Government (Open Market Competition) Bill.

Second Reading

Ms MOORE (Bligh) [10.02 a.m.]: I move:

That this bill be now read a second time.

I took carriage of this bill last year following its introduction by the Hon. Dr Arthur Chesterfield-Evans in the Legislative Council and its successful passage through that House. The need for reform of freedom of information legislation remains urgent and this bill is an important step forward. The community justifiably believes that there is too much secrecy and too little openness and accountability in government. A lack of transparency provides the environment for maladministration and corruption to flourish, with public projects that put corporate bottom lines and deals for mates before public interest.

Last year I told the House that my commitment to strong and effective freedom of information legislation has continued since the principles of open and accountable government formed part of my pre-election commitment in 1988, when I was first elected to represent the seat of Bligh. When the original freedom of information legislation was introduced in 1988, Independent members played an important role in the debate. Independents moved amendments that dealt with many issues, including reducing the maximum amount of time within which an agency could deal with applications, ensuring that the cost of obtaining information was within the reach of the average citizen, removing the five-year limitation on access to information, removing many of the excuses that agencies might put forward for not providing information, and reducing exemptions.

The Independents' charter of reform in the Fiftieth Parliament further addressed guaranteed open and accountable government. Improved freedom of information and increased scrutiny of statutory authorities were important goals of our charter. The aim of the charter's freedom of information reforms was to make all government information available unless there was a compelling case for the information to remain confidential. It was intended that any claim for exemption from the Freedom of Information Act should be required to demonstrate that the release of the document would be contrary to the public interest. I remind the House that in a letter to me dated 1 July 1991, in response to the charter of reform proposals, Premier Carr, who was then Leader of the Opposition, reiterated the Labor Opposition's support "for reforms that promote the openness and accountability of government." I remind the Premier and the Government of the Premier's commitment in 1991.

I commend the Hon. Dr Arthur Chesterfield-Evans for his thorough research when he was preparing the original bill. In November last year he organised a forum on open government and speakers from Canada and New Zealand attended. The transcript of the seminar's proceedings is available on his web site and hard copies are available from his office. New Zealand has led the way in the provision of government information to the public. The New Zealand Freedom of Information Act came into force in 1982. It was widened in 1987 and was reviewed in 1998. 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—we heard them also during the Fiftieth Parliament—were expressed when the legislation was introduced. Business claimed it would collapse, the Government was not supposed to survive, and so on. Of course, none of this happened, and the regime works very well in the public interest.

Despite the principles of the Independents' charter of reform, the practice of freedom of information legislation in the past decade has become non-disclosure unless there is a reason to disclose. The onus of proof should be on those wanting to maintain secrecy to prove that there is public benefit in doing so. The New Zealand legislation does just this—turning the 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. In 1999 the New South Wales Auditor-General urged similar increased openness, stating that governments had been too willing to hide behind the excuse of commercial-in-confidence when refusing to reveal details of agreements with the private sector.

Since the Fiftieth Parliament it has become apparent that the community is receiving less information on important matters. Requests for information are routinely denied, usually with the claim that information is commercial-in-confidence or is a Cabinet document. Mechanisms such as parliamentary inquiries are often obstructed through an overload of irrelevant witnesses or irrelevant documents. Over recent years information on issues affecting the Bligh electorate, including such important issues as the Eastern Distributor tollway, Fox Studios, Woolloomooloo Wharf, Tennis New South Wales leases at Homebush Bay and, currently, the cross-city tunnel, have been held back. I will refer in more detail to the cross-city tunnel.

In December 2002 the Government approved a massively revised cross-city tunnel project, which was proposed by its preferred tenderer and did not conform to the original tunnel approval from 2001. Although financial details have not been made public, it appears that the scheme was built around reducing government contribution and increasing toll revenues at the request of the preferred tenderer, rather than maximising public benefit. The contractual arrangements were reported to pay $100 million into government coffers, replacing the previously approved project when the Government contributed $40 million for a less environmentally damaging scheme. Such financial arrangements give an inappropriate incentive to proceed with the project based on reasons other than public benefit and transport improvements for Sydney. This amended scheme boosts private sector profits through more and faster traffic, with local residents paying the price through traffic impacts and increased pollution.

In December 2002 I called for the release of financial arrangements for the flawed cross-city tunnel scheme from a Government hiding behind the cloak of commercial-in-confidence. Only the release of these contracts can expose the truth and permit the New South Wales public to know whether the contractual arrangements are in their best interests. Without access to the documents the public has to trust that the Government gets it right and does it right. The problem is that the public no longer has that confidence, and we need to re-establish it. The absence of information adds to the appearance that the Government is aiding and abetting private corporations to make money at the cost of New South Wales residents. This bill seeks to ensure that all government contracts and their associated tendering documents are made publicly available by all public authorities. The documents are to be made available free of charge for inspection and on the web site, with the responsibility oversighted by the Ombudsman. The bill also allows the Auditor-General to inspect the accounts of persons or bodies that receive government grants.

One perception of the original bill in the Legislative Council was that it would cost too much to implement. I refer honourable members to the New Zealand experience in order to demonstrate that this is simply not the case. Initial challenges to the operation of the legislation in New Zealand dwindled quickly once the scope of the Act was established and defined. The cost to a public authority of making contracts available for public inspection is negligible. The cost of open government must be balanced against the cost of closed government, when significant time and money is wasted trying to have documents made available. The New South Wales taxpayer has had to pay the legal costs for both parties in two major court cases: *Egan v Willis* and *Egan v Chadwick and anor*. Many contracts released after significant court battles have been revealed as costing taxpayers much more than they should have. The publishing of contracts will encourage better bargains and better alternatives. This bill is good for business, for the taxpayers of New South Wales and for open, accountable government—particularly government in a third term.

I draw the attention of the House to one change to the bill that I introduced in this place last year. In September 2002 I gave notice of a proposed amendment to make the definition of "public authority" consistent with the meaning it is given in the Ombudsman Act 1974. This correction has now been incorporated in the bill before the House. Open, transparent government is a basic democratic right. The worldwide trend towards more open government is strongly supported by public demand for greater accountability. The New South Wales Government must respond. This bill aims to make government contracts open, to show where government money goes—it is public money—and to provide a mechanism for enforcement through the Ombudsman's office. I thank the Hon. Dr Arthur Chesterfield-Evans for his excellent work in preparing this bill for introduction in the Legislative Council. I commend the bill to the House and I urge all honourable members to support it in the interests of good governance in New South Wales.