Legislative Council

09/05/2002

Government (Open Market Competition) Bill Hansard - Extract

Second Reading

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.14 a.m.]: I move:

That this bill be now read a second time.

I have spoken in this House on more than 30 occasions about the need for governments—particularly this Government—to be more open and accountable. I organised a forum about open government in November last year that was attended by speakers from as far afield as Canada and New Zealand. The transcript of the seminar's proceedings has been on my web site for some time and hard copies are also available. My State and Federal party colleagues have introduced similar legislation in their jurisdictions. The Australian Democrats are committed to openness and accountability in government and this aim is reflected in the Federal Australian Democrats bill, the Freedom of Information (Open Government) Bill. My colleague in South Australia the Hon. Ian Gilfillan has introduced a bill entitled the Freedom of Information (Miscellaneous) Bill.

The problems with the Federal freedom of information [FOI] regime are reflected in the regimes of our States, including New South Wales. Problems include lack of independent oversight of the FOI process, a persistent culture of secrecy, prohibitive charges and excessive use of exemptions, especially commercial in confidence and Cabinet in confidence. Strangely, New Zealand has led the way in the provision of government information to the public. The Official Information Act came into force in 1982. It was widened in 1987 and then reviewed in 1998 but not amended. The Chief Ombudsman of New Zealand, Sir Brian Elwood, spoke at the open government forum in November and praised the success of the New Zealand legislation. He said that the usual concerns about the sky falling in were expressed when the legislation was introduced: business claimed that it would collapse, the Government was not supposed to survive and so on. None of this happened, and the regime works very well.

I have argued for a long time that the paradigm of this country's FOI legislation is wrong. The presumption is non-disclosure unless there is a reason to disclose. The New Zealand legislation turns this presumption around so that information is made available unless there is a good reason under the Act to withhold it—claims of commercial in confidence or Cabinet in confidence are not enough. As the years of the Carr regime have dragged on, it has become more apparent that less and less important information is seeing the light of day. Requests for information are routinely denied, usually with the pathetic cry that the information is commercial in confidence or is a Cabinet document.

I recently sought to obtain a report by Ron Christie, the erstwhile chief executive officer of the Olympic Roads and Transport Authority. The report, entitled "Long term strategic plan for rail", is an examination of Sydney's future transport requirements. I asked the Minister for Transport, and Minister for Roads for a copy of the report and was told that it was a Cabinet document. The report is public property and should have been available to all. Yet it was kept from the public for 18 months and released as I was completing a speech on a motion moved in this House requiring the Government to provide that information. It is clearly ridiculous that Opposition and crossbench members must line up to demand of the Government information compiled by public servants about public planning. It is a poor, even outrageous, situation.

Over recent years in this House I have seen calls for contracts for the M2, the M5 East, the Fox Studios development, Luna Park, and the Sydney Harbour Tunnel. All requests to make contracts public have been initially denied, and the upper House has had to get what information it can. At times the Government writes into the contracts that the agreement will be confidential, so it can then claim a breach of contract if the information is provided. It then says it is doing so in the interests of the private sector. One can only reflect that in fact it is the Government's job to look after the interests of the public sector, and that is what it ought to be doing.

The Government has also been at pains to obfuscate and frustrate the committee system, and it uses a number of tactics to do that. It is often a snow job: truckloads of useless documents are provided so that members do not have time to go through them all and the relevant information is lost. By the time it is realised that the relevant information is not there, opportunities have been lost. At other times it is a matter of providing witnesses with enough information to present and fill the allotted time so that there is not enough time for questions. Questions can then be taken on notice or other techniques used so that they are not answered.

This bill seeks firstly to ensure that all government contracts and their associated tendering documents are made publicly available by all public authorities. Public authorities are defined in clause 3 of the bill as the Government of New South Wales, a statutory body representing the Crown, an authority constituted for a public purpose, a State-owned corporation or any of its subsidiaries, or a council or county council within the meaning of the Local Government Act 1993. The second object of the bill is to allow the Auditor-General to inspect and examine the accounts of persons or bodies that receive Government grants.

It is fair and reasonable that bodies that receive public moneys should be able to, and have to, account for how that money is spent. Since the bill was first drafted I have had input and consultation with a number of people and bodies. Following these discussions I have made changes to the draft, and those changes are included in the bill tabled today. The changes that I have made already provide that, firstly, only successful tenders are to be made public—unsuccessful tenderers do not have to have their information made public; secondly, the Ombudsman is to oversee the compliance of government departments, as I believe a bill without an enforcement provision will fail of necessity; and thirdly, the Auditor-General will be given power to carry out a performance audit on the delivery of goods and services from someone who gets a government grant. The bill as tabled may need further refining at the Committee stage, and I know that both the Auditor-General and the Ombudsman have further suggestions to be included. I will be consulting all interested parties before the House returns in June and I welcome any input that honourable members may wish to provide.

I believe that some amendments will result from the input of the Auditor-General and the Ombudsman, and I am happy for that to be done in an open way, as I am advocating for the Government. There is no inconsistency in all of this. I will not go into the various possibilities of those amendments. As I have said, the bill is quite clear in its endeavor to make government contracts open, to see where government money goes, and to have a mechanism for enforcing that through the Ombudsman's office as opposed to having it come from the agencies that are asked the questions—as in the freedom of information situation, where people are obviously far more concerned about any flack that comes from their superiors than they are about flack from the person requesting the information. I commend the bill to the House and would be happy to have input from other honourable members in terms of amendments that we can discuss. Hopefully that will result in a final bill that will be accepted by all honourable members of this House.