trolley in order to deliver and subsequently retrieve from the Cabinet room in the Executive Building a number of boxes of documents associated with the Cabinet submission.

Who would have been sitting around the cabinet table at that time? The Premier for one, who was Deputy Premier at the time. The current Deputy Premier was also at the table, along with half a dozen of his current frontbench colleagues. The same people who stood in this House in 1992 heralding a change in cultural accountability sat back and allowed this abuse of FOI laws, yet Queenslanders are expected to believe that the bill before the House demonstrates their commitment to openness and transparency.

I urge the members opposite to grab a copy of the original legislation and note the date: Freedom of Information Act 1992. This act has been in force in Queensland for 17 years. Federally, FOI has been in place for 27 years. Why has it taken two decades for Queensland Labor governments to embrace accountability? As John Doyle, a former superintendent in charge of Queensland police FOI, puts it, 'It should not take some government crisis for the public to become aware of the mismanagement that is happening.'

If the Right to Information Bill is going to have half a chance of living up to its potential as stated in the preamble, it is going to require real political leadership. The Premier has to lead from the top down. I am hopeful this bill provides the catalyst for cultural change within the Queensland government and the Public Service.

I am pleased that the new provisions pertaining to cabinet documents leave the door open to greater transparency. The fact that cabinet documents will be accessible after 10 years under schedule 3, section 2(1) is heartening. It gives Queenslanders an opportunity to hold long-term governments to account. I question, however, whether more could be achieved in this area. As I mentioned previously, the original intent of the cabinet exemption was to encourage candour and frankness of advice put to cabinet. However, ministers of the Crown and public servants have a duty to provide candid advice. This point was noted by New Zealand Privacy Commissioner, Marie Shroff, who suggests that cabinet exemptions may allow for less than frank and impartial advice being given to cabinet ministers by civil servants.

Queensland's culture of secrecy is the single biggest threat to our right to information. In 2002 a Canadian study found that long-term exposure by agencies to FOI leads to the development of a resistant culture. This was confirmed recently by the Commonwealth Ombudsman in his report on the administration of the Freedom of Information Act 1982 in Australian government agencies, and it was confirmed by Australia's Right to Know group in their audit of press freedom.

Queensland's endemic culture of secrecy is something the opposition is all too familiar with. In order to obtain information—information which is held by the government on behalf of its citizens—the opposition has to make an access application like any other member of the public. My predecessor as Leader of the Opposition, the member for Southern Downs, made a submission to the Solomon review outlining the opposition's experience with FOI laws. On one occasion we lodged an FOI request with the Department of Premier and Cabinet for documents surrounding allegations of inappropriate conduct by a cabinet minister. The initial application was refused on the basis that there were no such documents in existence. After an external review, 27 documents were discovered. Clearly the initial search was grossly inadequate.

Queenslanders have reason to be concerned about the sufficiency of searches carried out in response to an access application. The courts have interpreted the Commonwealth FOI laws as requiring all reasonable steps to be taken to locate documents. Yet in some cases suspicions arise that this has not occurred. This has certainly been the opposition's experience. It illustrates why real cultural change, driven by the Premier from the top down, is vital for the success of the right to information laws.

For a start, the Premier could review the process by which an access application is handled by government departments. Queensland Health's official procedure for processing access applications requires the department to notify the minister's office within two working days of receiving the application. While the policy is silent on the role of the minister's office in determining the outcome of the application, it is fair to say that the minister's office has a very—and I highlight very—persuasive influence on the final decision.

It is also interesting that the departmental policy requires copies of relevant documents to be made on mauve coloured paper, which cannot be photocopied. No stone has been left unturned by this government when it comes to evading FOI and other accountability legislation. Labor has created an

insidious culture of secrecy that has filtered down to the most junior level of the Public Service. This has to change. We cannot forget that government belongs to the people.

One aspect of the bill which the Liberal National Party is pleased to support is extending the reach of right to information laws to government owned corporations and beneficiaries of public money carrying out public functions. The tendency of modern governments to outsource, corporatise and privatise public services has meant that information which may have previously been accessible falls outside the reach of modern FOI laws.

Outsourcing and corporatisation has become another means by which governments evade their duty to provide access to information. These concerns have been raised over the past decade by the Queensland Ombudsman, and they are concerns which I have shared. In his submission to the Solomon review, the Ombudsman, David Bevan, stated—

I am strongly of the view that private entities that carry out public functions using public funds are accountable to the public for the way in which they perform those services and spend those funds, and should be subject to all the usual accountability measures, including the application of the FOI Act, and scrutiny by the Crime and Misconduct Commission, the Ombudsman and the Auditor-General.

While it is important that these government owned corporations which compete with the private sector should retain their commercial viability, the public interest test set down in schedule 4 of the Right to Information Bill ensures that commercial-in-confidence information will remain as such. Now more than ever it is important that Queensland's right to information laws extend to government owned corporations and private sector businesses to which public functions are outsourced. As the Premier and Treasurer take the axe to the state's assets, Queenslanders need to be reassured that their information access rights will not be eroded.

One aspect of the bill which the opposition does not support is the implication and application of section 54. When an access application is approved, the government intends to make this information widely available 24 hours after access is given. This is despite the fact that the information would have otherwise been unavailable to the general public. While the Premier will dress this clause up as proof of the government's openness and accountability, it is in fact a sneaky way of deterring journalists from seeking official information. This is a cynical move by the Bligh government that will effectively stop media organisations from making access applications.

Media organisations invest a lot of time, effort and money gaining access to official information. Under Labor's proposed changes, when an access application is granted journalists will have less than 24 hours to analyse the information and break the story. Given the 24/7 news cycle, there is a real risk that a media organisation will end up having to pay for someone else's scoop. Journalists simply will not invest significant time and money in accessing information under the right to information laws if they are going to lose the exclusive.

Mr O'Brien: I'll bet you that's not true. That will be proven to be untrue.

Mr LANGBROEK: I will look forward to it being proven to be untrue. I know for a fact that these concerns have been raised with the Premier, yet they have fallen on deaf ears. Where is that cultural change of which she speaks? This aspect of the bill provides another nail in the coffin for investigative journalism. At a time when quality journalism is already under threat from falling circulations and cost cutting, we should be promoting easier access for the press to government information. The media plays a vital role in keeping governments honest. What does the Bligh government have to hide?

The Liberal National Party believes that we should be encouraging quality investigative journalism. That is why I will be putting forward an amendment that will require information obtained under an approved application to be published after 30 days, not 24 hours. I will also be putting forward an amendment capping the cost of an access application to $1,000. I understand the Solomon review recommendation for a fee regime based on folio numbers would actually increase the cost of making an information access application. I believe the charges for information should be reduced so that people are not deterred from making an application under the act.

Capping the cost of charges will allow Queenslanders to have access to government information at a much lower price and prevent the government from hiding behind excessive bills and charges to receive information. In addition, the Liberal National Party will move amendments excluding the time spent searching for documents from the cost of FOI. These fees for searching for documents encourage inefficiency in the process and pass that cost on to the person who is seeking the information.

I turn to the Information Privacy Bill. This bill essentially codifies existing government directives on privacy into legislation. These principles protect Queenslanders' personal information held by governments and deal with the manner in which that information can be used. The principles are essentially sound, but there are a number of concerns the opposition has in relation to the bill. The Bligh government has chosen to implement Queensland's own information privacy principles rather than the more stringent federal

national privacy principles. I am concerned that the Premier believes information about Queenslanders held by the state government should be less strictly held than information which is held by the federal government.

The opposition also has concerns about the lack of inclusion of a requirement to notify the Privacy Commissioner of an information privacy breach. In the same vein, under the Information Privacy Bill the Privacy Commissioner does not have to notify a person whose privacy has been breached.

Perhaps the greatest concern to Queensland is that this bill—a bill which is designed to protect private information—provides a mechanism for the government to sell private information for commercial purposes. Schedule 3(11)(4) states that an agency may disclose personal information if the information may be used for a commercial purpose. In addition to selling off the state's assets in a fire sale, the Bligh government is going to sell off private information about Queenslanders. The Liberal National Party opposition will move an amendment explicitly preventing the sale of Queenslanders' information for commercial purposes.

In summing up, I wish to quote from Australia's Right to Know submission—

FOI laws work poorly because a culture of secrecy continues to pervade many areas of government, to the significant detriment of good government. This culture needs to be addressed through a combination of legislative change, agency management and political leadership.

This bill represents the first step. In order for the Right to Information Bill to achieve greater openness and accountability, it is vital we see a real cultural change within the government and the Public Service. In passing these laws, the Premier has a responsibility to ensure that she leads change from the top down. As I have stated during my address, the opposition will be moving a number of amendments. Save for those, I will support the bill.