



Express law fast track information for clients

14 May 2010

Freedom of Information reforms passed by Federal Parliament

The [Australian Information Commissioner Bill 2010](#) and the [Freedom of Information Amendment \(Reform\) Bill 2010](#) passed through Federal Parliament yesterday. These Bills establish the Office of the Australian Information Commissioner, usher in major reforms to the *Freedom of Information Act 1982* and also make important amendments to the *Archives Act 1983*. The reforms will take effect on proclamation, expected later this year, or six months after Royal Assent.

The reforms

These legislative reforms will upon commencement effect:

- the establishment of the Office of the Australian Information Commissioner. The Australian Information Commissioner, who is to be Professor John McMillan AO, will head the Office, and have overall responsibility for FOI and privacy. He is to be supported by a new Freedom of Information Commissioner and the existing Privacy Commissioner
- a new Information Publication Scheme, due to commence six months after the other reform measures, which will replace 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 Australian Information Commissioner to declare FOI applicants vexatious in certain circumstances
- important amendments to the *Archives Act 1983* so that over the next decade the time after which documents will be available for release to the general public will be reduced from 30 to 20 years after their creation, with Cabinet notebooks to be available after 30 years instead of the current 50 years.

Amendments moved by the Government

On 17 March 2010, following the tabling of the Senate Finance and Public Administration Committee report on its inquiry into the Bills, the Government moved certain amendments, which were agreed.

One of the most significant amendments is a change to the provision dealing with onus of proof on parties before the Administrative Appeals Tribunal (AAT), section 61. The new section makes it clear that if an agency or Minister applies for review of the Australian Information Commissioner's decision, the agency or Minister has the onus of establishing that the decision is not justified. If the applicant seeks review, the relevant agency or Minister has the onus of establishing that the Australian Information Commissioner's decision is justified. Thus the agency or Minister concerned will always carry the onus in AAT proceedings. The Australian Information Commissioner will not be a party to any such proceedings.

Other amendments include:

- a change to the name of the Information Commissioner, to now be known as the Australian Information Commissioner
- a requirement for members of the Information Advisory Committee to declare any conflicts of interest
- clarification of the kinds of decisions to disclose a document which a business may challenge
- consistent with the existing obligations to the AAT, the agency or Minister who has made an FOI decision is obliged to use the agency's or the Minister's best endeavours to assist the Information Commissioner to make his decision on review.

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

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