



## Greg Barber MLC

State Member of Parliament for Northern Metropolitan Region

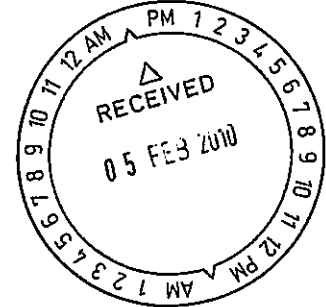
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Senate Finance and Public Administration Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600



To the Senate Finance and Public Administration Committee

### **Re: Freedom of Information Amendment (Reform) Bill 2009**

Thank you for the opportunity to make a submission on the above Bill. As a member of Victoria's State Parliament, I often find myself dealing with the Commonwealth's freedom of information regime because of the inter-governmental nature of Australia's federal system.

While I commend the proposed liberalising of the existing Act through measures in this Bill, there are a few issues I wish to bring to the Committee's attention. Namely, the commercially valuable information exemption and reversing the onus of proof.

My submission is informed through my current experience of attempting to obtain documents submitted by the Victorian state government to the Commonwealth entity Infrastructure Australia in 2008. It is the *Freedom of Information Act's* application in this inter-governmental context that I wish to highlight to the Committee.

In April 2009, I sent simultaneous requests to Victoria's Department of Transport and the Federal Department of Infrastructure, Transport, Regional Development and Local Government seeking Victoria's Project Prioritisation Submission to Infrastructure Australia. The documents were refused by both the federal and state departments, so the claim is currently proceeding against Victoria in its administrative appeals Tribunal.

Within my public interest statement, I pointed to the fiscal position of the Commonwealth as the dominant provider of State revenue [49.2% of Victoria's 2009-10 revenue has been derived from Commonwealth grants].<sup>1</sup> With the increasing role that the Commonwealth plays in funding investments in state programs, it is crucial that a culture of inter-governmental secrecy must be dissuaded wherever possible. The *Freedom of Information Act 1982* is vital to ensuring the public is not unreasonably locked out of agreements between governments. I believe these measures will better balance the demands between open governance and bureaucratic efficiency.

#### *Commercially Valuable Information*

Proposed s 47 protects commercially valuable information and there is no public interest override that could be used to displace these grounds of exemption. Victoria's Department of Transport is

<sup>1</sup> 56.4% of this figure is derived from non-GST sources. *Victorian Budget: 2009-10 Statement of Finances Budget Paper No. 4 May 2009* at 193.

currently relying on this equivalent ground in the state Act. Their claim to exemption is based on the assumption that they are engaged in trade or commerce. In order to prevent abuse of this proposed section it is important that if any government or agency wishes to rely on this ground, then it is classified a public interest conditional exemption such as the business (47G) and the economy (47J) exemptions. Otherwise a government agency might seek sanctuary from public interest considerations if any commercial dealings are involved between governments.

### *Onus of Proof*

Proposed section 61 intends the burden of proof to lie with the applicant instead of with the government agency in proceedings at the Administrative Appeals Tribunal. The ability of an applicant to mount a case as to why a document should be released without having full knowledge of its contents is unworkable. An applicant's successful argument would necessitate knowledge of the details within the disputed document – the very thing that is sought by the freedom of information request in the first place.

Australian procedural laws surrounding discovery prevent a litigant from “fishing” for documents, yet proposed section 61 would not only reduce an applicant to go fishing, but this guesswork would have to form the central basis of their claim. It is recommended to the Committee that the current burden of proof regime remain in place and proposed s 61 be removed from the Bill before its ascension into law.

Sincerely,

Greg Barber MLC