

The Freedom of Information Bill: the issues summarised

Introduction

3.1 In this chapter we identify and discuss in outline the seven general issues which have emerged in the course of our review of the Freedom of Information Bill 1978 as the most important, most controversial, or both. We commence with the obviously important, but in fact remarkably uncontroversial, question of whether there is a demonstrable need for freedom of information legislation at all in Australia. The other issues then successively identified, all of which are subject to more detailed scrutiny later in this Report, are:

- (a) the compatibility of freedom of information legislation with the basic principles of our system of government;
- (b) the question of administrative burdens;
- (c) the scope of the exceptions and exemptions in the Bill;
- (d) its access and appeal procedures;
- (e) the protection it affords for suppliers of information; and
- (f) the question of monitoring compliance with the legislation once it is enacted.

The need for freedom of information legislation

3.2 We have been very impressed by the fact that among our 168 submissions and 129 witnesses we encountered almost unanimous support for some form of freedom of information legislation. This support came in varying degrees from politicians, departments, statutory bodies, professional associations, academics, unions, research workers, public interest groups, newspapers and individual citizens. Support for freedom of information legislation also came from departments within the Federal Government and from most of the State governments. The only submission which was positively hostile and opposed to any form of freedom of information legislation came from the Premier of Queensland.

3.3 It seems to us that there are three quite specific justifications for having effective freedom of information legislation in Australia, each of which arises out of the principles upon which democratic government claims to be based. The first of these touches upon the issue of the rights of the individual. With certain national security exemptions to which we refer elsewhere, we believe that every individual has a right to know what information is held in government records about him personally. We believe that the individual has the right to inspect files held about or relating to him, and, as we shall argue later, the right to have material which is inaccurate corrected on such a file. His file, after all, is accessible to other people (that is, to various public servants) and we see no reason why it should not be equally accessible to the person most directly concerned.

3.4 Secondly, we believe that when government is more open to public scrutiny, it in fact becomes more accountable. As a result there is a greater need for it to be seen to be efficient and competent. The accountability of the government to the

electorate, and indeed to each individual elector, is the corner-stone of democracy, and unless people are provided with sufficient information accountability disappears. The Prime Minister (Rt Hon. J. M. Fraser) has described the situation thus:

The principle of responsibility—to the electorate and the Parliament—is a vital one which must be maintained and strengthened because it is the basis of popular control over the direction of government and the destiny of the nation. To the extent that it is eroded, the people themselves are weakened. If the people cannot call to account the makers of government policy they ultimately have no way of controlling public policy or the impact of that policy on their own lives But just as fundamental are two further requirements. First, people and Parliament must have the knowledge required to pass judgment on the government Too much secrecy inhibits people's capacity to judge the government's performance.¹

3.5 Thirdly, we believe that if people are adequately informed, and have access to information, this in turn will lead to an increasing level of public participation in the processes of policy making and government itself. Governments should be constantly in receipt of advice, not only from the professional public service but also from other sections of the community and from individual citizens and their members of Parliament. Unless information is available to people other than those professionally in the service of the government, then the idea of citizens participating in a significant and effective way in the process of policy making is set at naught. This participation is impossible without access to information.

3.6 Thus we believe that, for reasons which touch both upon the rights of the individual and upon the public policy aspects of our system of government, an effective Freedom of Information Bill is clearly needed in Australia today.

3.7 The essence of democratic government lies in the ability of people to make choices: about who shall govern; or about which policies they support or reject. Such choices cannot be properly made unless adequate information is available. It cannot be accepted that it is the government itself which should determine what level of information is to be regarded as adequate. The whole thrust of our Report is to ensure that a maximum amount of information is made publicly available, and that the barest minimum of restriction is placed on the public disclosure of such information. It appears that this proposition is not altogether accepted by governments; it is certainly not one which appears to permeate the legislation which we are studying.

3.8 Apart from allowing people to make rational decisions about policies, as we have observed, information is necessary if governments are to be kept accountable. This point was first made over 2000 years ago by Aristotle² who also dismissed the often voiced criticism that the public 'cannot understand' the information provided because they lack the necessary technical skills.³ Precisely the same point was made in 1861 by J. S. Mill who wrote that a principal function of any representative assembly was to 'compel a full exposition and justification'⁴ from the Executive of all its actions.

¹ J. M. Fraser, 'Responsibility in Government', *Australian Journal of Public Administration* XXXVII, 1, March 1978, pp. 1-2.

² Aristotle, *The Politics* (tr. T. A. Sinclair), Penguin, London, 1962, Book iii, ch. ii, pp. 124-5.

³ ' . . . there are tasks of which the actual doer is not either the best or the only judge, cases in which even those who do not possess the operative skill pronounce an opinion on the finished product,' Aristotle, cited footnote 2, p. 125.

⁴ J. S. Mill, *Representative Government*, Everyman, London, 1964, p. 239.

3.9 The need for information in a democracy, if it is to work effectively, has been spelt out many times. Thus, United States President James Madison as long ago as 1822 wrote:

A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance: and a people who mean to be their own governors, must arm themselves with the power which knowledge gives.⁵

A similar but more recent view was put in the following terms: 'Democracy places a burden of thought upon the public more onerous than the burden placed upon it by other systems'.⁶ Equally, the need for government to continue to make this information available has been expressed as follows:

Classical democratic theory is informed by an exceedingly ambitious purpose: the education of an entire people to the point where their intellectual, emotional and moral capacities have reached their full potential and they are joined, freely and actively, in a genuine community. Beyond this magnificent general purpose, classical democratic theory also embodies one great strategy for the pursuit of this goal: the use of political activity and government for the purposes of public education. Governance is to be a continued effort in mass education.⁷

3.10 Democracy rests very largely upon the idea of consent; that is the idea that people agree to abide by the 'rules of the game' although 'under representative government what the majority of the people consent to directly is rather the making of laws by certain persons than the enforcement of specific laws'.⁸ In turn such a theory of consent depends upon people having adequate information upon which they can make the decision to continue consenting to what is going on.

3.11 By contrast, secrecy in government, where excessive or unnecessary, is in fact destructive of the very foundations of a democratic society. In 1968 the Fulton Committee in Britain clearly recognised this. It suggested that the administrative process was 'surrounded by too much secrecy' and that 'the public interest would be better served if there were a greater amount of openness'. It stated:

We welcome the trend in recent years towards wider and more open consultation before decisions are taken; and we welcome, too, the increasing provision of the detailed information on which decisions are made. Both should be carried much further; it is healthy for a democracy increasingly to press to be consulted and informed.⁹

In its response to the Fulton Committee, the British Government in its White Paper *Information and the Public Interest* detailed the steps taken to give effect to such proposals. These included the presentation of the economic assessment for the ensuing 15 months with the annual Budget; the Treasury Green Papers on Public Expenditure and numerous other departmental White and Green Papers. The report concluded:

The Government agrees with the Fulton Committee in wishing to see more public explanation of administrative processes, a continuing trend towards more consultation before policy decisions are reached, and increasing participation by civil servants in explaining the work of Government to the public.¹⁰

⁵ I. Brant, *James Madison: Commander in Chief 1812-1836*, Bobbs-Merrill, Indianapolis, 1961, vol. 6, p. 450.

⁶ R. E. Lane & D. O. Sears, *Public Opinion*, Prentice Hall, New Jersey, 1964, p. 57.

⁷ L. Davis, 'The Cost of Realism: Contemporary Restatements of Democracy', *The Western Political Quarterly* XVII, 1, March 1964, pp. 40-41.

⁸ J. P. Plamenatz, *Consent, Freedom and Political Obligation*, OUP, London, 1968, p. 21.

⁹ Great Britain, The Civil Service Committee (Lord Fulton, Chairman), *Report*, Cmnd 3638, HMSO, London, June 1968, vol. 1, para. 278, p. 91.

¹⁰ Great Britain, *Information and the Public Interest*, Cmnd 4089, HMSO, London, June 1969, para. 36, p. 12.

3.12 These issues of openness and trust were restated with great clarity by the Franks Committee in its inquiry into the British Official Secrets Act. It wrote:

A totalitarian government finds it easy to maintain secrecy. It does not come into the open until it chooses to declare its settled intentions and demand support for them. A democratic government, however, though it must compete with these other types of organization, has a task which is complicated by its obligation to the people. It needs the trust of the governed. It cannot use the plea of secrecy to hide from the people its basic aims. On the contrary it must explain these aims: it must provide the justification for them and give the facts both for and against a selected course of action. Nor must such information be provided only at one level and through one means of communication. A government which pursues secret aims, or which operates in greater secrecy than the effective conduct of its proper functions requires, or which turns information services into propaganda agencies, will lose the trust of the people. It will be countered by ill-informed and destructive criticism. Its critics will try to break down all barriers erected to preserve secrecy, and they will disclose all that they can, by whatever means, discover. As a result matters will be revealed when they ought to remain secret in the interests of the nation.¹¹

3.13 The loss of trust and public confidence to which the Franks Committee so clearly pointed can be evidenced by events in the United States in recent years. The attempts to suppress the 'Pentagon Papers', indeed even to withhold them from the Senate Foreign Relations Committee,¹² and the whole saga of the later Watergate 'cover-ups' illustrate how destructive of the fabric of democracy itself excessive secrecy can be. It is also illustrative of how ineffective it is in anything but totalitarian regimes.

3.14 Many members of the Parliament feel themselves unable to fulfil their proper role as elected representatives because they are denied information which they consider vital to making proper decisions. Appendix 5 indicates the poor response received by Senator Missen to inquiries seeking information about governmental activity. Another member has written:

Information is a vital and valuable national resource. Access to information is equivalent to power . . . Individual freedom and individual efficiency will largely be determined by each person's ability to secure the right information at the right time.¹³

And of his role as a member he writes:

In Canberra I feel like a member of a football team which never plays at home—the public servants have collectively about 85% of the information and we have about 15%—much of which is acquired from leaks and newspaper reports.¹⁴

We cannot see why such a situation should persist. Government should not have aims that are different from those of the people who elect it, and in these circumstances the provision of information to the public is clearly an inherent responsibility of any government.

¹¹ Great Britain, Home Office, Departmental Committee on Section 2 of the Official Secrets Act 1911 (Lord Franks, Chairman), *Report*, Cmnd 5104, HMSO, London, September 1972, vol. 1, para. 12, p. 12.

¹² See for example B. Woodward & C. Bernstein, *The Final Days*, Coronet, London, 1977, p. 212.

¹³ Barry Jones, M.P., 'The Challenge of Post Industrialism', Current Information Service files, Australian Parliamentary Library, November 1978, pp. 11–12.

¹⁴ Barry Jones, M.P., 'A Personal Viewpoint', Opening address delivered at the State College of Victoria seminar on Directions in Australian Education and Society by the Year 2000, Melbourne Town House, 23 February 1979, Current Information Service files, Australian Parliamentary Library

The compatibility of freedom of information legislation with the basic principles of our system of government

3.15 It has been put to us that three characteristics exist in our system of government in Australia which, taken together, either render the need for freedom of information legislation less here than overseas, or else mean that Australia would be just as well served by having a Bill which in itself was less complete or far reaching than we are proposing. Further, it was suggested that these features of our system would mean that any freedom of information legislation would have less chance to stimulate real changes in the nature of government and its operation than has been found to be the case elsewhere. These three characteristics relate to (a) what is called the Westminster system of government, which we shall examine in detail in Chapter 4; (b) the problems of Executive and Crown privilege, which we shall examine in detail in Chapter 5; and (c) the impact upon the future role of our Parliament and individual members of Parliament, an issue which we examine later in this chapter and generally throughout our Report.

3.16 *The Westminster system.* Freedom of information is not an exclusively Australian issue. The point of our review of Australian and overseas history in Chapter 2 was to suggest that the experience of other countries is similar to our own. We have useful lessons to draw, as the demand for freedom of information is not a mere fad or something imported thoughtlessly from abroad. It has local origins and the legislation must be fitted to local needs.

3.17 Nevertheless it has been argued at great length before the Committee that the workings of the Westminster system are an almost total impediment to the legislation. We do not agree. But we concede that we cannot dismiss lightly the 'Westminster' objections which have been pressed upon us, if only because they have come from some highly placed people who could have considerable influence upon the implementation of the legislation. The Secretary of the Treasury (Mr J. Stone), for example, thought that the present Bill 'is a diminution and not a fundamental attack' upon the Westminster tradition but that extension of the Bill could indeed 'cut much more fundamentally' at it.¹⁵

3.18 The Westminster system has the appeal of simplicity. The conventional picture (leaving aside any residual powers of the Crown) is that the people elect a parliament, the majority in parliament choose a ministry, the ministers consider advice received from the permanent public service and elsewhere, and make decisions which are government decisions. The public service, apolitical and appointed on merit, then carries out those decisions. The line of responsibility is clear. The public servant is responsible to the minister, the minister to parliament, and parliament to the people. The public servant, in theory, has no independent power of his own. He is responsible to his minister, and his minister, through parliament, is responsible to the people. Ministers are thus responsible, in both collective and individual senses, for the activities of the public service. And the public service is the instrument which carries out the tasks which the community demands through its ministers. It is a system where lines of authority and responsibility are unambiguous and where the roles of the actors, and the relationship between them, are clear.

¹⁵ *Transcript of Evidence*, p. 1708.

3.19 In fact we do not think this is the way the system works now, or ever has. The system is neither so rigid nor so weak that it has failed to accommodate change. As parliamentarians, we have seen the system changing in helpful ways, as have ministers and members of the community. We think that an increasing number of public servants are responding to these changes too.

3.20 Certainly there has been a demand from the community in recent years for new forms of oversight and supervision of administrative activity. This is one way to interpret the apparatus of the new administrative law. Ministers of all parties have supported these developments, and for good reasons. They understand that ministers do not actually know all about, or effectively control, the whole of the complex machinery of the modern state. Indeed, the extent of ministerial control has never been without limit. No one, least of all ministers, has ever suggested that it should. Large parts of the government apparatus are formally beyond ministerial responsibility, and this has always been so. There has never been a time, even in theoretical or prescriptive writings, when it was imagined that ministerial control applied to judicial agencies, elective local governments and to many quasi-autonomous statutory bodies. The question to be decided is just what does fall within ministerial control and why. This is an important question and freedom of information legislation is helpful in answering it. Ministers need to know about, and control, the important decisions, and they need to agree about what is important: that is why Cabinet or collective unity is vital. But it is selectively applied. And ministers as individuals do not want to be held answerable for all things done within the public service. On the contrary, they will often want to see responsibility more accurately placed—or anyway, placed elsewhere.

3.21 Freedom of information legislation is a means not only of ensuring the more direct accountability of public servants to the public, but also of ensuring greater accountability of public servants to their ministers. It is in the interests of ministers themselves to expose the advice of their officials to wider scrutiny so as to improve the quality of that advice and ensure that all possible options have been canvassed. Freedom of information legislation can be in the interests of the public servants and government agencies whose processes are opened up to public gaze too, for it will lead to more adequate public recognition of the effectiveness of the public service. Greater exposure of government agencies to scrutiny can be expected in the longer term to result in a reduction in the level of suspicion and distrust surrounding relations between some government and non-government agencies.

3.22 Not all public servants, we are glad to say, feel unable to contemplate these issues about the direction in which our political institutions are going and should go. In evidence before us, many public servants, of different rank and experience and from different departments, have approached issues about public service anonymity, ministerial authority, political accountability and the like with insights drawn from important perspective. We in turn have drawn upon many of their contributions and feel justified in so doing. Public servants are not the umpires of our system but we should not pretend that they are excluded, or are correct in excluding themselves, from the game entirely. It is more constructive to see what their real role is. This implies a need to examine the 'system' as it presently operates, not as it is once alleged to have done.

3.23 What has happened, in short, is that critics have got things the wrong way around. It is not that freedom of information will change our governmental system; it is rather that our changing governmental system is contributing to pressures

for freedom of information legislation. A Freedom of Information Act is indeed one way to make government adaptable, flexible and effective. In Chapter 4 we consider in detail the working of the Westminster system and we show how freedom of information legislation can contribute to its more effective operation.

3.24 *Executive and Crown privilege.* We also draw particular attention in this regard to an important recent judicial decision. During the course of the Committee's inquiry the High Court handed down its judgment in the case of *Sankey v. Whitlam*¹⁶ in which it was called upon to determine various claims of Crown privilege in respect of documents whose production was sought. But the decision clearly had ramifications for freedom of information legislation beyond claims of Crown privilege in court proceedings. These ramifications are discussed in Chapter 5.

3.25 *The role of Parliament.* It has been suggested that, with an effective Freedom of Information Act, some of the traditional roles of the Parliament and its backbench members will be diminished. We do not accept this view; indeed we remember that this was also claimed to be a consequence of the introduction of the Ombudsman legislation, and nothing has been further from the truth.¹⁷ Our view is buttressed by reported statements by Lord Croham, a former Head of the British Civil Service. He expressed the view that less secrecy in the public service would lead to a strengthening of Parliament in relation to the Executive, in that members of Parliament could be expected to be better placed to scrutinise the government's performance on openness, obliging ministers to explain their refusals to release documents on request.¹⁸ While Lord Croham's comments were directed more specifically to administrative guidelines rather than legislative requirements, we believe that our proposals will have the effect of increasing the capacity of the Parliament to hold the Executive properly accountable for its actions and decisions.

Administrative burdens

3.26 One of the questions to which we have been most sensitive throughout is whether the public service can physically cope with effective freedom of information legislation. Many departmental submissions, including ones otherwise wholly sympathetic to the principles of freedom of information, drew attention to expected practical problems in its implementation, and the impossibility in most cases of carrying it into effect within existing staff ceilings. The public service unions, while very supportive of the legislation in principle and indeed anxious to extend its scope, were concerned at the workload implications for their members. Submissions we received from outside the public service were less immediately concerned with the resource implications of the present Bill and possible extensions to it, but many did nonetheless acknowledge that this was a central issue to be considered. Some indeed went further and expressed the concern that the real (or imagined) administrative implications of the Bill, and the resistance it would create in this respect within the public service, would be the rock on which the proposed legislation would founder.

3.27 We devote the whole of Chapter 6 to a thorough examination of this problem. Questions as to the resource implications of particular clauses, both existing and proposed, are discussed as they arise throughout the Report, and in Chapter

¹⁶ (1978) 53 ALJR 11.

¹⁷ J. Disney, 'Ombudsmen in Australia', *The Australian Quarterly* 46, 4, December 1974, pp. 38-55; Commonwealth Ombudsman, *First Annual Report*, AGPS, Canberra, 1978.

¹⁸ *The Times*, 17 August 1978, p. 2.

6 we attempt to bring together all the material bearing upon the problem and to make some overall evaluation of its significance. To give our conclusions as substantial an empirical foundation as possible, we asked the Public Service Board to conduct on our behalf a special survey of departments and major authorities exploring the scale of existing information retrieval arrangements, and the likely demands upon agency operations that would be created by freedom of information legislation of different degrees of stringency.

3.28 To the extent that it is possible to baldly state conclusions in this complex and uncertain area, the view that we have reached is that the Public Service *can* cope both with the present Bill and with the variations to it that we propose throughout the Report. We have no doubt that some additional resources will be required to make the legislation work effectively, even taking into account various off-setting savings and the potential utilisation of present government information resources in freedom of information work, but we take the view that the Government, by its very introduction of a Freedom of Information Bill, has committed itself to providing those resources on the necessary scale. We do not believe those resources will be as large as some commentators have feared, and take the view in any event that the contribution that will be made by effective freedom of information legislation to administrative efficiency and to democratic practice generally will be well worth paying for.

Exceptions and exemptions

3.29 Most of our submissions and witnesses were concerned to draw our attention to the issues which they saw arising out of the nature of specific exemptions and exceptions which the Bill contains. Some matters should quite properly remain protected from general public disclosure. By and large we have been confronted with five basic areas of controversy in deciding where the limits against disclosure should be drawn.

3.30 The first of these relates to whether or not documents which came into existence before the introduction of this Bill should remain automatically exempt. The current Bill says they should, with some minor qualifications. In Chapter 14 we shall argue that access to prior documents should be phased in over a period of time. We reject the idea that they should be automatically exempt, but we recognise the real administrative problems of granting immediate access.

3.31 Secondly, the current Bill provides that ministers may issue certificates which conclusively state that a document should be exempt from disclosure. In the light of both the judgment in the *Sankey* case and what we understand to be the fundamental principles of democracy, we reject the whole notion of conclusive certificates. We accept that such ministerial fiats should be given considerable weight, but we believe such certificates should be subject to sensitive review by a member of the judiciary and we propose specific safeguards (especially in Chapters 16 and 17) for the handling of such material in this area.

3.32 Thirdly, there is the question of exemption for particular types of documents. These issues are discussed in Chapters 16 to 26. It will be seen there that we have sought to limit some of the proposed exemptions by imposing greater tests upon them in a descriptive sense (such as with internal working documents), while recommending the total elimination of others (such as that for documents affecting the national economy).

3.33 Fourthly, we have confronted the issue of how to decide when and where there is a public interest in disclosure which overrides a particular interest in non-disclosure. This issue is raised in our discussion of the judgment in the *Sankey* case and elaborated upon in Chapter 15. It will be seen that we favour the extensive use of a public interest test to ensure that when documents are withheld, they are only withheld for good and sufficient reasons.

3.34 Finally, clause 5 of the Bill effectively vests great power in the Executive to exempt whole classes of documents or particular agencies from any of the operations of freedom of information legislation. In Chapter 12 we propose ways to limit the use of this power and insist that such exemptions should clearly be subject to parliamentary debate, scrutiny and approval.

Access and appeal procedures

3.35 It is important that freedom of information legislation state clearly the procedures for obtaining access to information and establish an equally clear set of procedures for appealing against the denial of access. Issues related to the identification of documents, delays in securing documents, fees to be charged for production of documents, and the costs of possible litigation to enforce one's right to documents are sensitive ones and need to be dealt with carefully. They are issues which have clearly been prominent in the thinking of many of our witnesses and submissions where important points of principle have been raised and must be answered. In our view careful attention must be paid to the implementation of this legislation. In a number of chapters we have therefore considered how individual members of the public can obtain access to information under the Act and how they can seek a review of, or appeal against, adverse decisions which affect them.

3.36 Throughout Part B, and in Chapter 31, we discuss the administrative procedures associated with the present Bill and those which will need to be developed if the Bill is to be strengthened. The way in which the Act is implemented will be crucial. Legislation is one thing; administration is another. Our concern is that the legislation should not fail, or simply do less than it might, because inadequate thought has been given to administrative procedures. Although we are a parliamentary committee reporting on an instrument of legislation, we feel it important to stress that our considerations have taken full and explicit account of the administrative considerations put before us. We see that legislative prescription and administrative implementation are two sides of the one matter. Accordingly, we pay due regard to both.

3.37 In Chapters 8, 9, 10 and 11, then, we trace through the sequence of a freedom of information request as it might be made, from the articulation of the request through to its satisfaction or denial or appeal. For the most part we follow the logic and language of the present Bill, though we have a number of suggestions to make about changing the procedural aspects of the Bill for the better. We deal in turn with the procedures involved in gaining access to a document: the form in which requests can be lodged, the transfer of requests to more appropriate agencies, requests involving the use of computers, the deletion of material from a document to enable it to be disclosed, the extent to which the power to release documents or to refuse disclosure is delegated, the duties, liabilities and legal protection afforded to individual officers involved in giving access to documents, the time limits for making decisions on requests for access including the possibility of deferment in certain circumstances, and the costs and fees associated with the grant of access.

3.38 In Chapters 27–30 of the Report we deal with Review and Appeal. Part V of the Bill deals with review by the Administrative Appeals Tribunal of a limited number of decisions made under the Bill. In Part D of the Report we recommend a role for the Administrative Appeals Tribunal which is both quantitatively and qualitatively more extensive than that proposed to be vested in it under the Bill as currently drafted. In Part D we further recommend that the review functions of the Administrative Appeals Tribunal be complemented by vesting in the Ombudsman certain functions which will allow him to conciliate between persons seeking access to information and agencies refusing to comply with such requests.

Protection for suppliers of information

3.39 Clearly there are cases when people, associations or other governments will think again about providing information to the Australian Government if they believe that that information could be drawn into the public domain under freedom of information legislation. We would not wish that to happen. So far as personal information is concerned, we deal with this matter in Chapter 24, where it will be seen that we are concerned to protect the personal privacy of individuals. As far as material from foreign governments is concerned, we believe our recommendations for exemptions in Chapter 16 cover this. In terms of information from State governments, it will be seen from Chapter 17 that detailed suggestions are made as to what sorts of information should be exempt and how these exemptions should operate.

3.40 Material provided by commercial or other associations is dealt with in Chapter 25. In this and other instances we raise the issue of 'Reverse-FOI' suits whereby the providers of information have a right to go to the Administrative Appeals Tribunal to prevent the release of information which they believe could harm their proper interests, and we propose that the Commonwealth should have an obligation to forewarn the originators of such material of the fact that its release is being contemplated.

3.41 Concern was expressed to us that public servants who placed opinions on paper for others, or people acting as referees or judges for the award of scholarships, grants and the like may face defamation suits if their opinions were revealed. Similarly the issue of copyright over certain material was raised with us as constituting a potential problem under freedom of information legislation. Both these issues are dealt with in Chapter 9, while in Chapter 22 we discuss the operation of prescribed secrecy provisions in other legislation and make a consequent recommendation to amend clause 29 to take account of the issues so raised. As a result of these discussions and their associated recommendations we believe that adequate protection can be afforded to all providers of information, where it is clear that such information should be withheld.

Monitoring compliance with the Bill

3.42 Legislation of course is one thing; its effective operation can be entirely another. We sincerely hope that all government agencies affected will co-operate in the spirit of the legislation and we see no reason why this should not occur. The recommendations made in this report reflect our perceptions of the appropriate balance between conflicting public interests and competing demands on finite administrative resources. In the light of these judgments, it is essential

that the operation of freedom of information legislation be kept under constant review in order to take account of changes in the balance of these interests and demands. Monitoring the operation of the Act is the subject of the final section of the Report.

3.43 In Chapter 31 we consider what departments should do to keep their unfolding experience under review. We note the part to be played by the Ombudsman—as a settler of difficulties as they arise, as a constructive critic of departmental practice and, possibly, as an initiator of needed reforms. The Attorney-General's Department and the Public Service Board have roles to fill also, and we describe these in detail.

3.44 In Chapter 32, we examine the future role of the Parliament itself. Freedom of information is part of Parliament's armoury too, and we thus consider how it might be used effectively in the future. We have already noted in this chapter the views of several British authorities who believe that freedom of information legislation will enhance the role of the Parliament, and we know from our study of the way in which the United States Congress monitors progress under that country's Freedom of Information Act that no loss of congressional power or authority has occurred. We fully expect that to be the experience in Australia.