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Strangling Freedom of Information

The developing hostility of the Commonwealth Government to administrative law reform has reached new heights with legislation introduced on Budget night to make fundamental changes to the Freedom of Information Act, and with the as-yet-not fully detailed moves against use of the Administrative Appeals Tribunal. The proposed changes are even worse than those it unsuccessfully attempted to impose last year and which the Senate, soon after, rejected. Then it was a case simply so raising the ante on costs as to stuff many people from using their rights. This time, while the Government is doing this as well (and with even higher scales of fees) it is also changing a fundamental principle of FOI. In the result, effectively producing a return to the pre-FOI days of disclosure at discretion. Only a body with unlimited resources can now rely on the law enforcing disclosure.

The fundamental change is to introduce a fee, to be calculated at \$20 an hour, for all the time an agency takes in considering whether a document (already located at the consumer's expense) should be disclosed. The fee can incorporate consultation time, time spent poring through a document line by line looking for any imaginably arguable exemptions, the time spent in preparing copies with deletions, even the time spent in preparing statements of reasons for refusal of access. A person will be liable even if in the result there is no disclosure at all. Significantly, the Act gives no protection against a department's deliberate time wasting — already a feature of the system in some departments even without the imposition of costs, against inefficiency, which under the new system will be rewarded, or against abuse of the sort where a department simply decides to bluff someone out of the market by quoting an extortionate fee. Nor is there any effective process of reviewing fees, provided that a department actually spends the time involved.

The Government might answer that anyone suspecting abuse or inefficiency can complain to the Ombudsman. Unfortunately, however, the Ombudsman's office has been long complaining that it cannot meet its existing statutory functions under FOI with the resources the Government has given it.

Experience under FOI has shown that the process of appeal, whether internally or to the AAT, is very often successful in prising out documents which have been initially refused. That is, a person who stands by his rights will often get the result he should have got in the first place. Now, however, that person will have to pay and take some considerable risks — not only with high lodgment fees for appeals (and more fees for decision making time) but at the AAT, in the AAT, of having to pay costs if unsuccessful. Those on welfare benefits will be exempt. But only the very large corporation will now be able to take the risk.

Curiously, if there has been any evidence of abuse of the FOI system, it has been by groups who will still find it of advantage to use the system, at whatever cost. The major abuse has not been, as Senator Walsh suggests, by Parliamentarians and media, but by those taking advantage of administrative review to gain delays on meeting their obligations — persons fighting tax assessments and so on. If the stakes are high enough it will still be profitable.

The administrative changes introduced last

year have already significantly reduced the cost of FOI. A year ago, Senator Walsh claimed that FOI would cost \$20 million for 1985-86 unless changes were made. Even without the extra fees because of the Senate disallowance, this year's Budget papers estimated the actual cost at \$14 million, and this with some fairly fanciful estimates of establishment costs. And, even without the ridiculous extra charges, the further administrative changes proposed for this year could save another \$4 million — reducing the real cost of FOI to about 30 per cent of what it was three years ago. The idea that there is any substantial revenue to be gained (Mr Bowen estimated \$4 million this year as against an actual collection of \$100,000 last year) is totally false, and part of an attempt to make the amendments Supply-type legislation. Given that about 90 per cent of existing FOI requests are from individuals who will still be able to get access for nothing, this suggests that the average non-welfare FOI request would cost an applicant \$1400. It is much more likely that almost all requests outside the personal files area would evaporate.

There are two real continuing problems with FOI. The first causes the expense and provides the specious excuse for the second. It is that many departments have still not adapted themselves to the idea that they are publicly accountable and that the public does have a

right to know. They have not integrated FOI and administrative review into their system, so that when they receive a request, they treat it as a big thing rather than a part of their functions and responsibilities. Some efforts from Attorney-General's, and some examples from departments such as Veterans' Affairs which acknowledge that FOI actually helps it do its job, have reined in some of these tendencies, but there are still major savings to be made.

The second is more sinister. Once a political party becomes used to government, it finds the notion of public accountability a real nuisance. Why should it, it asks, have to answer the impertinent requests of Opposition politicians, journalists and lobby groups? Often, of course, it has something to hide as well. But the party cannot use these objections, which are just a little transparent, so the argument is advanced that the principle, though admirable, is too expensive.

But there are other interests, not least the public's. The legislation should be withdrawn. Mr Bowen should remember some of the fine words he made when in Opposition, that 'freedom of information is a basic democratic right and . . . lies at the heart of our democratic system'. Putting FOI effectively out of the reach of the public is not exactly the way the principle is put into practice.

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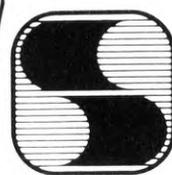
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