

PART E

MONITORING THE OPERATION OF THE ACT

Administrative Monitoring

31.1 Once the Bill is enacted it will be necessary for agencies to monitor the operation of the Act with care. In this way they will gain an awareness of the ramifications of meeting their obligations under the Freedom of Information legislation. To some extent, this will simply provide a sound basis for future planning. But it is also likely that defects will become apparent in the day to day operation of the Act. Improvements to overcome such defects as emerge will need to be instituted by the Executive as required.

Departmental responsibilities

31.2 It is in the interests of agencies themselves that they keep the operation of the legislation under close scrutiny, especially in its early stages. Many departments have recognised this. The Department of Housing and Construction,¹ for example, said that it would organise within its central office a 'general advising role particularly on questions of exemption'. It would 'establish a system to record all requests for information, and monitor their volume, type, and main topics of interest, so that an efficient response system can be set up for the Department as a whole'. The Department of Foreign Affairs² suggested the creation of a section with its own registry to enable it 'to monitor the progress of applications and to facilitate the compilation of statistical data which may be required for the annual report on the operation of the Act (section 48 (2)), which may assist in identifying workloads arising from this legislation and which can provide the basis for the calculation of fees'. The Department of the Capital Territory³ also argued for 'a continuing process of review and evaluation of the legislation and, indeed, of the new processes of administrative law'. Its submission continued 'the Department would favour the introduction of the present legislation . . . on the understanding that it could be modified in the light of experience'.

31.3 In our view each agency should be free, especially during the early stages of the legislation's operation, to develop whatever supervisory techniques it decides are appropriate to its particular functions. Differences in function will result in widely different demands being made on agencies as a result of the Freedom of Information legislation. Accordingly, it is important to cater to these differences by allowing agencies initiative in the way they monitor the effects of the legislation upon their functions.

31.4 Nevertheless in order to enable the Public Service and the Parliament to make decisions about the effective discharge of agency operations under the legislation, and to ensure that an assessable case is made for the allocation of resources to agencies in order to fulfil these obligations, we consider that a good deal of information should be assembled in common form by agencies, both for internal and comparative purposes and to provide a basis for annual departmental reports to Parliament (as to which, see Chapter 32). As the Public

¹ Submission no. 135, para. 2.7.

² Submission no. 150, incorporated in *Transcript of Evidence*, p. 2384.

³ Submission no. 149, incorporated in *Transcript of Evidence*, p. 2237.

Service Board has pointed out, 'departments will . . . need to devise, in advance of the legislation becoming law, systems recording requests for information [which are] . . . accurate and consistent'.⁴ We believe that the information to be covered should include:

- (a) Requests made
 - number made, granted, rejected, partly-rejected, deferred
 - exemptions claimed
 - time lapse to decision
 - subject-matter of requests
 - reasons for rejection
 - use of internal appeals systems
- (b) Handling of rejections
 - nature of Ombudsman's involvement
 - cases on appeal: summary, outcomes
 - secrecy claims (under present clause 28)
- (c) Costs of freedom of information
 - fees received
 - attributed costs (staff time, etc.); extra staff positions sought and/or approved
- (d) Internal procedures
 - rules made about monitoring procedures
 - changes to fee schedules
 - disciplinary action related to freedom of information; summary figures; notes on more serious cases
 - innovations in information-handling associated with freedom of information
 - levels of delegation under the Freedom of Information legislation; changes during period
 - any special arrangements made to implement legislation; special problems experienced; efforts to encourage compliance
- (e) Staff training and development
 - instruction courses offered; duration and scope; who attended
 - proposed courses.

31.5 Recommendation: In order to facilitate the administrative monitoring of the Freedom of Information legislation and to provide a basis for agency reports to Parliament, agencies should, in consultation with the Attorney-General's Department and the Public Service Board, assemble in common form information relating to the following matters:

- (a) requests made;
- (b) the handling of rejections;
- (c) the costs of freedom of information;
- (d) internal procedures; and
- (e) staff training and development.

31.6 Through monitoring of this sort, we expect the quality of government administration to be noticeably improved. This will flow from specific factors such as the improvement of record and index systems on the one hand and

⁴ Submission no. 47, para. 3.10., incorporated in *Transcript of Evidence*, p. 847.

from such general factors as the awareness of a greater degree of public accountability on the other. We mention this because we are aware that many of the costs and difficulties which will be attributed to the Act would have arisen anyway. Nevertheless, insofar as the Act will be an undoubted catalyst to better administration, it will be convenient for agencies to collate such improvements and costs under the heading of freedom of information.

31.7 While acknowledging that some elements of general administration such as the cost of preparing manuals, indexes and guides and of operating improved information retrieval systems, will thus be attributed to the Act, we are confident that agencies will be as anxious as we are to quantify and assess as far as possible the precise impact of the Freedom of Information Act. Perhaps the most frustrating, if largely inevitable, aspect of departmental appearances before the Committee was the element of speculation as to the administrative impact of the legislation. We hope that this will be ended as a result of careful internal monitoring by agencies. Agencies will be able to call on the Attorney-General's Department, the Department of the Prime Minister and Cabinet and the Ombudsman for aid, advice and guidelines. We now consider the role of these central agencies in the effective functioning of the legislation.

Attorney-General's Department

31.8 The role of the Attorney-General's Department will be crucial to the effectiveness of the Act. Above all we expect the Department to place the Attorney-General in a position where he can argue effectively in Cabinet for such resources and such directives as may prove to be necessary for the implementation and continuing scrutiny of the legislation. The special responsibilities of the Attorney-General, as Minister responsible for this legislation, cannot be minimised.

31.9 In addition, we expect that the Department will help agencies with needs related to freedom of information. In particular, this will involve providing legal advice; but it will also involve meeting departmental requests for information and guidance of a more general nature. The Department of the Capital Territory, for example, said, in relation to the lists of documents to be made available for inspection and purchase under clause 7, that 'the Attorney-General's Department will have to turn its mind to the problem of how to co-ordinate . . . across departments and across the Commonwealth structure'.⁵ The Department itself has recognised its role and stated that it will, in association with the Public Service Board, 'conduct seminars and the like to inform Departments about the legislation'; and that it will engage in 'the preparation of guidelines and instructions to other Departments on the application of the legislation'.⁶ The Department also expects that other departments 'particularly in the early stages of the legislation, will frequently seek advice on whether documents are required to be made available'. We expect, from the role already played by the Attorney-General's Department in alerting agencies to their respective responsibilities under the Freedom of Information Act, that it has already gained their confidence in this area.

31.10 In addition, the Department has said that it contemplates that 'there would be a continuing monitoring of this and other legislation in the administrative law

⁵ *Transcript of Evidence*, pp. 2265-6.

⁶ Reply of 20 March 1979 by Attorney-General's Department to Public Service Board Survey on resource implications of Freedom of Information Bill, Committee Document no. 67, p. 4.

area'.⁷ Although the Department correctly sees its task as being carried out in conjunction with the Public Service Board and the Department of the Prime Minister and Cabinet, we emphasise that the role of the Attorney-General's Department in keeping the operation of the legislation throughout the Public Service under constant scrutiny is crucial to the success of the legislation. These tasks require preparation and the Department has recognised this. It has said that 'additional resources will be required . . . for providing advice and guidance to other Departments, in the preparation and conduct of appeals to the Administrative Appeals Tribunal and in the production of an annual report to Parliament on the operation of this Act'.⁸

31.11 Recommendation: The Attorney-General's Department should be provided with sufficient resources to enable it to undertake its responsibilities in implementing the legislation and monitoring its operation.

Department of the Prime Minister and Cabinet

31.12 The Department of the Prime Minister and Cabinet will have a role in offering advice to other departments about decisions which will have to be made under the legislation. As the Department has said, it expects 'referrals where requests are made which raise major policy issues, because of the Department's co-ordinating role in administration'.⁹ The Department will therefore also be required to offer advice to the Government on progressive amendments to the legislation. We would expect such advice to be publicly available. In addition, the Department will be required to advise other departments about what papers attached to Cabinet documents may properly be separable and so made available under the legislation without delay or review. The Secretary of the Department indicated that the Department expected to be consulted by other agencies on this matter and that the Department has been 'putting [itself] in a position to respond to the various obligations that [it] will have'.¹⁰ We believe that the Department will have an important part to play in making departmental practices consistent in this way.

31.13 Recommendation: The Department of the Prime Minister and Cabinet should, in its annual report to Parliament, report not only upon its internal implementation of the Freedom of Information Act, but also upon its advisory role as to the Act's implementation in relation to other agencies.

Public Service Board

31.14 The Public Service Board will also play a part, as we have indicated above, in referring to staff development and training and to the need to keep staffing levels under review. The Council of Australian Government Employee Organisations raised this issue during the course of its evidence to the Committee. It said that the Government should 'give a commitment that it will review staff ceilings in an appropriate measure, with that measure being related to the proven additional workloads generated. We see that as a review process which should perhaps be carried out at least every three months during the introduction period'.¹¹ The Public Service Board has already, on our behalf, conducted a survey designed

⁷ *ibid.*

⁸ *ibid.*, p. 1.

⁹ Paper from Department of Prime Minister and Cabinet to Committee, March 1979, p. 3.

¹⁰ *Transcript of Evidence*, p. 2293.

¹¹ *Transcript of Evidence*, p. 1014.

to elicit information from departments about the expected operation of the Act, and we have referred to this survey extensively in previous chapters. Once the Act is in operation we would expect the Public Service Board to ensure the most economical and efficient discharge by agencies of their obligations under the Act, so furthering its effectiveness. The Board has indicated that it would expect to be consulted by departments, along with other key agencies, on such matters as administrative and staffing arrangements. It stated that 'consequent staffing proposals would be handled by the Board in the usual way'.¹²

31.15 Recommendation: The Public Service Board should continue to develop special monitoring processes which will make possible an assessment of any addition workloads generated as a result of the implementation of the legislation.

The Ombudsman

31.16 In our view the Ombudsman has a highly significant role to fulfil in monitoring the effective operation of the Act. In Chapter 29, we have discussed in detail his role in advising agencies which need assistance in complying with their obligations under the Act. In this way, the Ombudsman will be able to ensure improved responses by agencies to their statutory obligations in keeping with the general method of operation of his office. In observing the nature of different cases as they arise throughout the Public Service, the Ombudsman will be well placed to offer useful advice to agencies which will necessarily have a more restricted view of the operations of the Act. He will be able to advise agencies both as to the emerging practices of other agencies and the difficulties which individual members of the community may experience in using the legislation. The Ombudsman will thus be in a position to advise on possible changes to agency practice and then, if necessary, on changes required to the formal structure of regulations and legislation.

31.17 Responsibility for assessing the effectiveness of the legislation in a continuing way will thus rest with a number of agencies. Our remarks in this chapter have been directed principally to self-assessment by agencies of the operation of the legislation. But ultimately that self-assessment must itself be scrutinised by the elected representatives of those whom the legislation is designed to benefit. We turn to this complementary and ultimate role of the Parliament in the next chapter.

¹² Submission no. 47, incorporated in *Transcript of Evidence*, p. 847.