



Express law *fast track information for clients*

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Freedom of Information reforms introduced into Parliament

Bills which, if passed, will extensively reform the *Freedom of Information Act 1982* and establish the Office of the Information Commissioner were introduced into Federal Parliament yesterday. Exposure drafts of the Bills were released in March 2009.

Broad reforms remain unchanged

The Bills introduced yesterday—the [Freedom of Information Amendment \(Reform\) Bill 2009](#) and the [Information Commissioner Bill 2009](#)—are broadly consistent with the exposure drafts. As contemplated by the exposure drafts, the Bills would effect:

- the establishment of the Office of the Information Commissioner. The Information Commissioner would head the Office of the Information Commissioner, have overall responsibility for FOI and privacy, and be supported by a new Freedom of Information Commissioner and the existing Privacy Commissioner
- a new publication scheme, replacing the provisions currently dealing with publication of information. The scheme involves the publication of certain mandatory information concerning agencies' operations, as well as a requirement to publish most information released in response to an access request
- a major reorganisation of exemption provisions to clarify the cabinet documents exemption; subject more exemptions, to be called 'conditional exemptions', to a public interest test; standardise the public interest test across those 'conditional exemptions'; and exclude certain factors from consideration when balancing the public interest
- a range of procedural changes including protections for public servants releasing material outside of the FOI Act, amendments to third party consultation processes, modifications to the structure and form of merits review, and a capacity for the Information Commissioner to declare FOI applicants vexatious in certain circumstances.

Changes from the exposure drafts

While the Bills introduced into Parliament are closely aligned to the exposure drafts, there are some important differences. The most significant differences are:

- The reforms will take effect on proclamation rather than on 1 January 2010 as originally envisaged.
- While aspects of the business affairs exemption will still be subject to a public interest test, those parts which protect trade secrets and commercially valuable information are no longer proposed to attract a public interest test.

- Applicants will have the option of applying directly to the Information Commissioner for review of a first instance agency decision on an access request, with internal review becoming optional rather than mandatory, as is presently the case.
- To be valid, an FOI request must specify that it is made under the FOI Act. This removes the risk of ambiguity that would have resulted from the abolition of the application fee for FOI requests.
- Agencies may, with the applicant's consent, extend the processing time for an FOI request by up to 30 days.
- The circumstances in which agencies may charge for access to documents under the publication scheme (including documents released under FOI requests) are clarified as being limited to specific reproduction or incidental costs in providing access.
- Agencies need not publish to the world material released following an FOI request if it is personal or business affairs information and publication would be unreasonable, or where the amount of deletions necessary to remove such information (or exempt information) would make publication impracticable.

For further information and advice concerning the implications of the proposals for Commonwealth agencies please contact:

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