



THE NEW ZEALAND LIBRARY ASSOCIATION

CONFERENCE, HAMILTON, NEW ZEALAND

9 FEBRUARY 1988

"USER PAYS, LIBRARIES AND ACCOUNTABILITY"

THE NEW ZEALAND LIBRARY ASSOCIATION
CONFERENCE, HAMILTON, NEW ZEALAND
9 FEBRUARY 1988

USER PAYS, LIBRARIES AND ACCOUNTABILITY

The Hon Justice Michael Kirby CMG*

CONFESSIONS OF A FEDERATIONIST

Only a fanatical New Zealandophile would cross the Tasman, arrive after midnight, scurry to Hamilton, deliver this paper and return on the same day to Sydney, in order to sit in court the next day.

Some of you will know that I have previously suggested the federation of our two English speaking Parliamentary democracies. It will surely come, as Mr Gordon Bilney predicted to a recent conference¹. By this effort, I am simply endeavouring to prove how close our two countries are - even if it kills me!

My qualifications to address this conference may not be immediately apparent. True it is, judges are steeped in books. They are good customers of the law libraries at least. My special interest in library administration arose during the time I served on the Library Council of New South Wales and as President of the National Book Council of Australia. Lately, as Chancellor of Macquarie University, I have become aware of the tremendous problem which our libraries share because of the shifting terms of trade and the declining value of our

respective dollars, in purchasing power for overseas books and serials.

AUSTRALIAN MOVES TO "USER PAYS"

But I imagine that the immediate reason for the invitation to address you is an address I gave at the opening of Library Week in Hobart in September 1985. In that address² I reviewed a number of questions, particularly the vexed issue of "user pays" in the context of libraries. The speech received mixed reviews in the library community in Australia. The issue is a controversial one. I am not sure whether the Tasmanian government paid more than usual attention to my words. However that may be, in 1987 that government, facing a period of economic stringency, asked local authorities in Tasmania to increase their contributions to libraries from \$1.8 million to \$4 million in the next two years³. This request was made in August 1987. Local authorities protested, partly because of the timing, partly because of the difficulty of raising funds from ratepayers and partly on grounds of principle.

This development in Tasmania is not the only one of relevance to my subject in Australia. Libraries all over the country have been hit by the economic difficulties that face every level of government in this part of the world. Even if appropriations remain unchanged, the effective increase in the cost of books and serials from overseas has substantially affected the area of latitude which librarians of large and small libraries have in maintaining their current collections and in purchasing new material.

Other States have followed Tasmania. In Victoria, State and local government representatives began negotiating in August 1987 for changes to municipal library funding. The purpose of the envisaged change was to increase the amount that could be apportioned on a "needs and performance basis". But inevitably, this reduced the amount available as of right for the staple income of public libraries throughout the State⁴.

Faced by such squeezes and effective reduction in their capacity to maintain their collections, librarians, in some parts of Australia at least, have begun to talk more seriously about charging for services. This talk runs into immediate political and philosophical difficulties for politicians and librarians. The free public library system in Australasia is well entrenched. A Free Library Movement grew in all parts of our two countries in the 19th century. The "Free Public Library" in Sydney was opened in that name in 1869. The movement campaigned at all levels of government for the provision of free public libraries for the spread of information and literature to all citizens who were literate. At the core of the movement was the acceptance of the philosophical principle that information was the possession of all and that nobody should be denied access to information by the imposition of costs and charges. Such provision was one of the central functions of government - just as government provided other essential services. In my paper in Hobart, I traced the interesting way in which the free library movement supported the public and municipal libraries of Australia. Its

they will be acknowledged in the front of the books which are then purchased with their contributions⁶. According to one librarian the response had, as at August last year, been "outstanding". At least 5% of those approached had replied with donations of approximately \$25.00. But not everybody was happy. One pensioner, going under the endearing name of "Bookworm", asked, in a letter to the press, how pensioners could be expected to contribute money to buy books from their meagre allowances. And the writer then made this point:-

"Libraries are going ahead and starting a video lending service earlier this year, knowing cuts to government funding were inevitable. ...Videos are luxury items and if residents can afford to buy them, surely they can afford to buy or rent films they wish to view. Most pensioners and superannuated residents will never own a video, but spend many happy hours reading."

During 1988, throughout Australia, a special burden has been placed upon libraries by the demands that are being made for the celebration of the Bicentenary. Those demands fall heavily on the funds allocated by the Departments of the Arts⁸.

What are libraries to do in these circumstances? Given that the circumstances are unlikely to change in the foreseeable future and that the terms of trade look for some time to be unfavourable to Australia and New Zealand (thereby affecting the maintenance and expansion of their library) a point will be reached where the distinction made by "Bookworm" will surely have to be squarely faced. That may be an uncomfortable and even an unwelcome assertion. But it does appear that the writing is, by now, clearly on the wall. Indeed, at the end of December 1987, it was reported in the

Australian media that a draft report had been prepared on this subject by the Municipal Association of Victoria⁹. According to the reviews, the report suggests a move away from the free service and towards a "user pays" element at least in library funding as one of the recommendations for dealing with the problems of funding and the future planning and provision of novel services in the libraries throughout Victoria. A spokesman for the Association said that "while the user pays principle was envisaged chiefly for supplementary services offered by libraries, local government would have no option but to hit book borrowing as well unless a better long term funding deal was offered by the State Government"¹⁰.

Such media stories produced predictable reactions on the part of politically accountable representatives in local government. They were soon reported as saying that charges for book borrowers were "not on", although charges for other services "merited consideration".

In my own State, New South Wales, we are about to face a State election. In such an environment, it is not surprising that the politically sensitive question of charging for library services has not been raised by anyone. Obviously, libraries charge for photocopying of books and other materials. They charge for use of meeting rooms and like facilities. So it is no longer true to say that use of libraries, in the standard and ordinary sense that they are nowadays used, is absolutely free. Freedom in this context is like freedom in the context of s 92 of the Australian Constitution where it was guaranteed

that trade, commerce and intercourse between the states should be "absolutely free". Nearly a century of Federation has been spent by Judges and lawyers busily whittling away and redefining the "absolute nature" of that "freedom". So, I believe, in the years ahead will we see, on both sides of the Tasman, a whittling away of complete freedom in the use of library services. The challenge will be that of adhering to the fine basic principle of access to information for all in public libraries, whilst at the same time providing in a coherent and reliable way for the growth of library services and the use of the modern technology of communicating information.

THE ARGUMENT AGAINST USER CHARGES

It may be useful to catalogue¹¹ the arguments against user charges in public libraries.

- * Libraries provide "merit goods", ie those which are for the benefit of the consumer and for the overall good of the community. Free access to the services provided by libraries is a fundamental right of every citizen in a democratic society.
- * Fees would be discriminatory against low income and disadvantaged groups. Yet if "user pays" is applied rigorously, they would be the very groups likely to bear the greatest burden. If that happened, the risk must be run that an individual's access to information would be based on the ability to pay rather than the need of that individual to secure such access.

- * A further risk would be posed that libraries would place undue emphasis on revenue generating services in planning their future activities. From the provision of information and delight to those who presently use libraries, there would be a shift caused by economic pressure and resulting in a bias in the collections in favour of those who could afford to pay for them.
- * Citizens already pay (or have paid) taxation which indirectly supports libraries. To impose charges for what are basic services of general benefit to the community, would to impose a form of double taxation.
- * As fees were charged, the temptation, particularly in hard times, would be irresistible. It would be for governments to reduce general subsidies for libraries. This would exacerbate the tendencies mentioned above.
- * So far as the suggestion of distinguishing between "basic services" and "special services", critics point to the difficulty of drawing the line. In a modern community it would be erroneous to distinguish between information (including literature) in printed and electronic form. The valuable commodity, from the public's point of view is the information itself. The medium is irrelevant. Libraries should not be seen as, or consigned to become, old fashioned places of books. On the contrary, they should be in the forefront of technological change. The next generation will certainly expect libraries to provide electronic data as a "basic service" and not as something

forced to make a choice which the free provision of services may not demand of him or her. Inevitably, there is a distribution cost for such services. The only question is whether it should fall upon those who use them (at least sometimes) or should be picked up by the community as a whole. It is not immediately apparent why, for example, a large corporation using a library should do so at the expense of ordinary taxpayers. The only justification for so providing is the maintenance of a general principle for the greater good.

- * The existence of a sure flow of funds may provide insurance against the dull hand of uniformity and conformity which the new technology could bring. The spectre of the one universal data base for all government funded libraries is one which we should struggle to avoid. The best way of ensuring the survival of diversity at a time of technological pressure towards centralisation, is by ensuring a steady flow of funds sufficient to guarantee independence.
- * The strongest argument (and the most difficult to answer) is that fees would provide additional revenue to libraries which look like facing increasing difficulties in current economic conditions in securing revenue from traditional sources. Even those who are philosophically opposed to library fees are beginning to look at their necessity as the "less undesirable" alternative to the steady reduction of services. If libraries are successfully and relevantly

to join the 21st Century and if the price of doing so is the charging of fees to some users for some services, many librarians will regard this as preferable to the effective consignment of libraries to places of the previous technology of the print medium.

- * The very role of the librarian and of the library of the future is changing. As new information technology increasingly links every individual to unprecedented quantities of readily retrievable data in central data bases, the role of the library will increasingly become that of providing extra services. Or of guiding the individual who has not used the technology correctly. Thus for much information now only procurable in a public library, the technology will by-pass that facility. And for the extra services sought there will be, at least sometimes, a stronger argument for supplementary charges upon the user.
- * Supporters of the user pays principle point out that local government authorities already charge for other services. State and Federal Government now levy charges under Freedom of Information Acts. A dogmatic adherence to the free library principle may have been more appropriate to the age in which that principle was formulated when universal education, particularly at higher levels, was not firmly established.

CHARGES AS AN ATTRIBUTE OF ACCOUNTABILITY

It is not for me to resolve this debate for Australia, let alone for New Zealand. I am aware that the National Library of New Zealand has commissioned Price Waterhouse to undertake a strategic planning exercise for library services in the light of government moves in the funding of public services generally. I am also aware of the fact that some librarians feel threatened by moves towards increased accountability which would inevitably come in the wake of adoption of the user pays principle for some purposes. Whilst libraries provide a free core of books and basic services, it is largely left to librarians to judge the demands of the community. Where, however, fee based services were provided, there would be an inevitable tendency to compare the success of library facilities by the income derived by them from that provision. This would have some bad consequences. But it might have the beneficial consequence of increasing the effective accountability of librarians to the users.

At present that accountability is established by library boards which include citizens and community representatives as well as expert educationalists and librarians. But that is an old fashioned model for securing accountability.

In every profession, including my own, there have been significant moves in recent years to increase the accountability of important decision-making to the community being served.

I recently read an excellent paper by Mr E W Thomas QC of Auckland outlining the ways in which, within corporations, law and policy have moved towards increased accountability on the part of the governing bodies and the chief executives of companies¹². The old days, when the community was content to rely upon a board of directors of generalist skills, has passed. Mr Thomas, with characteristic acerbity describes this as the "amiable imbecile" doctrine¹³.

Similarly in the field of the public service. The old way by which when the public servant was accountable only to the Minister, and through the Minister to Parliament, was gradually seen to be a poor mechanism for the protection of individual members of the public against administrative wrongdoing or error. It was difficult to get a question in Parliament. Even when you did, the answer often obfuscated the issue and provided little relief. The courts were previously interested only in the procedures by which administrative decisions were made and whether they were lawful and fairly arrived at. The courts were not concerned with the substance and merits of the decision, or with the policy behind it. All of this has changed in recent years, in part led by New Zealand. The establishment of the Ombudsman in New Zealand and the success of Sir Guy Powles as the first English speaking Ombudsman, has led to the establishment of that statutory office throughout the world. As well, freedom of information laws, enhanced judicial review, statutory rights to reasons and the provision of improved tribunals for the review of administrative

decisions on the merits have all combined greatly to increase the accountability of the public servant to the public that is served. This is true in New Zealand as it is in Australia.

In the professions there has also been a trend towards greater accountability. Lay observers have been appointed to assist in the investigation of public complaints against lawyers, medical practitioners and other professionals. New legislation has been enacted to that end. In my own State there has even been passed a statute designed to increase the accountability of the judges where complaints are made about them¹⁴. This was highly controversial when proposed. But it has now passed into law. One litigant has even made a complaint against me which, happily, has been dismissed!

I list these changes in the case of company directors, high civil servants, other professions and even judges to make the point that librarians will not be immune from the demand for more effective accountability to the public for the discharge of their duties. Most of them are already subject to various forms of accountability. But for the daily performance of their duties, it seems likely to me that the introduction of charges for some services will increase accountability and provide objective norms by which that accountability can be judged.

WHAT IS AT STAKE? THE FUTURE DEFINITION OF THE PUBLIC LIBRARY

The important challenge for librarians in the years ahead will be to maintain their strong tradition of the provision of basic information, freely to the public; to resist any attempt

to consign libraries to books or to assign electronic data to others; and to define with precision any "super services" for which charges may be made lest, otherwise, such services are lost, for want of funds to the public libraries.

I suggested in Hobart that we should resist the notion (simple as it is for administrative purposes) that books should remain free but that access to computer terminals should be paid for. What we ought to be doing is searching for a new principle. It is simple enough to state that principle broadly. It is that the basic "core" information (and literature) should be available to every citizen (whether in books or in the form of the new information technology) free of charge. But drawing the dividing line between the "core" and the optional, between "basic" and "super" services is inescapably difficult. Things appear to be moving rapidly in Victoria and Tasmania. It is unlikely that the other States of Australia or the libraries of New Zealand will be immune from the same moves. The reasons for them are fundamentally applicable in every part of Australasia.

There are issues of law, library professionalism and high policy that have to be weighed in taking the steps ahead. Fundamentally, there is at stake the definition of the library service of the future, nothing less. If our public libraries are not to wither on the vine, it seems likely to me that they should be ready to take the plunge into a principled application of fees for particular services so that for some services at least, the user does pay. It would be a tragedy

indeed, in the age of an unprecedented information explosion and unparalleled technological developments relevant to the world of libraries, if they were left behind, stalwart and noble defenders of an admirable principle but one, the price of which, the community through its politicians was unwilling to pay. The new technology will increasingly change the very role of the librarian/information provider of the future. The role of the public library will also change, as I have said.

Like it or lump it, I believe that "user pays" for "super services" in public libraries is an idea whose time has come. What lies ahead is the hard part: defining the "user", specifying the "payment" and distinguishing the "super" from the "services".

FOOTNOTES

- * President of the Court of Appeal, Supreme Court of New South Wales, Sydney; Chancellor of Macquarie University. Formerly Member of the Library Council of New South Wales (1978-85).
1. G Bilney, reported NZ Herald, 3 December 1987.
 2. M D Kirby, "Libraries and the end of the new Feudalism", unreported address to the Library Promotion Committee of Tasmania, 20 September 1985.
 3. Hobart Mercury, 23 September 1987, p4.
 4. The Age, 14 August 1987, p19.
 5. *ibid*, p19.
 6. Melbourne Herald, 14 August 1987, p14.
 7. Melbourne Sun, 18 August 1987, p12.
 8. See eg Hon Race Matthews, the Age, 17 August 1987, p7.
 9. See eg Bendigo Advertiser, 30 December 1987, p1.
 10. *ibid*.
 11. I am grateful to Allison Crook, State Librarian of New South Wales, for material from which this section is derived.
 12. E W Thomas, "Corporate Governance-The Age of Accountability" in Provisional Administrator, December 1983, 203.
 13. *ibid*, 204.
 14. Judicial Officers Act 1986 (NSW).