LEGISLATIVE RESEARCH SERVICE
DEPARTMENT OF THE PARLIAMENTARY LIBRARY

FREEDOM OF INFORMATION LAWS AMENDMENT BILL 1986

Date introduced: 19 August 1986
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney-General

DIGEST OF BILL

Purpose

To introduce application fees, increase search and retrieval charges and make other amendments to the Freedom of Information Act 1982 (the Principal Act) and the Freedom of Information (Charges) Regulations (the Regulations).

Background

This Bill was introduced as part of the 1986-87 Budget. The amendments proposed by this Bill are designed to reduce administrative costs and to increase revenue. Certain charges were proposed to be increased by the Freedom of Information (Charges) Regulations Amendment of 1985, including an increase in the search and retrieval fee to $30 per hour. These Regulations were disallowed in the Senate on 13 November 1985.

In his Second Reading Speech the Attorney-General noted that the 1984-85 operation and administration of the Principal Act cost the Commonwealth between $16 million and $19 million and preliminary figures for 1985-86 indicate a cost between $14 million and $16 million. The Attorney-General went on to observe that the present charging structure will only recoup less than one half a per cent of the administrative cost. It is anticipated that the measures in this Bill will raise some $4 million.

The difficulties in calculating the costs of Freedom of Information (FOI) are indicated in the figures presented by the Attorney-General, with the cost for 1984-85 being placed within a $3 million range, while that for 1985-86 being within a $2 million range. The difficulties in estimating the cost of FOI are also indicated in other varying estimates.
In 1985 it was estimated that the operation and administration of FOI for 1986 would be approximately $20 million. This figure was apparently approved by the Department of Finance in a submission to the Senate Standing Committee on Constitutional and Legal Affairs which stated the 1984-85 cost at $19.2 million and concluded that the 'Information on requests for access now suggests that FOI costs will continue to grow'. However, the Department's representative at the Committee admitted that this prediction was based on overheads being 85% of salaries whereas 'a good operating figure is more likely to be in the range of plus 50 to plus 60 per cent than at plus 85 per cent'.

In the Explanatory Memorandum to this Bill, the Attorney-General's Department, operating on the 60% figure, estimated the cost of FOI at $16.5 million in 1984-85 and preliminary figures suggested a cost of $14 million in 1985-86.

Main Provisions

Amendments to the Freedom of Information Act 1982

Clause 4 will amend section 4 of the Principal Act so that a "request" will become an "application".

Information concerning the functions and documents of an agency will no longer need to be published a second time if the information already appears in an annual report of the agency (clause 5 which will amend sub-section 8(3) of the Principal Act).

Currently an index of documents used by agencies in their decision-making processes has to be published in the Gazette. Clause 6 will amend sub-section 9(2) sub-paragraph (b) so that such an index will have to be made available at every Information Access Office.

References to "requests" will become references to "applications", and where appropriate, such requests will only be dealt with when accompanied by an application fee (clauses 7, 8, 9 and 10 will amend sections 15, 17, 18 and 19 of the Principal Act respectively). Clause 10 will also amend sub-section 19(3) so that after 1 December 1986 the shortest time period in which a request for information must be met will not be reduced from 45 days to 30 days.
Clause 11 will amend section 24 of the Principal Act by substituting a new sub-section (1) and inserting new sub-sections 1A and 1B. New sub-section 24(1) provides that the agency (or the relevant Minister) may refuse a request for information when the request is a multi-document request and, in the agency's opinion, the likely total work involved would substantially divert the resources of the agency from its other operations or substantially delay the processing of other requests. Proposed sub-section 24(1A) defines a "multi-document request" for the purpose of the section so that a number of individual requests for similar documents cannot circumvent the section. Sub-section 24(1B) provides that when considering what the "likely total work" involved would be, the agency or the relevant Minister will have to consider, amongst other things the number and volume of the documents concerned and the difficulty in identifying, locating and collating the documents.

Where a charge has been imposed, an application may be made to the agency or the relevant Minister to have the charge remitted (sub-section 30(1) of the Principal Act). Currently, when considering such an application the agency or the relevant Minister must consider whether giving access to the document is in the public interest (sub-section 30(2) of the Principal Act). Clause 13 will amend sub-section 30 of the Principal Act to remove this mandatory requirement. Clause 14 will insert a new section 30A into the Principal Act so that an application may be made for the remission of application fees and, when considering the application for remission, the agency or the relevant Minister will have to be satisfied that payment of the fee would cause the applicant financial hardship and the document sought relates to the applicant's personal affairs.

Where disclosing a document would involve a breach of confidence that document is exempted from the provisions of the Principal Act (sub-section 45(1)). This section was amended by the Freedom of Information Amendment Act 1983 so that the internal working documents prepared by an agency or a Minister could not be exempted (sub-section 45(2) of the Principal Act). Clause 15 will amend sub-section 45(2) of the Principal Act so that where disclosure of such an internal document would breach a confidence owed to a non-government source, then that document may be exempted.

The decision that an applicant will have to pay an application fee will not be the subject of an internal review and applications for internal review themselves must
be accompanied by an application fee (clause 16 which will amend section 54 of the Principal Act).

Clause 12 amends section 29 of the Principal Act so that that section refers to charges not application fees. By referring to amended section 29, section 55 will now only allow appeals to be made to the Administrative Appeals Tribunal from decisions concerning charges not application fees (clause 17).

The Attorney-General must report every year on the operation of the Principal Act and the report must contain a lot of detailed information from each agency and Minister (section 93 of the Principal Act). Clause 18 will amend section 93 so that the matters on which each agency and Minister will be required to supply will be simplified, basically, into the number of requests for information received, the number dealt with, the number of applications for internal review, the number of requests for review by the Administrative Appeals Tribunal, the number of requests to amend records and total of the application fees and charges collected.

The prohibition against imposing charges by way of regulation is omitted from section 94 of the Principal Act by clause 19. Clause 19 also amends sub-section 94(2)(b) so as to clarify that a charge will be a single hourly rate and not related to the classification of the officer doing the work.

Amendments to the Freedom of Information (Charges) Regulations

The name of the Regulations will be changed to the Freedom of Information (Fees and Charges) Regulations (clause 23).

The application fee to accompany a request for information will be $30 and the application fee to accompany a request for internal review will be $40 (new regulation 5 which is substituted by clause 25).

Requests for information relating to a claim for a benefit under the Seamen's War Pensions and Allowances Act 1940, the Social Security Act 1947, the Student Assistance Act 1973 and Veterans' Entitlements Act 1986 will generally not be subject to an application fee (new regulation 6 which is substituted by clause 25).
Because regulation 5 now imposes a $30 charge for an application for information item 1 of Part 1 of the Regulations will be deleted (clause 27). The charge for searching for and retrieving a document will be increased from $12 to $15 (clause 27). A further charge of $20 per hour will be provided for by new item 5 inserted into the Regulations by clause 27 and the charge will be in respect of the time a Minister or agency spends deciding whether to grant access or not. Parts III and IV will be omitted by clause 27.

The new application fees and charges will apply to requests received after the commencement of these amendments (clause 28).

For further information, if required, contact the Law and Government Group.

18 September 1986

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References

3. Ibid., p.1203.

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