

# **Australian Greens**

## **Additional Comments**

The Australian Greens support reform of the Freedom of Information Act and welcome the arrival of these long awaited amendments. Reform to the current Act is long overdue. The effectiveness of the regime, and the ability of Australian citizens to access information about government decision-making, has been greatly diminished.

The Greens believe open and transparent government is a prerequisite to an effective democracy. We believe that creating a culture of openness at all levels of government is essential if the Australian people are to have any faith at all in the parliament.

### **Response to Committee Recommendations**

With regard to the Committee's report the Australian Greens wish to provide the following additional comments on each of the Committee's Recommendations.

#### Committee Recommendation 1

The Australian Greens support the amendment of section 49 of the Administrative Appeals Tribunal Act 1975 to provide that the Information Commissioner is an ex officio member of the Administrative Review Council.

#### Committee Recommendation 2

The Australian Greens believe that the issue of exemption from the Act are central to the successful operation of the Act and these issues are more appropriately dealt with by the Parliament rather than by a statutory officer. We also advocate that it is beyond the scope of the role of the Information Commissioner to decide such fundamental aspects of the legislation, after the bill has been passed.

The Greens do not believe that, simply because a document originated in a security agency, it automatically has implications for national security and therefore should receive automatic exemption from the freedom of information act. An extract from my second reading speech on the Freedom of Information (Removal of Conclusive Certificates and Other Measures) Bill 2008, and our subsequent amendments moved in committee of the whole, illustrates our concerns:

"In fact, many documents pass through any number of agencies, including some security and intelligence agencies, before they reach a minister. It is ludicrous simply to tick a box and say that if it has come through a certain department then it is in the national interest and should be excluded...

It was put to me in a conversation with a very senior legal counsel who has worked on many of the terror cases where these sorts of laws might come into effect that the security intelligence agencies need to be tightly circumscribed under law and not be exempt from the sorts of provisions that we see under the Freedom of Information Act. This is partly to their own protection, so that the laws and the boundaries within which they

operate are made clear. We must have a freedom of information regime that gives us the power to review the work of these agencies where possible, within the provisions as they exist to protect national security. We must have an FOI regime that gives us the flexibility to weigh the public interest in national security against the public interest in accountability and transparency because sometimes the latter will outweigh the former."

### Committee Recommendation 3

The Australian Greens will seek that the government respond to this issue before the bill is voted on in the Senate. We request that the government give consideration to the issues raised with respect to fees and charges and we do not support leaving consideration of this matter, which was of particular interest to many witnesses in this inquiry, to the drafters of the regulations.

### Committee Recommendation 4

The Australian Greens strongly support this recommendation that the proposed section 61, in item 42 of Schedule 4 to Part 1 of the Freedom of Information Amendment (reform) Bill 2009 be amended to remove the concept of an onus of proof from the Act. We take this opportunity to emphasise the Committee's view that this recommendation must be adopted before the passage of this bill.

### Committee Recommendation 5

The Australian Greens support the recommendation changing all references to the 'Information Commissioner' to the 'Australian Information Commissioner'.

### **Additional Areas of Interest**

In addition to these recommendations made by the Committee I would like to indicate additional areas of interest to the Australian Greens:

- the application of the public interest test to all exemptions, in particular to Cabinet notebooks and the exemption of whole agencies from the scheme;
- the fee and charges structure;
- leadership from the government and the culture of disclosure embodied in the Rudd Government including the proposed publication scheme not applying to ministers;
- the application of freedom of information laws to the parliament.

These areas will be examined in light of the Australian Greens desire to promote further accountability and transparency in government decision-making and activities.

**Senator Scott Ludlam**  
**Australian Greens**