

THE PARLIAMENT'S NEED FOR FREE ACCESS TO INFORMATION: POSSIBLE BARRIERS AND PRACTICAL SOLUTIONS*

By Rob Brian

Abstract: Legislators require free and easy access to relevant, accurate, timely and impartial information if they are to accomplish the difficult tasks they have been elected to carry out. The main obstacle to this is a lack of adequate funding. Funding is required to attract highly qualified and competent staff - both librarians and researchers - and to purchase relevant library materials. Parliaments can also legislate for legal deposit of materials published in the Parliament's jurisdiction. Parliaments can legislate to give special copying rights to members of Parliament in the performance of their parliamentary duties. Finally, the Internet provides a ready and growing resource for relevant information that is available free of charge.

In modern democratic societies the Parliament represents the will of the people. At least, that is the ideal. One can argue interminably to what extent that ideal is actually achieved. We can all think of Parliaments that have the appearance of being democratically elected, but are in reality little more than dictatorships. And, of course, there are countries where the results of democratic elections are simply ignored and the chosen leader is put under house arrest. In those countries nothing of what I am going to say will have much meaning. The Parliaments that I will be dealing with in this paper are those that are elected through a democratic process and where all the Members, whether they form the Government or are part of the opposition, truly represent all their constituents.

Newt Gingrich, the Speaker of the House of Representatives in the US Congress, has written: In a post-industrial era, the legislator's job is beginning to change from an inside-fixer who solved personal problems for constituents, toward a student-teacher who works and educates to solve the nation's problems.¹ The modern legislator does have to look after her constituents, otherwise she is not likely to get re-elected. But the voters also expect their representatives to solve the

* Paper delivered at the 63rd IFLA General Conference, Amsterdam, August 31- September 5, 1997

¹ Newt Gingrich, 'On Leadership', Futurist, July 13, 1995.

likely to get re-elected. But the voters also expect their representatives to solve the nation's problems, indeed the world's problems. The American economist and international development expert, John Korten, has remarked: People around the world are learning through experience that the survival of democracy itself may depend on a massive change in attitude in Western societies about the appropriate rights, privileges and powers of corporate entities. And that requires access to information. Without ready access to accurate and reliable information the legislator is what we call in colloquial English 'a lame duck', i.e. seriously handicapped in carrying out the task to which they were elected.

The Parliament needs access to information to generate and maintain public support, for once the people lose confidence in the parliamentary institution the way is open to revolution and/or anarchy. Subject to policies relating to privacy and security, the Parliament pursues a number of goals, including the development and dissemination of information, building support for the political system, providing services to all constituents, and enacting policy decisions into law.

The problems facing the modern legislature are many and complex. It is often the problems that are too difficult for the private sector that are thrown into the lap of the Parliament. Without ready access to relevant information Members of Parliament have no hope of keeping up with the rapid changes our societies are undergoing, nor will they be able to make the right decisions. It is not surprising, therefore, that most modern Parliaments spend a considerable proportion of their budgets on parliamentary information and research services. Those Parliaments that do not are at a serious disadvantage.

The fundamental barrier to a Parliament having access to information is a lack of adequate resources. Without adequate funding it will not be possible to attract qualified librarians and researchers to undertake the research that is necessary to deliver to the Members of Parliament information that is relevant, accurate, timely and impartial. A democratically elected Parliament deserves the best possible staff, because the people deserve the best possible parliamentary government. It may be necessary to offer somewhat higher salaries than the norm to attract highly qualified, dedicated staff. It may also be necessary to provide opportunities for ongoing training and development. In my own Parliament, for example, we encourage our research officers, who already possess one or more relevant degrees, to pursue higher degrees. The Library pays their course fees for Masters' degrees, each time a subject has been successfully completed, provided, of course, the higher degree is relevant to the research needs of the Parliament. Our environmental expert, for example, is pursuing a Master's degree in

Environmental Law. Our Senior Research Officer with a PhD in Political Science has just completed a Bachelor of Laws degree with First Class Honours. We have no doubt that this is money well-spent. The projects that these people undertake for their course are invariably such that they can also produce a relevant Briefing Paper or Background Paper for the Parliament. It is a win/win situation.

We also encourage our professional staff to attend relevant continuing education courses and conferences so that they remain up-to-date with the latest developments in their areas of expertise. We strive to maintain a staff training and development budget of \$25,000 per year in a total allocation of some \$2.2 million. Where such courses or conferences are held in Parliament House by other professional groups we try to secure some free places.

Of course, no matter how highly qualified staff may be they need access to a vast amount of relevant information whether it be held in-house or elsewhere. Again, it will depend on the size of the allocation for the purchase of library materials, as well as on the expertise of those who do the selecting of those materials, how good the in-house collection will turn out to be. But there are a few things that Parliaments can do fairly easily to ensure the supply of the most needed information.

Parliaments are able to enact Legal Deposit legislation.² In New South Wales the Parliament made provision for this by amending the New South Wales Copyright Act 1879 in 1952. In his second reading speech the Minister assisting the Premier stated:

The object of this bill is to provide that a copy of every book first published in New South Wales shall be supplied by the publisher free of charge to the Parliamentary Library of New South Wales ... within two months of publication.³

Similar provisions existed in Queensland and in South Australia, although those provisions now exist under Library Acts, rather than Copyright Acts. The Minister went on to say:

The cost to the publishers of complying with the provisions of this measure will not be great and the advantages that will accrue to the Parliamentary Library will be fully appreciated by honourable members.⁴

² See J. Lunn, 'Study on a model law for legal deposit', COMLA Newsletter, 1978 August, No 21, p 49ff.

³ New South Wales Parliamentary Debates, 12 March, 1952, p 5304.

⁴ Ibid, pp 5304-5.

The justification of this legal deposit provision was based on the need for Members of Parliament to have ready access to local publications in order to be able to answer queries from constituents over a whole range of subjects and, one assumes, to assist in informed parliamentary debate. As one speaker said:

The library of Parliament was established so that the representatives of the people could be fully informed on all matters affecting their constituents. Obviously it follows ... that honourable members should have ready access at all times to whatever information is provided in printed form.⁵

We have been fortunate in New South Wales in so far as most books published in Australia are, in fact, published in Sydney. As a consequence most of our Australian legal collection is received free of charge.

A weakness in the legislation is the reference to 'printed' material in its strict physical sense as the sole medium for information. This has obviously become a glaring anachronism. The definition of 'book' in the legislation would exclude sound and visual recordings and electronic information products, such as microforms, computer disks, CD-ROMs, including audiovisual/multimedia products, and on-line databases. Other Australian States, such as Tasmania, Victoria, Queensland and South Australia, have tried to broaden the definition of 'publication' to include microforms, audio-visual material, and CD-ROMs. It is doubtful, however, that any of those definitions will be found by a court of law to include information published via on-line databases.⁶ Despite these difficulties in drafting comprehensive legal deposit legislation, this is a valuable way to ensure that the Parliament has free access to important information.

The Copyright Law can be a significant barrier to Members of Parliament having free access to relevant information. In Australia we are fortunate that the *Copyright Act 1968* (Commonwealth) makes special provision for the needs of infringement for copying done for members of the Parliament to which the library is attached.

The Parliamentary Librarian may authorise another person to make copies on behalf of the Parliamentary Library for the use of a Member of Parliament. I have done this recently to enable officers of the Ethnic Affairs Commission of New South Wales to make copies of translated summaries of relevant newspaper

⁵ Ibid, p 5309.

⁶ For a full discussion of the issue of Legal Deposit and what would be required in the definition of 'publication' to capture on-line information, see the article by Vicki Mullen in APLA Newsletter, No. 13, May, 1995, pp 11-20. When she wrote this article Vicki Mullen was a Research Officer in the New South Wales Parliamentary Library. She has since taken up a position on the staff of the Legislative Council, the Upper House of the New South Wales Legislature.

Parliamentarians. Sections 48A⁷ and 104A⁸ exempt Parliamentary libraries from articles in the ethnic press, so that Members can become aware of the political issues that concern non-English speaking communities.

The Copyright Law Review Committee is currently working to try and simplify the rather complicated copyright law. Parliamentary Librarians have submitted to the Committee, not only that these provisions for Parliamentary Libraries should be retained, but that they should be extended to include electronic copying. No one appears to have suggested that these special provisions for members of Parliament should be removed. It seems to me that any country could insert similar provisions in its copyright law to enable members of Parliament to have free and easy access to required information.

Finally, there is a huge resource of free information available on the Internet. The only obstacle there is a possible lack of a personal computer, a printer, a modem, a telephone line, and a service provider. Provided one is able to obtain funding for these basic necessities, at a cost of between \$5,000 and \$10,000, it is possible to gain ready and free access to a vast amount of useful and relevant information. In the United States all officially published information is in the public domain, which means that it may be copied freely, republished, and so on. In Australia we have what is called 'Crown copyright', which means that the Government retains the copyright in officially published information. However, increasingly Governments are prepared to waive their copyright. In New South Wales legislation and law reports (or court judgements) may be freely copied and reproduced. These are now available on the Internet. Many jurisdictions have done the same.

A good place to start looking for information relevant to Parliaments is the Section's homepage at [<http://www.citec.com.au/iflaparl/>], which is being maintained by Nick Bannenberg, the Parliamentary Librarian of the Queensland Parliament. This site provides many useful links to other sources of information, such as the New South Wales Parliamentary Library's home page at [<http://www.parliament.nsw.gov.au/gi/library/liblinks.html>]. No doubt, other

⁷ *Copying by Parliamentary libraries for members of Parliament* The copyright in a work is not infringed by anything done, for the sole purpose of assisting a person who is a member of a Parliament in the performance of the person's duties as such a member, by an authorized officer of a library, being a library the principal purpose of which is to provide library services for members of that Parliament.

⁸ *Acts done by Parliamentary libraries for members of Parliament* A copyright subsisting by virtue of this Part [i.e. subject matter other than works] is not infringed by anything done, for the sole purpose of assisting a person who is a member of a Parliament in the performance of the person's duties as such a member, by an authorized officer of a library, being a library the principal purpose of which is to provide library services for members of that Parliament.

experienced users will have their own favourite starting point. We have provided the following links on our front page:

Links by Category to Internet Resources used by the Library

- **Internet Search Tools** used by the New South Wales Parliamentary Library.
- Politics and Government resources: **Federal, State** and **International** Links to political parties, Federal and State Governments, Election information, Australian and International Government Agencies, The British Monarchy, etc.
- Parliaments and the Executive: **Australian** and **International** Links to Australian and Overseas Parliaments and Legislatures, Parliamentary Affairs and Executive Government.
- **Current Hot issues** Currently includes the United Kingdom Election, Wik judgment⁹, euthanasia, the Commonwealth [of Australia] Budget, gun control, Western Australian Election results¹⁰, the 2000 Olympics and Internet censorship.
- Law and Legislation resources: **Australian** and **International** Law resources including Commonwealth, State and overseas legislation, Australasian Legal Information Institute, etc.
- General Information resources: **Australia** and **International** Includes resources such as the World factbooks, Australian general reference info, phone books, Australian Bureau of Statistics, Internet Glossary, etc.
- **News based resources** Includes the Sydney Morning Herald site, the Australian, Australian Broadcasting Corporation, CNN, Reuters Online, The Times, etc.
- **Other library services and resources** Australian Parliamentary Library, National Library of Australia, Australian National University, State Library of New South Wales, etc.

⁹ The Wik Peoples v The State of Queensland & Ors; The Thayorre People v The State of Queensland & Ors. This is the judgement relating to native land rights. The High Court of Australia decided that native land title was not extinguished by pastoral leases granted after white settlement, but rather that the two co-exist. The judgement is the subject of heated debate between pastoralists and Aborigines. The Prime Minister, John Howard, currently has a ten-point plan to resolve the difficult issue. The judgement can be found at: [http://www.austlii.edu.au/au/cases/cth/high_ct/unrep299.html].

¹⁰ The State of Western Australia had its State Election on 14 December 1996 with the following results: Liberal/National Party Coalition 62% of the seats; Labor Party 33%; and Independents 5%. Details of the election can be found at: [<http://www.waec.wa.gov.au/96results.htm>].

The links from this site lead to legal, political, parliamentary, and other information around the world. And, of course, it is of vital importance to all of us that we try to persuade our various legislatures to make their publications freely available on the Internet, so that we all have the opportunity to access this material free of charge. Some Parliaments think that they can make a healthy profit by charging for access to their materials on the Internet. In my view this is very short-sighted. The cost of publishing material on the Internet is almost nil compared to the cost of paper, printing, binding, postage, handling of invoices, and so on. So by publishing on the Internet Parliaments and Governments will, in any case, be saving considerable amounts of money. Since the materials are produced at the expense of the taxpayers, it should not be necessary to charge those taxpayers again for access to these materials.

The other side of this coin is, of course, that all citizens should have a ready opportunity to access these materials. In Australia most politicians will have access to the Internet. Governments are also making computers and Internet access available in schools and in public libraries. A well-informed electorate is more likely to elect a good Government. Well-informed legislators are more likely to enact sound legislation. There are barriers to ensuring free access to information, but these barriers are not insuperable. As Parliamentary Librarians we have a duty, indeed, a mission, to work towards achieving a society where all, citizens and those who have been elected to represent them, have ready and free access to relevant, accurate, timely and impartial information.

Rob Brian
Parliament of the State of New South Wales
Macquarie Street
Sydney NSW
Australia 2000
Fax: (612) 9231 1932
email: lbrian@parliament.nsw.gov.au