

Freedom of Information Amendment (Open and Accountable Government) Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Freedom of Information Act 1989* so as:
 - (i) to provide for the appointment and functions of a Freedom of Information Commissioner, and
 - (ii) to entitle members of the public to be present at all meetings of boards of management of statutory corporations, and
 - (iii) to allow external review proceedings to commence without the need for internal review procedures to have been followed, and
 - (iv) to enable the Ombudsman to give access to an agency's document to a person who has applied to the Ombudsman for a review of the agency's conduct in relation to an application for access made by the person, and
 - (v) to make it clear that agencies have the burden of establishing that documents are exempt documents for the purposes of that Act, and
 - (vi) to provide that the fees and charges that may be charged under that Act are to set by regulation rather than, as is presently the case, by the Minister administering that Act, and
- (b) to amend the *Ombudsman Act 1974* so as to enable the same person to hold office as both Ombudsman and Freedom of Information Commissioner, and
- (c) to amend the *Statutory and Other Offices Remuneration Act 1975* so as to provide for the remuneration of the Freedom of Information Commissioner to be appointed under the *Freedom of Information Act 1989*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Freedom of Information Act 1989* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Ombudsman Act 1974* set out in Schedule 2.

Clause 5 is a formal provision giving effect to an amendment to the *Statutory and Other Offices Act 1975* set out in Schedule 3.

Schedule 1 Amendment of Freedom of Information Act 1989

Freedom of Information Commissioner

Proposed Part 1A (to be inserted by Schedule 1 [2]) contains provisions with respect to the appointment and functions of a Freedom of Information Commissioner (the **FOI Commissioner**).

Proposed section 12A enables the Governor to appoint an FOI Commissioner, and allows that office to be held by the Ombudsman.

Proposed section 12B states that the principal function of the FOI Commissioner is to supervise agencies in the fulfilment of their obligations under the Principal Act.

Proposed section 12C gives the FOI Commissioner the right to enter and inspect an agency's premises, and to inspect any document or thing on the premises.

Proposed section 12D allows the FOI Commissioner to give directions to agencies and their staff, and makes it an offence to refuse or fail to comply with such a direction.

Proposed section 12E allows the FOI Commissioner to submit reports to Parliament on any matter arising in connection with his or her functions under the Principal Act.

Section 6 (1) is consequentially amended by Schedule 1 [1].

Access to agency meetings

Proposed Part 1B (to be inserted by Schedule 1 [2]) contains a provision (proposed section 12F) that entitles members of the public to be present at all meetings of boards of management of statutory corporations.

External review proceedings

The amendments to sections 52 and 53 (to be made by Schedule 1 [3] and [5]) allow external review proceedings to commence without the need for internal review procedures to have been followed.

Ombudsman may give access to agency's documents

Proposed section 52 (8) (to be inserted by Schedule 1 [4]) enables the Ombudsman to give access to an agency's document to a person who has applied to the Ombudsman for a review of the agency's conduct in relation to an application for access made by the person.

Burden of establishing that documents are exempt documents

Proposed section 59C (to be inserted by Schedule 1 [6]) makes it clear that agencies have the burden of establishing that particular documents are exempt documents, or that particular matter is exempt matter, for the purposes of the Principal Act.

Fees and charges

The amendment to section 67 (1) (to be made by Schedule 1 [7]) provides that the fees and charges that may be charged under the Principal Act are to be set by regulation rather than, as is presently the case, by the Minister administering that Act. Section 67 (2) is consequentially repealed by Schedule 1 [8].

Schedule 2 Amendment of Ombudsman Act 1974

Schedule 2 amends the *Ombudsman Act 1974* so as to enable the same person to hold office as both Ombudsman and Freedom of Information Commissioner.

Schedule 3 Amendment of Statutory and Other Offices Remuneration Act 1975

Schedule 3 amends the *Statutory and Other Offices Remuneration Act 1975* so as to provide for the remuneration of the Freedom of Information Commissioner to be appointed under the *Freedom of Information Act 1989*.