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LEGISLATIVE ASSEMBLY

[Thursday, 28 November 1991]

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Freedom of Information Bill

Second Reading

MR D.L.SMITH (Mitchell – Minister for Justice) [11.17am]: I move –
That the Bill be now read a second time.

Freedom of information legislation represents a fundamental reform of the relationship between the State and local governments and the community they serve. It enshrines in legislation rights which are at the very heart of democratic processes.

The time has gone when Government was shielded from public scrutiny, when the principles of democracy were principle rather than practice. The Freedom of Information Bill sets the

scene for a real and meaningful level of accountability. Without information about the processes that govern them, members of the community cannot fully participate in government and exercise their rights as citizens. Freedom of information strengthens democracy, promotes open discussion of public affairs, ensures that the community is kept informed of the operations of government, and opens Government performance to informed and rational debate.

In introducing the Freedom of Information Bill the Government is continuing its commitment to greater openness and accountability of government. The Bill is part of a package to which the Government has given the highest priority and which will greatly improve the accountability of not just the Government but Parliament itself. In the past access to information has been at the discretion of the Government. There has been no legally enforceable right. That right will now be enshrined in legislation.

The objects of the Freedom of Information Bill are clearly spelled out in clause 3. They are –

- (a) to enable the public to participate more effectively in governing the State, and
- (b) to make the persons and bodies that are responsible for State and local government more accountable to the public they serve.

These objects are achieved by –

- (a) creating a general right of access to State and local government documents, and
- (b) making policy statements, administrative guidelines and other documents, concerning State and local government operations available to the public.

To further the objects of the legislation, the Bill sets out a number of principles aimed at facilitating and encouraging the disclosure of information. As it is, Government already makes available to the public a wide variety of information by both formal and informal means. This Bill is not intended to replace existing practices for giving information or to discourage their use; it is intended as a means of exercising rights where access is not available as a matter of custom or law. Therefore, clause 6 recognises that a right of access is not needed in relation to documents which are already available to the public.

Clause 4 sets out the principles of administration. Agencies are required to give effect to the legislation in a way that assists the public in obtaining access to documents, and which allows access to be obtained promptly and at a reasonable cost. Clause 10 provides that a person has a right to access, which is not affected by any reasons the person gives for wishing to obtain access, or the agency's belief as to what are the person's reasons for wishing to obtain access. This is a strong and clear statement of the rights conferred by the Bill. In addition, clause 11 imposes an obligation upon agencies to take reasonable steps to help people make application for access.

Although the public has an interest in access to information, they also have an interest in the proper functioning of government and in protecting the privacy of individuals and the commercial interests of business organisations. The Bill is intended to strike a proper balance between competing interests. Schedule 2 contains a limited number of clearly defined exemptions necessary to protect certain essential public and private interests. However, even where an exemption may apply, it is not a prohibition on disclosure; where they can properly do so, Ministers and agencies are free to make that information available. In addition, most exemptions incorporate a public interest test which specifically requires a consideration of the public interest in disclosure.

The Bill further protects the privacy of individuals and the commercial interest of businesses about whom the Government hold information by ensuring that documents containing personal or business information about third parties is not given out without the third party being consulted. The Bill also provides a comprehensive means of review of agencies' decisions on whether to allow access. Where an applicant is aggrieved by an agency's decision, she or he may request an internal review by a more senior officer within the agency. Where an applicant is still unsatisfied, she or he can then seek independent review by the information commissioner. Appeals from the commissioner on questions of law can also be made to the Supreme Court. The information commissioner can also refer questions of law to the Supreme Court for determination.

In addition to granting a right of access, the Bill seeks to increase effective participation in Government by requiring agencies to publish updated information about their structure and functions and the types of documents they hold. Agencies are also required to make available their internal manuals containing the rules, guidelines and statements of policy used to make decisions affecting the rights, privileges or other benefits or obligations, penalties or other detriments to which members of the public are, or may be, entitled, eligible, liable, or subject. This important feature of the Bill promotes an increased awareness of how Government operates and is the foundation for effective participation in Government. Knowledge of the basis on which decisions affecting members of the public are made makes Government agencies more accountable and assists the public to assert their rights under this and other legislation.

Charges will be made for access to documents, and these will be set by regulation; however, those charges are subject to the principle set out in clause 98 that charges are to be reasonable and that special regard is to be had to the need to ensure that financially disadvantaged people are not precluded from exercising their rights under the legislation merely because of financial hardship. That provision also recognises the special relationship that a person has to information about himself or herself, and it is therefore the intention that access to information about oneself will not be subject to application or processing charges. To further recognise the special relationship a person has to information about himself or herself, clause 20 allows that special interest to be taken into account as an additional factor in applying exemptions, thus affording even greater opportunity for access.

Some of these features of this legislation are common with other freedom of information Acts in Australia; however, this legislation has some important features which distinguish it from others. The principal feature is the Bill's unlimited retrospectivity; this means that access can be obtained to documents no matter how old they are. Other jurisdictions allow for access to personal documents no matter when they were created, but requests for official documents can go back, at most, five years. There is no such limit in this Bill. This is a significant feature of the legislation and is a clear indication of this Government's willingness to be open without limit.

Another key feature of this Bill is the creation of the office of information commissioner. The commissioner is an independent person charged with review of agencies' decisions. He or she will be appointed by the Governor and can only be removed by Parliament. The commissioner will form an accessible link between the public and Government. The investigatory and conciliatory nature of his or her role is more appropriate to freedom of information than the traditional methods of dispute resolution through the courts. The commissioner's main function is to deal with complaints about decisions made by agencies. Other functions include ensuring that agencies are aware of their responsibilities under the legislation; ensuring that members of the public are aware of their rights under the legislation; and providing assistance to members of the public and agencies.

The process of review is intended to be informal, conciliatory and accessible. We recognise the problems facing most people in trying to solve disputes through the courts and the injustice this often creates. The information commissioner will be able to make decisions which are binding upon agencies, and this is an important means by which members of the public can seek effective access to justice.

The Bill contains other unique features to which I shall refer during the Committee stage. This legislation will mean not only open Government, but also better Government. As the experience in other jurisdictions has shown, the benefits include a greater awareness on the part of agencies of the need for objectivity and accountability in dealing with the public; an improved quality of decision making; an improved communications and understanding between agencies and clients; an improved efficiency of record management; and a greater public awareness of the role of agencies. Freedom of information legislation promotes openness, accountability and responsibility. It is an important measure of how truly democratic a Government and, consequently, a society is.

I commend the Bill to the House.

Debate adjourned, on motion by Mr Kierath.

FREEDOM OF INFORMATION BILL*Second Reading*

MR D.L.SMITH (Mitchell – Minister for Justice) [3.05 pm]: I move –
That the Bill be now read a second time.

The Government introduced the Freedom of Information Bill 1991 in November last year. At the time it was stated that the Bill would lie on the table over the Christmas break to allow the community to consider it and comment on it. As a result of submissions and discussions since then, including discussions with the Opposition, a number of amendments have been made to the Bill. Those amendments have been consolidated in the Freedom of Information Bill 1992, and the Freedom of Information Bill 1991 has been withdrawn. Explanatory notes on the amendments are available for distribution to members.

The Freedom of Information Bill 1992 retains the key features of the Freedom of Information Bill 1991, namely: The creation of a right of access to documents held by State and local government; unlimited retrospectivity; and provision of a comprehensive means of review, including the creation of the independent office of Information Commissioner. The most significant amendment is the inclusion in the Bill of a new part which provides a means to ensure that personal information held by the State and local government is accurate, complete, up to date and not misleading. This part was to be left for the proposed privacy legislation. However, due to the Government's very full legislative program the privacy legislation will not be ready for introduction this year; therefore, the provisions have been included in the Freedom of Information Bill 1992.

Part 3 is the new part of the Bill. Clause 44 gives people the right to apply for amendment of personal information which is inaccurate, incomplete, out of date or misleading. The agency may make the amendment by altering, striking out, deleting or inserting information, or inserting a note in relation to information. The agency is not to make the amendment by obliterating or removing information, or destroying a document, unless the prejudice or disadvantage to the person outweighs the public interest in maintaining a complete record and the agency has notified the Library Board of Western Australia. If the agency does not agree to the amendment, applicants can have a notation or attachment containing their claims added to the information. The applicant's claims are to be passed on to anyone to whom the information is disclosed. There will be no fees or charges for applications for amendment of personal information. An applicant can seek internal review of decisions of an agency and can complain to the commissioner. Appeals to the Supreme Court are allowed on some grounds. A number of amendments have been made throughout the Bill as a result of the

addition of this new part. For example, the objects clause now includes an object relating to amendment of personal information.

Other amendments in the Freedom of Information Bill include: Requiring agencies to give effect to the Act in a way that allows access to documents to be obtained promptly and at the lowest reasonable cost; allowing the Information Commissioner to reduce as well as extend the 45 day time limit within which agencies must decide applications for access; requiring agencies to notify applicants of the basis of their estimate of charges as well as their estimate; allowing applicants to seek a review of charges before an agency completes the work; allowing consultation with someone representing the interests of the child of a deceased person; requiring the Information Commissioner to make decisions within 30 days of a complaint unless it is impractical to do so; allowing the Commissioner to award costs against a party whose conduct is exceptional and unreasonable; allowing the Information Commissioner to refer questions of law to the Supreme Court without the agreement of all parties, but allowing a party to opt out of such a reference, avoiding any associated cost; allowing the Supreme Court more flexibility in dealing with references of questions of law; restricting applicants to the mechanisms of review, complaint and appeal provided in the Bill; extending the law enforcement exemption to matter that has originated with or been received from a Commonwealth intelligence or security agency; and exempting for 12 months matter which is the subject of three specified secrecy clauses in other Acts.

In addition, a number of drafting amendments have been made to ensure consistency of terms used throughout the Bill and to clarify the meaning of clauses. I commend the Bill to the House.

Debate adjourned, on motion by Mr Bradshaw.