

# **FREEDOM OF INFORMATION AMENDMENT BILL 1995**

## **EXPLANATORY NOTE**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The objective of the Freedom of Information Amendment Bill 1995 (the Bill) is to ensure that all matter covered by the Cabinet and Executive Council exemptions is clearly exempt from disclosure under the *Freedom of Information Act* (the FOI Act).

#### **Reasons why the Proposed Legislation is Necessary**

It is in the public interest and essential to the efficient working of government, that government has the ability to deal with certain matters confidentially. Government operates through Cabinet and Executive Council direction. The amendments are necessary to remove any ambiguity associated with the Cabinet or Executive Council exemption. The objects of the FOI Act, as stated in section 5 of the FOI Act, recognise on the one hand, that the disclosure of particular information could be contrary to the public interest because disclosure would have a prejudicial effect on essential public interests, and on the other hand, the public interest in promoting open discussion of public affairs and enhancing government's accountability. The FOI Act also acknowledges the need to strike a balance between the competing public interests.

The amendments are an express recognition of the importance of the conventions of collective and Ministerial responsibility and the intention of the Government to state clearly that all Cabinet and Executive Council matter is exempt under the provisions of the Act.

**Estimated Cost of Implementing the Legislation**

There will be no cost associated with implementing the legislation.

**Consultation**

Consultation has been limited to agencies within Government.

**NOTES ON CLAUSES****PART 1—PRELIMINARY**

*Clause 1* provides the Act's short title.

**PART 2—AMENDMENT OF FREEDOM OF  
INFORMATION ACT 1992**

*Clause 2* provides that this Part and Schedule 1 amend the FOI Act.

*Clause 3* replaces sections 36 and 37 of the FOI Act. The amendments to s.36 safeguard the confidentiality of the entire Cabinet process. Section 36(1)(a) provides that all matter submitted to Cabinet is exempt. "Submit" has been defined in subsection (4) and will include the act of bringing documents to Cabinet. The section will ensure that all matter placed before Cabinet is exempt from disclosure. It removes absolutely any requirement to consider the purpose behind the submission of matter to Cabinet, the nature of the material put before Cabinet or the manner in which Cabinet treats the material.

New s.36(1)(c) provides that briefing material for chief executives as well as Ministers on Cabinet matter will be exempt.

New s.36(1)(e) prevents access to Cabinet decisions and any other matter which would disclose Cabinet considerations. It will also prevent access to

matter which would disclose the fact that Cabinet has considered an issue or matter which would prejudice the confidentiality of Cabinet considerations or operations.

Subsection (4) defines “consideration” expansively and includes noting (with or without discussion), decision, discussion and deliberation.

Section 37 (Executive Council Matter) is amended in the same way as s.36.

*Clause 4* inserts Part 7 into the FOI Act containing sections 110 and 111 which are transitional provisions.

Section 110 provides that the amendments made by the Bill operate retrospectively and apply to all applications made under the FOI Act, including applications for access, internal review and external review. The amendments made by the Bill will apply regardless of the date that the application may have been made. Subsection (2) will ensure that the amendments will continue to operate notwithstanding the expiry of Part 7 pursuant to s.111.

Section 111 provides that Part 7 will expire one year after commencement.

## **SCHEDULE 1—CONSEQUENTIAL AND MINOR AMENDMENTS OF THE FREEDOM OF INFORMATION ACT 1992.**

*Clauses 1-2* amend the definition of “document”.

*Clause 3* makes a minor amendment to s.35(2).

*Clause 4* amends s.42(3) so that the provisions relating to the issuing of certificates are consistent throughout the FOI Act.