



Legislative Assembly

Freedom Of Information Amendment (Open And Accountable Government)

04/05/2000

Bill Hansard

Extract

Second Reading

Mrs CHIKAROVSKI (Lane Cove—Leader of the Opposition) [10.14 a.m.]: I move:

That this bill be now read a second time.

The aim of the Coalition's Freedom of Information Amendment (Open and Accountable Government) Bill is to restore the public's right to information by peeling back Labor's culture of secrecy. Our bill is based on the Jeffersonian principle that an informed citizenry is the cornerstone of democracy. As the father of the United States of America Freedom of Information Act 1966, US representative John Moss, said:

The real security of a nation is the intelligence and understanding of its people. Every effort [should] be made by government ... to assure that maximum information be available to the people who are the ultimate power under the constitution. No agency, no department, no individual has demonstrated a need so great as to avoid accountability for ... decisions made.

The New South Wales Coalition shares this view. As honourable members would be aware, in 1989 the Greiner Coalition Government introduced the New South Wales Freedom of Information Act believing that public access to information was a fundamental tenet of a Liberal democratic society. Unfortunately for the people of New South Wales, successive Labor governments have never shared this belief. The Wran and Unsworth governments continually blocked attempts to introduce freedom of legislation throughout their 13 years in office. In an unauthorised biography of Neville Wran in 1986, Milton Cockburn and Mike Steketeer stated that under the Wran Government there was no "enthusiasm for greater scrutiny of government decision making".

Similarly, Professor Peter Wilenski, the original proponent of freedom of information legislation in New South Wales, described the then Labor Government as a bastion of secrecy. The Carr Government, of course, has continued the Labor tradition of secrecy. The Government has systematically abused the exemption provisions in the Freedom of Information Act by denying public access to information that it deems could damage the Government politically. By doing this, the Carr Government has turned the Freedom of Information Act into the freedom from information Act. The Deputy Ombudsman, Chris Wheeler, noted in 1999:

Where the information requested is in anyway contentious, it appears that agencies will go to considerable lengths to prevent disclosure of information.

The Premier's own department was found to be the worst offender by refusing, in full, 55 per cent of all freedom of information applications. Departments and agencies routinely abused the exemption provisions of the Freedom of Information Act by spuriously declaring requested information to be subject to Cabinet privilege, legal privilege, or being commercial in confidence. One department even tried to suppress a 1996 report by claiming there were problems with its research methodology. However, this rationalisation was later shown to be a lie by the report's researchers and forced the department to begrudgingly release it in 1998. Other techniques used by agencies are to impose exorbitant request fees or to black out large sections of documents rendering them practically useless.

Mrs Skinner: Absolutely true.

Mrs CHIKAROVSKI: The honourable member for North Shore and shadow Minister for Health has had recent and ongoing experience of this particular practice. Disinterested observers might ask: How does this secrecy really affect my life? An answer can be found in the *Sydney Morning Herald's* "Secret State" articles in February and March 1999. One article, entitled "30 things they won't tell us", listed some of the information the Government has blocked access to, including funding allocations and expenditures for area health services; comparisons of individual school results for the Higher School Certificate, School Certificate, and basic skills tests; a Department of Community Services report into allegations of assault and rape at the Royal Place group homes for the disabled; an education department report detailing an increase in drug use by TAFE students; a transport department report into expanding the Pension Excursion Ticket scheme to private buses; Olympic Co-ordination Authority contracts for the construction of Olympic facilities; and Department of Community Services data on the number of notifications it receives annually from people concerned about child safety.

This is not dry, esoteric information. This information goes to the heart of government. It is information that would allow public scrutiny of the Carr Government's performance, and as such it is information the Carr Government is keen to keep out of the public arena. In addition to shielding incompetent decision-making from the glare of public

scrutiny, secrecy also has the potential to be a breeding ground for corruption. Tony Harris, the former Auditor-General, after being refused access to Cabinet documents, said:

The absence of entitled access to these documents allows accountability to be evaded ... it was this lack of accountability that enabled WA Inc to emerge.

It is these twin concerns that have prompted the New South Wales Coalition's proposed amendments to the Freedom of Information Act. The main features of our bill include, first, the appointment of the Ombudsman or Deputy Ombudsman as the Freedom of Information Commissioner, with strengthened powers to access information and deal with reviews and appeals. The Freedom of Information Commissioner will have the power to enter agency premises and search for relevant documents. The second feature is a presumption in favour of access to information, with agencies having the burden of establishing that documents are exempt documents subject to "Cabinet privilege", "legal privilege" or "commercial in confidence." In other words, matters involving the personal affairs of individuals and issues of security would continue to be protected.

The third main feature is a requirement for agencies to number or otherwise identify their documents in such a way as to make it readily apparent if any document, or any part of a document, is unaccounted for in any response made by the agency to an application. The fourth provision is that agencies will not be permitted to impose excessive charges on individuals legitimately seeking information. The fifth feature is that the public will be able to attend the board meetings of statutory corporations, subject to a provision allowing them to go in camera to deal with appropriate staffing, financial or commercial details. The sixth provision is that the Freedom of Information Commissioner will have the power to name individual bureaucrats and agencies that obstruct access to information. The commissioner will also have the power to impose a maximum penalty of 20 penalty units on agencies and individuals who refuse or fail to comply with a direction.

These amendments give expression to the Coalition's belief that it is the people who own information; government is merely the custodian. This is something Labor governments have never understood. I accept that some people may believe that the Opposition is only interested in freedom of information amendments for its own political interest, to be used to try to expose government blunders. It is often said that oppositions lose their enthusiasm for freedom of information amendments once in government. However, I make this commitment: Our government will abide by both the letter and spirit of the Freedom of Information Act. In the emerging information age, voters are growing less tolerant of governments that keep secrets, and are demanding greater accountability and openness.

All established institutions in society—such as the judicial system, churches, the media and large corporations—are being exposed to far greater scrutiny. The Carr Labor Government's response to these developments has been to further restrict public access to information. Is it any wonder the public holds politicians in such low esteem—somewhere around the level of used car salesman—when they act in such contravention of the public interest. The task, as I see it, is to regain the public faith in its political institutions. In this sense, the Coalition's freedom of information amendments are also about institution building. These amendments are about rebuilding the public's faith in the Government. The amendments are about encouraging people to take a greater ownership in government. The amendments are about making government a more effective instrument for improving society. Before the Government rejects our bill—as I expect it to—I would ask it to ponder the words of Thomas Jefferson, who said:

I know of no safe depository of the ultimate powers of the society but the people themselves, and if we think themselves not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion.

With this bill the New South Wales Coalition is seeking to inform the people's discretion. I commend the bill to the House.