

FOI for the NT

In an address to the Fannie Bay branch of the Country Liberal Party last month, in his capacity as President of the Bar Association of the Northern Territory, Colin McDinald QC called for an effective Freedom of Information Act for the Territory on the grounds that "people have the right to know."

"Unnecessary secrecy in government leads to arrogance in governance and defective decision making. The perception of secrecy has become a corrosive influence in the decline of public confidence in government. Moreover, the climate of public opinion has changed: people expect much greater openness and accountability from government than they used to."

With these words Her Majesty Queen Elizabeth II in December 1997 commenced the debate in the British Parliament on new Freedom of Information (FOI) legislation in the United Kingdom.

The words were used advisedly and after careful research. FOI legislation was one of the pledges leading to the election of the government of Tony Blair.

But these words ring true in the Northern Territory in 1999. Strenuous efforts to introduce effective FOI legislation have been ignored. There is a need for the government to modernise its relationship with the people. There is a need, and an ever increasingly expressed public desire, for the government to be open with the people of the Northern Territory and for the government to trust people with a legal right to information.

The recent experience of the debacle of the statehood referendum demonstrated how savage - yet mature - the people of the Territory could be. Effectively shut out from the constitutional reform process by a number of undemocratic and untrusting devices such as the sham of the statehood convention, the people acted in an understandable way. They said "no" to statehood. They said "no" to both major political parties. They said "no" to glossy pamphlets; calls to patriotism; and assurances that all would be fixed, if only they voted "yes". The people said "no". As one commentator put it: "It was as if at a children's party, the children rejected both ice cream and chocolate cake."

How the people of the Northern Territory reacted to being shut out of the

constitutional process and effectively disenfranchised in relation to their own political and constitutional future is a matter of significant recent political history. There are lessons to be learned. Most important of these lessons was the need for the government to show it has nothing to hide.

One of the plain lessons that emerge from the "no" vote to statehood is that the people of the Northern Territory want to be involved in the important processes which affect them and their children. A corollary of being involved in important political processes is for the people to be informed. To be informed the people need access to government information.

A refusal to be open with the people by government leads to a rejection of that government by the people. This is what we saw happen in the statehood referendum in October last year - the people resented being taken for granted and being denied proper access to the process. They objected to being rebuffed by both the CLP and the ALP.

Openness is essential to the political health of any modern democratic state. Openness is only achieved when a government has the foresight and the courage to trust the people with a right to be informed. A legal right to access to government information is fundamental to a mature democracy. A mature democracy is a fundamental prerequisite of any further grant of statehood.

The right and the freedom for citizens to access information is nothing new. The people of Sweden have had it since the 18th century. The people of that great democracy, the USA, have had access to government information since 1966; the people of France since 1978. The people of New Zealand, Canada and Australia voted by their national parliaments for FOI legislation in 1982. Every state in Australia and the Australian Capital Territory has FOI legislation. Not so the Northern Territory.

The reasons which guided the great democracies of the world and every other jurisdiction in Australia to have FOI legislation is clear. It was recognised that the quality of democracy was improved by having an informed citizenry. For the benefit of all, governments were potentially made more accountable.

The most thorough inquiry in Australia into the pros and cons of FOI

legislation was by the Australian Senate Committee established to report to the Senate in relation to the Federal legislation. That inquiry concluded:

"The essence of democratic government lies in the ability of people to make choices: about who shall govern or about what policies they support or reject. Such choices cannot be properly made unless adequate information is available."

The Australian Freedom of Information Act has perfect democratic justification - a person had a right to know rather than a need to know.

The principles of other Australian FOI legislation are simple. First government departments and authorities should make their structure and functions known to the public and publish the rules and the guidelines they apply in making decisions which affect the public. Secondly, citizens are entitled to access information held by government departments and authorities unless there are special reasons why the information should not be made public.

The Northern Territory needs to look at itself. It is time for a change. If the Northern Territory is to ever embrace statehood, the laws passed by the Northern Territory parliament providing for administrative justice are part of that necessary change. Administrative justice should be a right entrenched in the new state constitution.

It is intellectually indefensible that citizens in all other states of Australia should have the legal right to access to public information in respect of their government and the people of the Northern Territory do not.

We have heard the groans go up from some in the government that the real desire is simply to access personal information. Hence the hurried announcement of an access to information and privacy legislation by way of a ministerial statement on 22 April 1999. This goes only part of the way.

Similarly, noises are made that freedom of information legislation is just freedom from information. That sounds a clever play on words, but that is all it is, a play on words. The issue here is how mature a democracy is the Northern Territory prepared to be. What is needed is effective FOI legislation which includes

(continued on next page)

Cyberlex

by Jason Schoolmeester

**OK I'm on the Internet. Where do I go?
How do I find what I am looking for?**

To find information on the Internet you use an address (e.g. www.austlii.edu.au). If you already have an address then it is simply a matter of typing the address into the URL or address section of your browser. Alternatively, if you have 'bookmarked' the address previously, just click on the bookmark (see future article on bookmarking).

But, what happens if you do not know the address or you want to find other sites on a similar theme? Well, you use a search tool or engine. A search tool is an Internet site providing a means of accessing a database. These databases store Internet addresses and details of the information stored at these locations. When you conduct a search you are presented with a list of hypertext links to the 'hits' the search tool has found. The size of the Internet is increasing exponentially, and as such, no one tool can contain references to all the web pages on all the web sites throughout the world.

Your success in finding the information you want depends on how



you define your search parameters and which search tools to use.

There are two main types of search tools: Subject Directories and Keyword. Most of the mainstream search tools now provide a combination of subject directories and keyword. Subject Directories provide you with a "drill down" approach to finding your information. You start with a broad category and follow its link to sub-categories and continue this process until you are presented with a list of web sites or web pages. On the other hand, Keyword searching provides you with an ability to search for words, terms, and phrases regardless of the "category" of the web page.

Because not all pages are indexed in

any one database, how can you be sure you have searched all there is to search? The simple answer is you cannot. The best approach is to use at least two search tools. In selecting which type of tool to use, a good rule of thumb is to start with a subject directory tool (e.g. www.yahoo.com). This will usually provide you with a quick appreciation of what is available. Then, back your research up with the use of a keyword search tool to ensure a comprehensive search (e.g. www.altavista.com).

Here is a list of the most common search tools: www.yahoo.com, www.altavista.com, www.excite.com, www.lycos.com, www.hotbot.com, www.anzwers.com.au. Personally, I use the combination of Yahoo and AltaVista.

Operators to use:

AND this operator limits your search (e.g. negligence AND solicitor)

OR this operator expands your search (e.g. negligence OR solicitor)

Jason Schoolmeester is a legal practitioner at Parishes. He can be reached at jasons@legalnet.net.au (for those without email you can call on (08) 8948 1155).

FOI (continued)

access to government information as well as personal information held by government.

Of course, legislation needs to be balanced. The right of access to public information cannot be absolute. Some government information must remain confidential. FOI legislation for the Territory needs to strike the right balance. However, the legislation should not be a hollow shell which only pays lip service to the citizen's right to access government information collected and stored at public expense.

The British have opted for a substantial harms test. That is, the question needs to be asked will the release of a document or information cause substantial harm? This test (or one similar) can be provided as a public interest safeguard subject to judicial appeal or review. The community interest can be protected.

There will inevitably be areas of interest which may require protection: law enforcement, personal privacy,

commercial confidentiality, public and individual safety, the environment and information supplied in confidence.

The recent response of government was a disappointment. It fails entirely to deal with access to government information. The government should rethink its minimalist response to the ever widening calls for freedom of access to government information. I believe it is time for a change. I believe the people of the Northern Territory will expect and demand nothing less than effective and comprehensive FOI legislation which includes access to government information.

The argument that FOI legislation is "fine in principle, but doesn't work in practice", has been rejected by the Commonwealth government, by all the states and the ACT, the USA, Canada, France, the UK and NZ. It is indisputable that FOI has helped to improve public health and safety, prevent environment damage and improve the efficiency of government administration. Efficient and honest public servants have nothing to fear from public access to information

held for the benefit of the public.

The passage of an effective FOI Act for the Territory will signify an openness in government and a preparedness to trust the people. Above all, passage of an effective FOI Act will signify to the rest of Australia a developing political maturity in the Northern Territory. It will assist the people of the Northern Territory to make informed choices about how they are governed and by whom. An effective FOI Act will provide a clear standard of openness for government as a whole whilst retaining ministerial accountability to the Parliament.

It is time for a change. It is time for openness. It is time for trust. It is time for Territory citizens to be treated the same as governments all over the world treat their citizens. It is time for an effective FOI Act for the Northern Territory.

The Northern Territory Bar Association has long advocated sensible, responsible and effective FOI legislation. In the interests of the Northern Territory, the Northern Territory Bar will continue to contribute to a reasoned debate.