

Resource implications

Introduction: the problem

6.1 A recurring theme in our deliberations has been concern at the ability of the public service to cope with the physical demands that effective freedom of information legislation will undoubtedly place upon it. The Attorney-General, Senator Durack, has emphasised that the Government is 'sensitive to the demands that this legislation will make on the resources available to Departments and authorities'¹ and that 'costs need to be monitored'.² Although the Attorney has not unduly belaboured the point about resource implications, it is apparent that worries to this effect have certainly contributed to the Government's decision to confine the scope of the Bill in several important ways, in particular the decision to apply it prospectively only, and not to documents created before its proclamation.³ The Public Service Board, for its part, made it clear that the implementation of the Bill could not be regarded as cost-free:

So long as governments seek to limit the number of Public Servants and the overall cost of the Public Service, greater access by the community to the information holdings of the Service should be seen as another service of government competing for the finite resources made available. To increase resources in one area of government activity will inevitably lead to some lessening of emphasis in another, or to an increase in the overall level of resources.⁴

6.2 The impact of staff ceilings on the ability of departments to mobilise new resources for freedom of information purposes was a problem repeatedly raised in evidence before us from departmental and statutory authority witnesses. So, too, was the pressure that the passage of the Bill will necessarily impose on senior officers, who will have to make many important decisions in the administration of the legislation—especially in its early stages—and whose numbers cannot readily be increased even were there a willingness to make additional appropriations for this purpose.⁵ The public service unions, for their part, while welcoming the Bill, emphasised the strains it would impose on staff, not just at senior but at *all* levels, if appropriate new resources were not brought on strength. The Council of Australian Government Employee Organisations (CAGEO) put the point this way:

For the Government to introduce legislation, albeit limited legislation, without additional financial and staff resources, would in fact negate the value of the legislation, and importantly, from CAGEO's viewpoint, place quite intolerable strains on the limited labour resources available in times of difficult staff ceilings.⁶

6.3 Throughout our inquiry, and in making all the recommendations which follow in subsequent chapters, we have been thoroughly mindful of these considerations. It is pointless to generate proposals which, however attractive they

¹ Senator the Hon. P. Durack, Q.C., *The Freedom of Information Bill*; An address delivered to the Pharmaceutical Manufacturers Association, Press Release by the Attorney-General, Canberra, 21 August 1979, p. 9.

² Australia, Senate, *Freedom of Information Bill 1978: Explanatory Memorandum*, Canberra, 1978, p. 5.

³ *Transcript of Evidence*, p. 78.

⁴ Submission no. 47, incorporated in *Transcript of Evidence*, p. 849.

⁵ *Transcript of Evidence*, p. 868.

⁶ Submission no. 8, incorporated in *Transcript of Evidence*, p. 995.

may be in principle, are likely to be quite incapable of practical realisation by this or any other government in the immediately foreseeable future. Equally, however, we have proceeded on the assumption that the Government has, by bringing forward the Bill, clearly manifested its intention to make freedom of information work and that it has committed itself—and will continue to commit itself in the future—to providing the necessary resources to ensure that it does.

6.4 In this chapter we see our task as twofold. First, we endeavour to evaluate the resource implications of the Bill as it is presently drafted, taking into account both overseas experience and the estimates made by our own departments and authorities. Secondly, we attempt to assess the likely resource implications of those changes to the Bill that we propose in the course of this Report, in particular changes relating to the time within which access requests should be met and the matter of prior documents. We have been much assisted in these tasks by the Public Service Board, which at our request, and in consultation with us, carried out a survey of the resource implications of freedom of information legislation in thirty-seven departments and selected non-departmental agencies, the results of which survey are summarised in Appendix 4 (in this chapter called 'the Public Service Board Survey'). We are most grateful to the Board, and in particular its Chairman, Mr R. W. Cole, for their co-operation in this respect. Our conclusions on the resource question, necessarily expressed in fairly general terms because of the uncertain state of the data, are set out in paragraph 6.48 below.

Overseas experience

6.5 Here as elsewhere, overseas experience must be used with great caution by those who would draw lessons of any kind, positive or negative, about the likely impact of freedom of information legislation in Australia. Political systems, administrative practices, cultures and traditions are all different. Certainly there can be no ready or immediate comparability of likely Australian experience with that in the United States or anywhere else in terms of actual numbers of staff employed or actual dollar costs.

6.6 One conclusion in relation to resource implications that it is perhaps permissible to draw from overseas experience is that agency and departmental predictions of probable impact are likely to be somewhat exaggerated. In the United States, the one country for which we have some detailed resource documentation, this appears to have been the case. In respect to the United States Privacy Act 1974 (which deals with access to personal records as distinct from general government documents, and which is administered jointly with the Freedom of Information Act by the same personnel in most agencies) the Office of Management and Budget estimated that operating costs over its first four or five years would run at \$200-300 million per year. In fact, however, the cost of administering the Act in its first year of operation (September 1975-September 1976), excluding one-off commencement costs, was only \$36.59 million.⁷ In the case of the Freedom of Information Act itself, the comparable figure for 1975 was \$11.8 million although this has increased to \$20.8 million in 1976 and \$26 million in 1977.⁸ Such cost escalation as has occurred in recent years in the United States has been largely attributed to the pressures that have developed in a handful of particularly controversial agencies, notably the FBI and CIA, rather than across the

⁷ K. P. O'Connor, Submission no. 88, incorporated in *Transcript of Evidence*, p. 537.

⁸ Figures supplied to Committee Chairman by Dr H. C. Relyea, Specialist, American National Government, Library of Congress, Congressional Research Service.

whole spectrum of government activity. Certainly expenditures have varied enormously: a survey of federal law enforcement agencies conducted by the United States Comptroller-General, covering the three fiscal years 1975-7, showed that operating costs for the Privacy and Freedom of Information Acts over that period ranged from \$159 000, incurred by the United States Postal Department's Inspection Service, to about \$3.8 million incurred by the FBI.⁹ A similar pattern prevails elsewhere in the Executive Branch, with relatively high costs in some agencies being balanced against a number of others reporting 'negligible' expenses which were absorbed by normal operating budgets.¹⁰

6.7 While the figures quoted do convey an impression of the order of magnitude of reported freedom of information spending, their relative exactness is somewhat misleading. Mr K. P. O'Connor, who visited the United States in late 1978 to conduct research for the Australian Law Reform Commission's current privacy reference, reported to us his findings in this respect:

Overall cost is calculated by adding up various items (e.g. cost incurred in granting access, publication requirements, security and control, etc.). However, I was informed that agencies do not use well-defined or uniform criteria in determining the relevant items of cost. A good deal of discretion is left with the agency. Agencies were left largely to making their own calculations within the broad categories stipulated in the forms sent out by the Office of Management and Budget. It was considered that there had been a tendency to write-off to FOIA/PA compliance costs which would have been incurred, in any event, regardless of these laws. It was felt that the details provided by agencies *should* be treated with some caution. For example, an agency has sometimes shown the purchase of a computer as a FOIA cost, when in fact it had multi-purpose use. Again, personnel salaries were not assessed in a manner which had regard to how much of the officer's work was related to FOIA or PA and how much was not. Further, in reporting agencies are asked to assess their 'incremental' costs. But few had a clear 'cost base' from which to begin. On the other hand, some agencies had absorbed compliance costs and not reported any special costs attributable to those laws. (In 1977 two agencies had shown no costs, but recorded income from fees for copies provided under the laws leaving on paper a 'profit'.) My conclusion is that the costs as reported, despite their *apparent* exactness, tend to overstate the true situation.¹¹

These impressions are confirmed by other official sources we have sighted.¹² Not the least of the difficulties confronting anyone seeking to identify the net additional cost attributable to the Freedom of Information and Privacy legislation is the way in which, as Mr O'Connor noted, compliance costs that would have occurred anyway have been written down to it. The Comptroller-General of the United States, for example, reports the impression of one official from the Immigration and Naturalization Service (a very high request-volume agency) that 'about 90 per cent of their requests would have been received and answered even without the existence of the two Acts'.¹³

6.8 We would not wish it to be thought that there has been no criticism of the administrative and cost burdens associated with the United States legislation, or

⁹ United States, Comptroller-General, *Data on Privacy Act and Freedom of Information Act Provided by Federal Law Enforcement Agencies*, 16 June 1978.

¹⁰ H. C. Relyea, 'The Provision of Government Information: The Federal Freedom of Information Experience', *Canadian Public Administration*, vol. 20, summer 1977, p. 339.

¹¹ *Transcript of Evidence*, pp. 537-538.

¹² H. C. Relyea, *The Administration of the Freedom of Information Act: A Brief Overview of the Executive Branch Annual Reports for 1976*. Library of Congress, Congressional Research Service, Committee Document no. 61, pp. CRS-23, 24.

¹³ United States Comptroller-General's report, cited footnote 9, Appendix 1, p. 7.

no concern expressed at the rapidly escalating character of that cost burden, particularly in relation to the Justice Department and its associated agencies. But even a commentator like Allen Weinstein, who in a recent article records in elaborate and sometimes lurid detail the nature and extent of these and other criticisms of the legislation, concludes that 'support for the Act in Congress and the country remains strong' and 'few people would argue that it should be repealed or emasculated'.¹⁴ These impressions were confirmed by Senator Knight, himself a recent visitor to the United States, in evidence before us.¹⁵

6.9 A point which has not been overlooked in United States discussions is that the costs associated with the legislation, however great, pale almost into insignificance when compared with the amount spent on 'executive branch public relations puffery'.¹⁶ Mr O'Connor told us that he had been informed that the total spent by the United States Government in its information and public relations functions 'was estimated conservatively to be \$1000 million—i.e. forty times the reported Freedom of Information Act figure'.¹⁷ Perhaps the most important point of all to consider, however, when weighing up, in the United States or anywhere else, the cost implications of freedom of information legislation against its advantages, is that made by Dr Relyea:

And there is also the more philosophic argument: the maintenance of democratic practice requires money. If, indeed, the Freedom of Information Act contributes to the realisation of a democratic system of government, then the cost of its demise or diminution is the more troubling consideration.¹⁸

Expected utilisation of the Act

6.10 An almost universal uncertainty prevails on this basic question. The 1976 Interdepartmental Committee said that 'the work-load under any scheme for freedom of information is impossible to predict',¹⁹ and this is still a widely accepted view. In the Public Service Board Survey departments and authorities were asked:

On the basis of the Department's experience of requests for information at present, what is the anticipated annual number of requests under the Freedom of Information legislation?

The answers received to this and other questions are summarised in Appendix 4. In commenting to us on them, the Public Service Board stated that 'as expected, most replies are tentative, and in many cases admittedly based on little more than guesswork'.²⁰ The Department of Finance put succinctly a common response: 'There are too many unknowns to allow the impact of the legislation to be quantified with any precision'.²¹

¹⁴ A. Weinstein, 'Open Season on "Open Government"', *The New York Times Magazine*, 10 June 1979, p. 32.

¹⁵ *Transcript of Evidence*, pp. 2098–2115.

¹⁶ Relyea, cited footnote 10, p. 339.

¹⁷ *Transcript of Evidence*, p. 538.

¹⁸ Relyea, cited footnote 10, p. 339.

¹⁹ Australia, Parliament, *Policy Proposals for Freedom of Information Legislation: Report of Interdepartmental Committee*, Parl. Paper 400/1976, Canberra, 1977, para. 22.9.

²⁰ *Public Service Board, FOI Survey January–February 1979, Notes on Departmental Responses to 28 February 1979*, incorporated in Committee Document no. 41, para. 3.

²¹ Reply of 20 February 1979 by Department of Finance to Public Service Board Survey on resource implications of FOI Bill (PSB Survey) incorporated in Committee Document no. 41, p. 3.

6.11 The quantified estimates that we did receive, as to the likely number of additional requests that would be received by agencies annually, varied greatly. Broadly speaking they fell into four groups: (a) about 100—e.g. Attorney-General's, Industry and Commerce, Transport; (b) about 1000—e.g. National Development, Housing and Construction; (c) between 2000 and 20 000—e.g. Health, Primary Industry, Public Service Board, Veterans' Affairs; and (d) 100 000 or more—Australian Electoral Office, Employment and Youth Affairs, Immigration and Ethnic Affairs.

6.12 There is little doubt in our minds that a number of these figures, particularly those in the highest categories, represent a very considerable over-statement of the likely reality. The Immigration and Ethnic Affairs Department's postulated total of over 100 000 requests per year is a clear case in point. The figure looks somewhat implausible right at the outset when one notes that in the United States—a country some fifteen times larger than Australia in population terms—the equivalent agency, the Immigration and Naturalization Service, received in 1977 (the latest year for which we have figures available), only 26 486 requests under the Freedom of Information and Privacy Acts combined.²² Looking more closely at the assumptions on which the Australian Department's total is based, this impression cannot but be reinforced: what has been taken into account are 50 000 requests (out of a possible total of 300 000) from overseas applicants to immigrate who have been rejected at the preliminary check stage; all 20 000 recipients of ministerial letters rejecting appeals against initial decisions; all 500 persons whose applications for change of status are annually rejected; all 1000 rejected applicants for an extension of visitor permits; all 30 000 rejected overseas student applicants; all 150 refused applicants for grant-in-aid support; and 100 academic and media requests.²³ It is apparent that the Department has treated as the basis for its estimates the maximum conceivable number of possible requests rather than what is, on any view, the *likely* number of actual requests.

6.13 Another very high figure which we have difficulty in accepting at anything like its face value is the 86 000 requests per year estimated by the Australian Electoral Office to be its likely additional burden with respect to what are described as 'electors' roll/index inquiries' alone, which figure does not include an unquantified number of additional inquiries of a 'commercial' nature which the agency also expects 'to be flooded with': together these demands will, in the agency's estimate, require another fifty staff to handle.²⁴ It appears that the sole foundation for the extraordinarily high base figure is the agency's assumption that 'if . . . say 1% of electors each year demanded and the law provided for their inquiry to be answered, there would be 86 000 inquiries'.²⁵ Just why anything like this, or any other randomly chosen, number of electors could reasonably be expected to be stimulated by the passage of the Freedom of Information Act to make, in specific reliance on that Act, the kind of inquiry here contemplated, we are not told.

6.14 The only other agency which estimates an annual demand in the 100 000 plus range is the Department of Employment and Youth Affairs.²⁶ The estimates

²² United States Comptroller-General's report, cited footnote 9.

²³ Reply of 6 March 1979 by Department of Immigration and Ethnic Affairs to PSB Survey, incorporated in Committee Document no. 41, paras 4–11.

²⁴ Reply of 16 February 1979 by Australian Electoral Office to PSB Survey, incorporated in Committee Document no. 41, paras 10–16 and 20–22.

²⁵ *ibid.*

²⁶ Reply of 19 April 1979 by Department of Employment and Youth Affairs to PSB Survey, Committee Document no. 83, p. 6.

here (a maximum 500 000 in the first year, a minimum 100 000 in subsequent years), although frankly acknowledged by the Department to be based on 'crude assumptions', there being 'no information which provides any guidance on this matter' are intuitively more plausible given the existence of over four hundred thousand registered unemployed, many of whom can be expected as individuals to have more than a passing interest in their personal files. The Department anticipates that 'compared with the volume of work flowing from requests for personal records, inquiries about policy matters, statistics, etc., are likely to be almost insignificant'. It estimates, again we think realistically, that the great bulk of these requests would not be in writing, that 80% of them would not involve consideration of potentially exempt material, and that 'these "simple" requests could be dealt with by local office counter staff'.

6.15 We have not found it possible, or indeed believed it likely to be very productive, to undertake any kind of detailed analysis of the replies of all the thirty-seven departments and authorities who participated in our survey. Perhaps the most important point to emerge from the agency estimates, looked at as a whole, apart from the obvious uncertainty which prevails and the differing character and quality of the assumptions on which those estimates have been based, is the clear picture provided of the enormously varied impact that the Freedom of Information legislation will have. To fully appreciate that variability, it is necessary to look at more than simply the raw numerical data, however well founded the different estimates of likely request levels may be. Straightforward numbers may be a useful yardstick for departments and authorities of an essentially service-delivery nature, where most requests will be relatively simple applications for access to personal records. However they may be almost meaningless for agencies where most requests will be for policy-related material and where the potential application of various exemptions will need to be much more closely examined. Bearing in mind these considerations, we note that the particular agencies who believe—and for the most part we accept their assessments—that they will be under heavier pressure than most others are as follows: first, among the more service-delivery oriented departments, Employment, Social Security, Health, Veterans' Affairs, Immigration and the Australian Government Retirement Benefits Office; and secondly, among the others, Attorney-General's, Primary Industry and the Australian Taxation Office.

Expected staffing and other costs

6.16 Obviously estimates of the actual costs of the Freedom of Information legislation, in manpower and other terms, are going to be directly contingent on the expected utilisation of that legislation. Reflecting the differences of both experience and approach described above, agencies reached, predictably enough, many different conclusions when responding to our survey question²⁷ about the eventual impact of the legislation upon themselves. The task of initially compiling or updating the manuals and indexes required under clauses 6 and 7 was one for which estimates of additional staff required ranged from nil (most departments), to 10-15 man-years (Social Security, Public Service Board), to 40-plus man-years (Primary Industry), to an extraordinary 250 man-years (Australian Taxation Office). Estimates, where quantified, of the numbers of additional staff thought

²⁷ The question was, '(i) What is the number of people wholly or partly employed at present in preparing such manuals or other similar documents and in supplying information to the public? (ii) Is it anticipated that the introduction of the Freedom of Information Bill 1978 (as drafted) would require an increase in those numbers?'

to be required to process freedom of information requests in an ordinary full year fell into five broad categories: (a) nil or negligible—e.g. Defence, Treasury, Aboriginal Affairs, Administrative Services, Auditor-General, Industrial Relations Bureau; (b) under 10—e.g. Capital Territory, Housing, Industry and Commerce, Productivity, Australian Government Retirement Benefits Office; (c) 10-20—e.g. Attorney-General's, Public Service Board, Prime Minister and Cabinet, Transport; (d) 30-60—e.g. Health, Home Affairs, Veterans' Affairs, AGPS, Australian Electoral Office and Employment (for the last-mentioned, this is assuming 'low' utilisation: double that if 'high'); and (e) over 100—e.g. Social Security (320) and Immigration (125).

6.17 Again we have made no attempt to systematically analyse individual agency responses, or to aggregate total responses in either numerical or dollar terms: the assumptions on which such calculations would be made would be too uncertain, and variable, to be of assistance. A further point that must be acknowledged is that any such calculation would in any event inevitably conceal some of the real, even if hidden, costs that will necessarily be associated with the legislation, at least in its initial operation. The Treasury made the point quite strongly in evidence:

In the early stages, before the scope of the legislation becomes generally known and clear guidelines are established, we could well be faced with a spate of requests for what turns out to be exempt information. If this should happen, then the practical workings of the Department could be considerably disrupted for a time through having to divert numbers of staff from other duties to process the requests.²⁸

The Department of the Capital Territory argued to similar effect:

Without actual operational experience it is difficult to estimate the actual resources that will be required or indeed the precise nature of those resources. However, the Department believes they will be significant, for even if large numbers of staff are not involved, implementation of the legislation will certainly make additional demands on all senior officers.²⁹

6.18 There are other costs that will be associated with the introduction of the legislation, as to which we have not sought specific estimates, but which in many instances will be not insubstantial. In the first place, there is the accommodation and equipment costs that will be associated with the provision and improvement of reading rooms, copying facilities and the like. Secondly, there is the cost of developing and maintaining staff training programs, both within agencies and across the public service as a whole: we discuss this important issue in the next section below. Thirdly, there will be the costs associated with the central supervision and general monitoring of the legislation, primarily by the Attorney-General's Department (which has itself estimated that it will require five to six additional officers for this purpose. Fourthly, there will be the costs associated with the review and appeal procedures under the legislation: these do not appear to us to be likely to be very great under the Bill as it is presently drafted, but will assume some importance if our recommendations to greatly expand the available review and appeal avenues are accepted. We return to this matter below. At this stage, we say only that with respect to none of these matters do we regard the likely cost burden upon the Government as significant enough to justify any retreat from the concept of the Bill or the commitment to make it work.

6.19 There is a further general point that needs to be made about the staffing and other resources—and especially the *variable* nature of those resources—that

²⁸ Submission no. 124, incorporated in *Transcript of Evidence*, p. 1686.

²⁹ Submission no. 149, incorporated in *Transcript of Evidence*, p. 2221.

will be necessary to ensure the effective operation of the Bill. The certainty that the impact of the legislation will vary across the public service is in itself significant. In a sense, it provides the means of control which managers are seeking. The provision of adequate resources for the departments or authorities most affected is crucial, but this does not imply any need to provide substantial new resources throughout the whole public service. The demand which freedom of information legislation will make upon the public service will definitely not be the sum of all estimated demands; however we may adjust the estimates to take reality into account. We believe, on the contrary, that with effective management inside the public service, it will be the places where the demand is greatest that the relief comes easiest. The Government has given a commitment in introducing the Bill which will ensure its successful implementation. Although the Government has not promised to provide specific resources for freedom of information legislation, it has approved the allocation of some of the resources of the public service to the reform. We believe that the public service has the capacity to use this mandate with vigour and with success, and that it can do so, by and large, at less cost than critics of the proposed legislation assume.

Training and development

6.20 We have emphasised, and will continue to emphasise throughout this report, the crucial importance of public servants being adequately prepared to carry out the implementation of freedom of information. Staff development must take place at all levels. As the Canadian Green Paper said:

Basic to the successful administration of a statute would be the development of a commitment to and a sense of responsibility for the policy embodied in it, on the part of departmental personnel, from management to clerical staff.³⁰

6.21 We doubt, however, that adequate work is presently being done in this area. The unions are certain that it is not. For example, the Australian Clerical Officers' Association (ACOA) said to us:

The administration of the Freedom of Information Act will demand a workforce reasonably well instructed in the requirements of granting access to governmental information. The Executive appears to have adopted a decidedly flat-footed stance towards preparation for the administrative task ahead of it. There would appear to be no reason why, for training purposes, the principles of access embodied in the Bill, to the extent that they represent some liberalisation, should not already be in operation. No such policy has been announced. No training of staff is in progress.³¹

The Federal Secretary of CAGEO, Mr R. Gradwell, similarly said that:

a number of our unions have given the Freedom of Information legislation a reasonable amount of publicity in their journals, but when we look inside the Public Service and the government authorities, to the best of our knowledge there has not been any concerted attempt made to produce the simplest form of pamphlet outlining it to acquaint all staff with it . . . it seems to me to be perfectly reasonable . . . [to have] some internal publicity.³²

6.22 Staff associations naturally see these issues clearly. Their members may be pressed hard by the legislation unless the Government takes seriously the commitments it has given. The staff associations are supporters of strong legislation,

³⁰ Canada, Department of Secretary of State, *Legislation on Public Access to Government Documents*, Govt. Printer, Ottawa, 1977, p. 22.

³¹ Submission no. 42, incorporated in *Transcript of Evidence*, p. 912.

³² *Transcript of Evidence*, p. 1007.

but they do say that the great mass of public servants need some guidance and leadership from the more senior managers if it is to work effectively, or at all. Training and development, clearly, must not be undertaken only at the middle and lower levels of the public service: senior managers must also be taught to understand the legislation, to think about it, and to work through its implications for themselves and their organisations.

6.23 Some departments are making progress. The Department of Administrative Services, for example, considers that:

extensive education of Departmental officers in all facets of the legislation is required . . . to raise the awareness of officers of the implications of the legislation for Departmental operations. Training courses on more specific procedural aspects will be arranged . . . Consideration is being given to arranging training in the Department's regional offices, preferably with the use of audio visual aids to increase coverage and reduce costs.³³

The Department of Foreign Affairs has said that:

a substantial training program on this package of legislation (including the Ombudsman Act, the Administrative Appeals Tribunal Act and the Archives Bill) will have to be set up and maintained on a continuing basis. The Department considers that proper administration of the legislation will require a clear understanding of its provisions and constant attention if the individual's right of access to information, the public interest in exempting certain information from this right and due protection of the officers of the Public Service are all to be secured. Staff at virtually all levels may need at some stage of their careers to be aware of the implications of this legislation.³⁴

The Department of the Capital Territory also has said that:

To reduce the possibility of duplicated effort and the consequent inefficient use of limited departmental resources, there is an urgent need for action to develop information management techniques and training courses which are uniform throughout the Service and which will enable the Service to cope adequately with the new initiatives in administrative law.³⁵

There are not enough departments, however, whose thinking, let alone actual planning and action, has gone so far.

6.24 We do not anticipate that the implementation of a systematic training and development program, both inter-departmental (in which the Attorney-General's Department and Public Service Board would be primarily involved) and intra-departmental, would be especially costly. The development of officers to understand fully the spirit and letter of the Freedom of Information legislation is something which is ideally situated within the normal work routine. It is true that some special instruction in the subject will be necessary and more experienced officers must be brought into systematic contact with their less experienced colleagues. But these are matters well within the capacity of efficient officers to manage. There are, moreover, staff training and development units scattered throughout the public service which can be of great help. Officials in these units are an under-utilised resource, for the meaning of staff development is often vague and uncertain. With the active involvement of senior management, this can change. Putting freedom of information into effect gives a clear line of direction to training and development work. Doing this will have invigorating effects all round.

³³ Submission no. 141, p. 2.

³⁴ Submission no. 150, incorporated in *Transcript of Evidence*, p. 2385.

³⁵ *Transcript of Evidence*, p.2236.

6.25 It has been said that educational programs of any kind cannot yet be sensibly undertaken because the final shape of the legislation is not clear. While it is of course true that a great many detailed matters of substance and procedure in the present Bill may be subject to change before it is finally enacted—not least, we hope, as a result of this Report—we do not believe that there is any case at all on these grounds for postponing the commencement of staff familiarisation and training programs. The very act of comparing the Bill as it presently stands with our recommendations and discussion in this Report may well be a salutary and effective means of raising the issues in such a way that their complexity is fully appreciated. We will have occasion to emphasise throughout this Report that what matters most of all in implementing freedom of information legislation is that its basic underlying principles be understood, appreciated and sensitively applied; nothing is more likely to produce dispute and disillusion than the treatment of this legislation as a mere set of mechanical rules, capable of being memorised and applied by automata. While the training of automata may have to wait upon the emergence of precise programming instructions, the task of sensitising human beings to the general nature and implications of the task they will be performing is one that can commence immediately.

6.26 Recommendation: All agencies, and in particular the Public Service Board and Attorney-General's Department, should give urgent attention to the planning and implementation of programs to train and develop staff in freedom of information matters, it being neither necessary nor desirable that the commencement of such programs wait upon the passage of the legislation in its final form.

Commencement of the legislation (clause 2)

6.27 No consideration of the resource implications of the present Bill would be complete without some reference to the time period over which it is likely to commence operation. Because of the very considerable resources that will have to be devoted in a number of agencies to, in particular the compilation of manuals, indexes and guidelines pursuant to Part II of the Bill, the question of commencement is an extremely important one in resource planning.

6.28 Clause 2, as it is presently drafted, allows for complete flexibility in respect to commencement:

2. The several Parts of this Act shall come into operation on such respective dates as are fixed by Proclamation.

No time limits are fixed for the commencement of the Bill, or any part of it: this is left wholly within the hands of the Executive to determine. It is apparent to us that there will in fact be considerable pressure from within the public service to delay the implementation of the legislation as long as possible. The Public Service Board put the point to us in the following diplomatic terms, stating that it 'would support a reasonable period of grace between enactment and proclamation of the Bill to enable the Service to gear itself to meet the requirements of the legislation in its final form', although it did 'not offer a particular view on the length of time that would be appropriate'³⁶.

6.29 A number of submissions to the Committee have suggested that the Bill should specify a particular period within which it will commence operation. It

³⁶ *Transcript of Evidence*, p. 850.

was pointed out, for instance, by the Freedom of Information Legislation Campaign Committee that the *Administrative Decisions (Judicial Review) Act 1977*, which was assented to on 16 June 1977, has still not been proclaimed, the stated reason in that case for the delay being the preparation of regulations to implement the Act. Since regulations (that could be quite extensive) will have to be prepared to implement the Freedom of Information Bill on various matters such as charges and access procedures, it is feared that there may be a lengthy delay between Royal Assent and Proclamation into effect. The suggestion commonly made to us was that clause 2 should be amended to provide that the Bill will commence operation 12 months from the date of Royal Assent. It would still be possible, consistent with this approach, to provide for a staged introduction of different Parts of the Bill.

6.30 After considering the matter carefully we do not in fact propose to recommend any change to the language of clause 2, as we recognise the difficulty of forecasting in advance the exact date when a statute can commence operation. That process of forecasting is particularly hard to perform with this Bill, as it will require a marked change in the administrative procedures of some departments. Moreover, it is likely that there will be much interdepartmental consultation as to the form of the regulations and we expect that specialist advice will also be sought from such bodies as the Administrative Review Council. It may be inappropriate or unwise to schedule these activities to a predetermined timetable that is difficult to adjust.

6.31 But having said that, it is nevertheless our firm opinion that the Act should commence operation no later than 12 months from the date of assent. Although the Bill is yet to be enacted, the Attorney-General has announced clearly on a number of occasions the Government's intention to proceed with the legislation. There has already been a long lead-time, and the implications of the Bill should already be sufficiently clear for all departments and authorities as a result of general discussion of the Bill and of this Committee's hearings. Agencies, in our opinion, should be in a position to administer this Bill within 12 months of its enactment. Elsewhere in this Report we have sought to ensure that this will be administratively possible, by preserving for the time being both the existing restriction on the application of the Bill to prior documents and the 60 day time period in which requests are to be answered. Alterations to these provisions should be phased in as agencies become accustomed to the legislation.

6.32 There is no reason why different Parts of the Bill should not be introduced at different stages. We note in particular that, in Part II, clauses 6 and 7 each provide that the publication of the statements and indexes anticipated in these clauses will occur 'not later than 12 months after the commencement of this Part'.³⁷ We believe it to be appropriate, in the light of this built-in time lag, for Part II to be proclaimed earlier than other Parts of the Bill, and in fact to commence operation immediately upon assent.

6.33 Recommendations:

- (a) **While clause 2 of the Bill should not be amended to specifically so provide, the legislation should commence general operation not later than 12 months after its passage through the Parliament;**
- (b) **Part II of the Bill should be proclaimed immediately upon assent.**

³⁷ Clause 7 (2) (b).

Resource implications of proposed changes to the Bill

6.34 The discussions so far in this chapter about resource implications has proceeded on the basis of the Bill as it presently stands, with no assumptions at all being made about likely fundamental changes to it. Obviously, however, it is necessary to take into account the potential resource impact of the changes which we recommend elsewhere in this Report: to propose sweeping changes without giving due regard to considerations of this kind would be both irresponsible and more likely than not, fruitless. We have taken the view that, on balance, there are only three areas of proposed change where resource questions loom really large. These are the extension of the scope of the Bill to cover prior documents, the reduction in the time to be allowed for agency response to access requests, and the extension of review and appeal rights and procedures. Each of these questions is considered in the paragraphs which follow. While we do acknowledge that the various extensions we propose in the obligations to prepare and publish material under Part II, some of the procedural variations we propose in relation to Part III, and some of the rewriting of the language of exemption clauses in Part IV may all create additional pressures on staff in certain areas, we believe that their quantitative significance—when measured against the array of obligations already contained in the present Bill—is not such as to justify special concern.

6.35 *Implications of extension of Bill to prior documents.* In the Public Service Board Survey we asked departments and authorities the following question:

3. (a) To what extent does the Department anticipate increased demand for information under the Freedom of Information legislation if disclosure were to be required of past or existing documents?
- (c) What is the age of the material expressed in percentage terms (i) 0-5 years (ii) 5-10 years (iii) 10-30 years (iv) over 30 years?

The responses received to this question are summarised in Appendix 4. Although, by and large, they provide a very useful collection of information, particularly as to the amount of information of any real age that is held (in most cases surprisingly little), there is little point, because of the variable character of the answers, in attempting to tabulate this information in any aggregated form. There are, however, a number of general impressions which do emerge.

6.36 In the first place, here as elsewhere, agencies were quite unable to forecast with any real precision the possible effects on demand and workload if the present provisions (confining the operation of the Bill, with minor exceptions, to documents created *after* its enactment) were extended. None indicated an awareness of existing known demand for public access to prior documents that was not met by present arrangements, although some respondents (including the Department of Foreign Affairs, the Industrial Relations Bureau, the Department of Industry and Commerce, the Australian Electoral Office and the Australian Government Retirement Benefit Office), tentatively identified parts of the community which could have a particular interest in access to prior documents in specified areas. The main resource cost associated with extending access to prior documents, apart from the additional demand likely to be generated by the availability of a larger volume of material, was likely to be in relation to the excision of exempt material under clause 20: this process was thought likely to be time consuming, and would require careful judgment by senior staff. Certainly it was the case, almost without exception, that agencies felt that if access were extended beyond the current provisions of clause 10 (2) there would be 'considerable' additional resource costs.

6.37 A particular problem was identified by those relatively new departments which were the product of a considerable history of change of function: agencies such as Housing and Construction, National Development, the Industrial Relations Bureau and the Department of Finance are now responsible for records accumulated by several different predecessor departments, and would have to organise that material for inspection within current functional arrangements and according to current policies. Both these departments, and a number of those which have regarded themselves as traditionally 'non public', foreshadowed difficulties in coping with any significant initial demand for older documents.

6.38 We appreciate the force of these considerations and, in our discussion of the whole prior documents question, in Chapter 14, fully take them into account. We believe that there is a strong case to be made in principle for the extension of the Bill to prior documents generally, but modify our recommendations to accommodate the kinds of concern which agencies have expressed. Our proposals are, in short, that general retrospectivity should only apply in relation to personal records, which are for the most part easily retrievable and raise few difficult exemption questions. So far as general government records are concerned, we propose that the Bill should apply in the first instance only to documents up to five years old, with future extensions to this period being phased in as this becomes administratively feasible. Further, even the limited extensions with respect to prior documents which are proposed to be incorporated in the Bill are recommended to take effect only after 12 months from the date of proclamation. We believe that these proposed phasing-in arrangements will allow a full opportunity for the resource implications of any extensions to the scope of the Bill to be assessed in the light of actual experience, and necessary adjustments made accordingly.

6.39 *Implications of reducing agency response time.* This again was the subject of a question we specifically asked in the Public Service Board Survey:

4. What is the anticipated impact on staff resources if decisions on requests for access were to be notified within (a) 60 days, (b) 28 days, or (c) 14 days?

The answers to these questions are summarised in Appendix 4, and the whole matter is discussed at some length in Chapter 8 of this Report (see paragraphs 8.35–43).

6.40 Predictably, the bulk of the respondents were not confident of being able to meet a response time of less than 60 days (as currently provided) without significant additional resource costs. Most anticipated an unmeasurable, but probably significant, increase in the time of senior officers if a 28 or 14 day response time were introduced. Departments generally supported the existing 60 day provision with the comment that it would be in their interests to respond as soon as possible within this period; many drew attention to the appeal provisions of the Bill in relation to the response time. Many considered that responses to all requests within 28 or 14 calendar days could not be achieved within existing resources without detrimental effects on normal existing functional responsibilities.

6.41 As explained in Chapter 8, we have—despite the considerable number of submissions which pressed us to make drastic time reductions immediately—responded cautiously in this area, and with some sympathy to the administrative problems agencies are likely to confront, particularly in the early stages of the operation of the legislation. We have, accordingly, recommended that while there should be substantial time reductions these should be gradually phased in, with a

reduction to 45 days after two years and to 30 days after four years, and with any further reductions to await subsequent review. We make the further point that, subject to Parliamentary approval, even these initial reductions should be subject to waiver if circumstances genuinely demand it. It is our belief that the scheme we have recommended will, again, enable the as yet unknown resource implications of this proposal to be fully assessed before any drastic new demands are placed upon the system.

6.42 *Implications of proposed review and appeal procedures.* We do propose, later in this Report, that the existing review and appeal procedures provided for under the present Bill should be very much extended, particularly so far as the role of both the Ombudsman (discussed in Chapters 27 and 29) and the Administrative Appeals Tribunal (discussed in Chapters 27 and 30) are concerned. We have not been able to make any estimate of the establishment and operating costs that will be involved in expanding the Ombudsman's office, but we believe it not inaccurate to say that, relatively speaking, informal and conciliatory services of this kind can be delivered far more cheaply than any other comparably effective form of remedial assistance.

6.43 Nor have we been able to make any complete or worthwhile estimate of the cost to government that will be involved in the proposed extended jurisdiction of the Administrative Appeals Tribunal, although we do deal in Chapter 30 with questions as to the way in which the Government's cost burden is shared out among different agencies, and also the circumstances in which costs should be awarded to successful applicants against agency or ministerial decisions. One of the few relevant precisely quantified estimates we have received in this area was from the Attorney-General's Department, which indicated in its response to the Public Service Board Survey that an additional 5-6 staff members would be required in the Crown Solicitor's Division to handle Tribunal appeals arising from the public service generally.³⁸ Although the costs associated with the staffing and operation of the Tribunal itself, so as to enable it to deal with a wider range of freedom of information matters, will undoubtedly be significant (and the costs of litigating individual cases even more so), these costs should not be overstated. We believe that the role we propose for the Ombudsman will be a very important one in practice, serving in particular to keep a good many cases away from the Tribunal which might otherwise proceed there. Only experience will indicate the extent to which the Tribunal does come to be utilised in this area, but a massive initial injection of funds to expand the ranks of its members and staff will in our view be unlikely to be necessary.

Offsetting savings

6.44 Freedom of information should not be seen merely as an innovation which will consume resources. This is an important lesson of overseas experience which is applicable in this country also. If handled properly, it will free certain resources which should be seen as offsets against other costs associated with the legislation. The savings flow from better information-keeping and management within government. We do not say that these savings can be precisely estimated in advance, any more than can costs, but we do say they should be taken specifically into account.

³⁸ Reply of 20 March 1979 by Attorney-General's Department to PSB Survey, Committee Document no. 76, p. 5.

6.45 In Australia the off-setting savings which will become possible with the legislation are becoming more widely recognised. The Records Management Association of Australia, for example, congratulated the government for bringing freedom of information forward. The Association noted criticisms that the legislation would mean 'great pressure on registry staff' and other officers, and would 'demand great efficiency in registry standards for manual registries, EDP data bases and micrographics'. It argued however, that the new demands would 'force long overdue development of trained information managers', not only in relation to freedom of information generally but especially in making the Archives legislation effective.³⁹ The Australian Advisory Council on Bibliographical Services similarly supported the 'improvement of registries . . . [and] library activities' which the legislation would make possible.⁴⁰ The Victorian Government maintained that the legislation would promote 'long overdue development in records management and the development of a new "breed" of trained information managers'.⁴¹ Some Commonwealth departments made similar points, based upon their own experience. The Department of Trade and Resources, for example, described how it was engaged on a project 'directed to integrating all our information holdings' both to 'prepare for the implementation of the Bill when enacted and to improve our internal management of current information'.⁴² We support these statements, which pay regard to important problems of government administration.

6.46 Although freedom of information in legislative form is new to Australia, the public service which will be implementing it has been in existence for a long time. We believe that a good many of the resource costs of the legislation will in fact be found by the rearrangement and more effective use of resources already being used within the public service. Central attention should be directed in this respect towards the existing government information services, which as now constituted, consume a very great deal of money. When this question was last publicly examined, by the Coombs Royal Commission, the direct cost of the government information sections amounted in all to some \$51 million: early in 1975, some 800 staff were employed in special information sections in departments, and further large numbers were employed in the statutory authorities.⁴³ Agencies responding to our own question, asked in the Public Service Board Survey, as to the number of people employed at present in preparing manuals and supplying information to the public, confirmed that some hundreds of public servants are engaged in this work. We note with considerable interest that in 1978 the Prime Minister established a task force within his Department to examine government information services. It is important to examine the effectiveness of existing agency information systems—what information goes to the public, who distributes it, how it is delivered, at what cost and so on—because there are savings to be made in this area. The interaction between freedom of information and government information services generally has been acknowledged clearly enough within the government. As the 1976 IDC observed, 'part of the apparent "freedom of information" workload of departments could perhaps more properly be regarded as a continuation of existing departmental services of providing information to the public'.⁴⁴ We recommend that the task force to which we have referred

³⁹ Submission no. 127, p. 1.

⁴⁰ Submission no. 75, p. 16.

⁴¹ Submission no. 121, p. 6.

⁴² Committee Document 69, p. 2.

⁴³ Australia, Parliament, Royal Commission on Australian Government Administration (Dr H. C. Coombs, Chairman) *Report*, Parl. Paper 186/1976, Canberra, 1977, p. 351; cf. J. Hilvert, 'Towards Costing Government Information Services', *Rupert*, no. 5, October 1976, pp. 13–15.

⁴⁴ 1976 IDC *Report*, cited footnote 19, para. 22.9.

should take our findings and recommendations into account so that the procedures associated with freedom of information and with the provision of governmental information can be properly brought together and savings made.

6.47 Recommendations: Close attention should be given, in particular by the task force presently examining government information services, to the utilisation of existing government information and public relations resources in the administration of the Freedom of Information legislation.

Conclusion

6.48 This chapter has canvassed a number of matters which will be recurring themes throughout this Report. We have been concerned here less with the making of detailed recommendations—there are plenty of those elsewhere in the report and particularly in the chapters which follow—than with putting the resource question in its total context. The key points we have attempted to establish can perhaps be summarised as follows:

- (a) It is not possible to predict the resource consequences of the present Bill with any real precision at this stage.
- (b) By bringing forward the Bill, the Government has implicitly accepted the responsibility for providing the necessary resources to make it work effectively.
- (c) Agency estimates of the net resource consequences of the present Bill have a tendency to somewhat overstate the likely extent of the problem. Any inclination on the part of the Executive to rely on such estimates as a ground for either containing the scope of the legislation, or unduly delaying its operation, should be strenuously resisted by the Parliament and the community.
- (d) Agencies do not need to know with certainty all the demands which freedom of information will make upon them in order to begin to prepare for it. This is especially true of the need to train and develop staff so that they understand the spirit as well as the letter of the legislation.
- (e) Those changes we propose to the Bill which would have an immediate effect—in particular the rewriting of various exemption provisions and the establishment of more far-reaching review and appeal procedures—would not significantly increase resource demands.
- (f) Those changes we propose to the Bill which would undoubtedly have significant resource effects—namely its extension to prior documents, and the reduction of response time—have been recommended to be phased in rather than introduced immediately. By the time they are due to be effected, both government and Parliament will have ample evidence on which to predict and assess their resource implications.