

PART G
RECOMMENDATIONS

Resource implications

1. All agencies, and in particular the Public Service Board and Attorney-General's Department, should give urgent attention to the planning and implementation of programs to train and develop staff in freedom of information matters, it being neither necessary nor desirable that the commencement of such programs wait upon the passage of the legislation in its final form (paragraph 6.26).
2. (a) While clause 2 of the Bill should not be amended to specifically so provide, the legislation should commence general operation not later than twelve months after its passage through the Parliament;
(b) Part II of the Bill should be proclaimed immediately upon assent (paragraph 6.33).
3. Close attention should be given, in particular by the task force presently examining government information services, to the utilisation of existing government information and public relations resources in the administration of the Freedom of Information legislation (paragraph 6.47).

Directories, indexes and manuals

4. The list of matters required to be published under clause 6 (1) (a) should be rewritten to encompass, among other things:
 - (a) all possible institutional avenues presently existing (and which it is practicable to identify) for direct and indirect public participation in governmental decision making;
 - (b) facilities provided for physical access to agency information;
 - (c) informational literature available by way of subscription services or free mailing lists; and
 - (d) basic information about Freedom of Information legislation access procedures, including initial contact points for each agency (paragraph 7.14).
5. The matters to be considered by the minister under clause 6 (2) in approving the form in which information about agencies and their documents is to be published should be widened to include what is necessary to enable members of the public:
 - (a) to take advantage of existing avenues for participation in governmental policy formulation and decision making;
 - (b) to avail themselves of agency facilities and information resources; and
 - (c) to exercise effectively the rights conferred under the Freedom of Information legislation as a whole (paragraph 7.16).
6. The categories of 'internal law' documents described in clause 7 (1), and required (subject to exemptions) to be published, should be extended so as to clearly encompass:
 - (a) letters of advice (of precedential status) to persons outside the agency;
 - (b) statements of policy; and
 - (c) documents used in enforcing the law (as distinct from administering it) (paragraph 7.32).
7. Clause 7 (2) should be amended to require the publication, where necessary, of an index-updating statement at not less than three-monthly intervals rather than twelve-monthly as presently provided (paragraph 7.34).

Processing access requests

8. The words 'where practicable' should be omitted from clause 13 (4) in order to make unequivocally clear the responsibility of agencies to respond helpfully to persons making requests (paragraph 8.13).

9. The training given to public servants to equip them to implement the legislation should emphasise the underlying principles of the legislation and make it clear that the assistance they give inquirers should be given in an equitable, even-handed way without regard to the public servant's view of the quality of the application or of its likely outcome (paragraph 8.15).

10. (a) Preparatory work should commence at once on the production of a Freedom of Information Handbook, explaining the nature of the rights conferred by the Freedom of Information legislation and the procedures by which they might be exercised.

(b) Such handbook should be written in plain and accessible English, produced also—if necessary in abbreviated form—in the principal migrant languages, and distributed free or at a minimal charge.

(c) The Attorney-General's Department should have the responsibility for producing the basic handbook, but other agencies should consider, where appropriate, producing their own information brochures and other publicity.

(d) The basic handbook should if possible be available at the time of proclamation of the legislation, but delays in its production at that time should not be used as an excuse to delay such proclamation (paragraph 8.20).

11. For purposes of clarification, the requirement in clause 16 (1) (a) that a request be 'duly made' should be replaced by one that it be 'made in writing' (paragraph 8.23).

12. The Attorney-General's Department should, in consultation with the agencies most closely concerned, consider the arrangements which will guide transfers from one agency to another, and formulate guidelines for the effective administration of all aspects of clause 14 (paragraph 8.30).

13. The qualification in clause 15 (2) should be amended to require that compliance interfere 'substantially' as well as 'unreasonably' with the operation of the agency (paragraph 8.34).

14. (a) The Bill should provide for the reduction of the sixty-day time limit prescribed by clause 17 to forty-five days two years after the legislation has come into operation, and to thirty days four years after its operation.

(b) Further reductions in the time limit are in principle desirable, but should wait upon future reviews of the legislation's operation.

(c) Either or both of the initial time reduction steps should be capable of waiver only by an affirmative parliamentary resolution (paragraph 8.43).

Making the access decision

15. The Bill should contain an additional clause specifically exhorting agencies, when processing requests for documents, to do so with a view to making the maximum amount of information promptly and inexpensively available to the public (paragraph 9.5).

16. The Ombudsman should, where appropriate, draw public attention to misbehaviour or maladministration by particular officers in relation to freedom of information matters in his annual reports or in special reports, and such reports should be referred to the agency concerned and to the Public Service Board (paragraph 9.12).

17. (a) In the decision-making arrangements adopted by agencies for the handling of freedom of information requests, the general principle to be applied should be that authority to grant requests be delegated downward as far as realistically possible, while authority to deny requests should be confined to a small group of officers of at least Second Division status.

(b) Officers who are delegated authority to deny access requests should be specifically identified by title in annual departmental reports and in the material required to be published or made available under Part II of the Bill (paragraph 9.20).

18. Clause 22 should be amended to specifically include, among the matters of which the applicant must be notified, the procedures by which he might secure a review of the decision (paragraph 9.26).

19. (a) The Bill should be amended to provide that where an agency relies upon an exemption relating to security, defence or international relations (clause 23), Cabinet or Executive Council documents (clauses 24 and 25) or law enforcement (clause 27), it should be entitled to respond in a form of words which denies access to the document without confirming or denying the existence of that document.

(b) A response in these terms should be treated for the purposes of appeal to the Administrative Appeals Tribunal as a refusal to grant access (paragraph 9.34).

20. Clause 46 should be amended to place beyond doubt the principle that the original authors of defamatory material, whether within or outside the Public Service, should not incur liability merely by virtue of its being published under, or as a result of, the Freedom of Information legislation (paragraph 9.40).

21. Further to our recommendations in paragraph 10.19, the Bill should be amended to provide:

(a) that no action for breach of copyright shall lie against an officer for providing access to a copy of a document pursuant to the Bill; and

(b) that the giving of access to a person to a copy of a document shall not be taken for the purposes of the law relating to copyright to constitute an authorisation or approval of any 'copyright act' (as referred to in section 31 of the *Copyright Act 1968*) in relation to the document or its contents by the person to whom access was given (paragraph 9.49).

Meeting successful requests

22. (a) In order to enable public discussion of proposed access arrangements, agencies should announce the arrangements they propose to make under clause 18 before the regulations are gazetted and the legislation commences operation.

(b) Agencies should, where at all practicable, establish reading rooms to assist the public to peruse manuals, indexes and other information required to be made available.

- (c) The Bill should be amended to provide that where access is granted, pursuant to clause 18 (3), in a form other than that requested, a person should not be required to pay a fee greater than the fee that would have been payable if access were given in the form requested.
 - (d) Applicants should be entitled to inspect documents at their closest regional Commonwealth Government office without paying any copying costs that may necessarily be incurred by the agency to make such inspection possible (paragraph 10.8).
- 23.** Clause 18 (3) (c) of the Bill should be deleted, and the Bill amended to provide that the granting of access to the document in any form does not amount to a breach of copyright (paragraph 10.19).
- 24.** Clause 19 should be amended so as to:
- (a) delete the words 'or having regard to normal and proper administrative practices';
 - (b) require the notification of the intended deferment to be communicated to the applicant as soon as practicable but in any event not later than sixty days after the request is received (paragraph 10.23).

Charges and fees

- 25.** Charges for the search and retrieval of information should be fixed on a single set hourly rate basis, with provision for the agency to waive or reduce any such charge if it deems it appropriate in the circumstances (paragraph 11.17).
- 26.** No charge should be made for the time spent in examining material to determine whether access should be granted to it (paragraph 11.24).
- 27.** Agencies should be entitled to charge an applicant the identifiable direct on-cost incurred in supervising the inspection by him of material to which he is granted access (paragraph 11.26).
- 28.** Agencies should be entitled to charge applicants the reasonable costs incurred by them in supplying copies of paper documents, sound and video-recordings and similar materials (paragraph 11.29).
- 29.** Where it is anticipated that fees and charges in excess of \$25 are likely to be incurred by an applicant, a mandatory system of advance notification should apply before such charges can be levied (paragraph 11.31).
- 30.** Clause 49 should be amended to specifically provide for the imposition of fees and charges on a uniform basis as between different agencies. There should be no variation of scale charges as between different classes of applicants (paragraph 11.35).
- 31.** (a) Normally charges levied under the Bill should not be required to be paid until an affirmative access decision has been made;
- (b) Agencies should be entitled to require, where the anticipated fee chargeable exceeds \$25, an advance deposit of 25% of the anticipated fee; and
- (c) Where an applicant has previously failed to pay a charge under the legislation, agencies should be entitled to require an advance deposit of the full amount of the anticipated fee (paragraph 11.39).
- 32.** The Bill should explicitly confer upon ministers and agencies the discretionary power to waive or reduce fees where an applicant is impecunious or

where the provision of the information in question can be considered as primarily benefiting the general public. The exercise of such discretionary powers should not be subject to appeal to the Administrative Appeals Tribunal (paragraph 11.45).

Exemptions of agencies and classes of documents

33. The exemption of any agencies or classes of documents of an agency and the determination of whether a body is part of a specified agency should be achieved by listing them in a schedule to the Freedom of Information Bill with subsequent amendment to that schedule occurring by means of regulation taking effect only upon affirmative resolution of both Houses (paragraph 12.14).

34. The fact that an agency is engaged in competition with other non-government commercial enterprises should not of itself be a ground for exemption of the agency or a class of its documents under clause 5 of the Bill. Exemptions of entire commercial agencies or classes of documents should be made only after individual agencies have demonstrated, after experience of the operation of the Bill, that deployment of financial or staff resources made necessary by the Bill would significantly weaken their competitive position (paragraph 12.21).

35. The fact that disclosure of particular information may be reasonably likely to impair the ability of an agency to obtain similar information in the future should not invariably give rise to an exemption of the relevant class of documents. But this is a factor, which in all the circumstances of a particular agency, may warrant exemption of some classes of documents (paragraph 12.25).

36. Clause 4 of the Freedom of Information Bill should be amended so as to limit the exemption in respect of courts to documents of a non-administrative character (paragraph 12.30).

37. Paragraph (c) of clause 4 of the Bill should be deleted and any exemption of the conciliatory bodies listed therein be achieved in a schedule to the Bill in respect of their non-administrative functions only (paragraph 12.34).

Refusal of access on administrative grounds

38. Clause 13 (3) should be amended so that compliance with a categorical request can be refused only if it would 'impose a substantial and unreasonable burden on the operations of the agency or the performance by the minister of his functions' (paragraph 13.4).

39. Clause 15 (2) should be amended so that compliance with a request under clause 15 (1) for information not in discrete form in documents of the agency can only be refused if it would 'impose a substantial and unreasonable burden on the operations of the agency' (paragraph 13.11).

Prior documents

40. The Bill should be amended to specifically provide individuals with a right of access to prior documents affecting themselves (paragraph 14.12).

41. (a) The Bill should be amended to provide for a right of access to documents up to five years old at the time of proclamation, such right of access to be effective after one year from the date of proclamation.

(b) Further retrospective access should be phased-in by subsequent amendment to the Act as it becomes administratively possible until access is

available to documents within the thirty-year period between proclamation of the Freedom of Information Bill and the open access period provided in the Archives Bill (paragraph 14.19).

Security, defence and international relations

42. The criteria of prejudice to the security, defence or international relations of the Commonwealth employed in the Bill should be brought into line with the language of the *Protective Security Handbook* (paragraph 16.13).

43. (a) The national security classification 'Restricted' should be discarded as serving no useful purpose in alerting officers to the danger of disclosure.

(b) Cabinet documents should be distinctively marked but should not carry national security classifications unless such classifications are justified by their content (paragraph 16.18).

44. *The Protective Security Handbook* should be re-written to specify that a classification marking will indicate the portion of the document (if not all) to which it applies (paragraph 16.22).

45. A system for automatic declassification of national security documents should be instituted on an administrative basis (paragraph 16.26).

46. The following details should be shown on the face of all documents given a national security classification:

(a) the identity of the person who originally classified the document;

(b) the office in which the document originated; and

(c) the date at which declassification becomes effective or subsequent review must occur (paragraph 16.29).

47. Clause 23 (1) should be amended by deleting the redundant reference to public interest (paragraph 16.32).

48. Paragraph 23 (1) (b), which exempts any information or matter communicated confidentially by another government to the Australian Government, should be deleted (paragraph 16.34).

49. (a) Clauses 23 (2)–(6) and 37 (5) should be deleted so that an applicant denied access to a document pursuant to clause 23 will be permitted to appeal to the Administrative Appeals Tribunal.

(b) Such an appeal should be heard by a presidential member of the Tribunal (paragraph 16.38).

Commonwealth–State relations

50. The Bill should be amended to include a separate test of public interest in determining whether documents relating to Commonwealth–State relations should be exempt and to permit appeals on this exemption to the Administrative Appeals Tribunal (paragraph 17.11).

Cabinet and Executive Council documents

51. Clauses 24 and 25 should be amended to limit the scope of the conclusive exemption for Cabinet documents to documents containing opinion, advice or recommendations of a policy nature, thereby excluding documents of a purely factual nature such as consultants' reports, reports from advisory committees and so on (paragraph 18.9).

52. (a) There should be a right of appeal to the Administrative Appeals Tribunal under clauses 24 and 25 on the limited question whether a document is in fact a Cabinet or Executive Council document; and
 (b) The jurisdiction to hear such an appeal against a determination under clause 24 or 25 that a document is a Cabinet or Executive Council document should be exercised by a presidential (legally qualified) member of the Tribunal acting alone (paragraph 18.12).
53. (a) A special marking should be established to distinguish Cabinet documents and their attachments; and
 (b) The special 'Cabinet' marking should be used on attachment to Cabinet documents only where those attachments would be exempt from disclosure under clause 24 of the Bill (paragraph 18.16).

Internal working documents

54. (a) Sub-clause 26 (1) should be left unchanged.
 (b) The wording of clause 26 (3) should be clarified so as to provide that clause 26 does not apply to documents, or portion thereof containing purely factual material (paragraph 19.21).
55. Clause 37 (4) of the Bill should be deleted, in order that the powers of the Administrative Appeals Tribunal extend to reviewing a decision of an agency or minister that the disclosure of a document would be contrary to the public interest (paragraph 19.30).

Law enforcement documents

56. The word 'lawful' should be inserted in clause 27 (d) between the words 'disclose' and 'methods' so as to provide for the exemption of lawful methods or procedures of law enforcement only (paragraph 20.9).
57. Clause 27 should be amended to permit an agency to deny access to a document without conceding the existence of that document, whether or not the existence of a document is a matter of concern in any particular case (paragraph 20.17).

Prescribed secrecy provisions

58. (a) Clause 28 should be amended so that the list of secrecy provisions to be prescribed under the clause be contained in a schedule to the Bill;
 (b) Any amendments to the schedule after enactment of the legislation should be made by regulation expressed to take effect only upon affirmative resolution of both Houses of the Parliament;
 (c) All criminal provisions prohibiting or restricting the disclosure of information that are not prescribed under the Bill should be repealed; and
 (d) Where possible, other provisions which confer power upon a tribunal, body or person to regulate the disclosure of information should be brought into line with the criteria contained in the exemptions in the Bill (paragraph 21.13).
59. Urgent consideration should be given by the Government to the question of reforming section 70 of the Crimes Act so as to limit the categories of information that it is an offence to disclose and to establish procedural safeguards for any person who may face prosecution under that section. Any such reform of section 70 should preferably be enacted either before or simultaneously with the enactment of the Freedom of Information Bill (paragraph 21.27).

Adverse effect on agency operations

60. The words 'or would otherwise have a substantial adverse effect on the efficient and economical conduct of the affairs of an agency' should be deleted from clause 29 (paragraph 22.7).

61. The 'staff management interests' referred to in clause 29 should be expressed as 'personnel management and assessment interests' in order to accommodate a wider range of matters legitimately entitled to protection (paragraph 22.14).

62. A separate public interest criterion should be added to clause 29 to enable the review on public interest grounds of exemptions claimed under this clause (paragraph 22.19).

Privilege and contempt

63. (a) Sub-clause 31 (1) should be deleted as redundant; and
(b) Sub-clause 31 (2) should be amended to read 'A document is an exempt document if it is of such a nature that it would be privileged from production in pending or likely legal proceedings to which the Commonwealth or an agency is or may be a party, on the ground of legal professional privilege' (paragraph 23.9).

64. Clause 36 should be deleted on the grounds that it is redundant and contrary to the principle of the Bill (paragraph 23.21).

Privacy

65. The privacy exemption in clause 30 should be retained in its present form but it should be given particular attention when the legislation is subject to its first major review (paragraph 24.13).

66. The Bill should be amended to incorporate a system whereby rights are conferred upon Australian citizens and permanent residents to request the correction of inaccurate or misleading facts concerning personal information pertaining to the applicant (paragraph 24.18).

Commercially sensitive and other confidential information

67. Clause 34 of the Bill, exempting documents the disclosure of which would constitute a breach of confidence, should be deleted (paragraph 25.19).

68. The Bill should be amended to include provision for:

- (a) notification by an agency to the supplier of documents which come within the terms of clause 32 that the agency has received a request for access to those documents and seeks the supplier's view as to whether disclosure should occur;
- (b) further notification to the supplier where the agency after consultation has decided to go ahead with disclosure; and
- (c) a recognised right of Reverse-FOI by means of an appeal to the Administrative Appeals Tribunal by the supplier against intended disclosure (paragraph 25.32).

National economy

69. Clause 33 of the Bill, exempting documents the disclosure of which would be contrary to the public interest by reason that they would be reasonably likely to have a substantial adverse effect on the national economy, should be deleted (paragraph 26.13).

Internal review

70. The notice required to be supplied to the applicant under clause 22 should include particulars of the manner in which application for internal review should be made (paragraph 28.5).

71. Agencies should give consideration to the most appropriate internal review machinery for their own needs and take steps to ensure that such machinery is fully operational by the time of proclamation of the Act (paragraph 28.7).

72. For the purposes of freedom of information the Ombudsman should make it a practice not to investigate a complaint before the completion of internal review unless he is of the opinion, taking account of the urgency and importance of the complaint and the attitude of the agency concerned, that his intervention is warranted at that time (paragraph 28.11).

Role of the Ombudsman

73. For the purposes of the Freedom of Information Bill, the Ombudsman should not be precluded in any way by section 6 (3) of the Ombudsman Act or otherwise from investigating a matter which is also subject to review by the Administrative Appeals Tribunal (paragraph 29.9).

74. In relation to clauses 23, 24 and 25 of the Bill the Ombudsman's powers should include those of investigation and conciliation insofar as he is able, but not include (except in the case of Commonwealth-State relations matters) the power to inspect the documents for which exemption is claimed (paragraph 29.11).

75. For the purposes of freedom of information, ministerial decisions should be within the jurisdiction of the Ombudsman (paragraph 29.13).

76. For the purposes of freedom of information the Ombudsman should be empowered to act as counsel before the Administrative Appeals Tribunal on behalf of an applicant if he forms the opinion that his intervention is warranted. In forming his opinion he should take account of such considerations as:

- (a) the importance of the principle involved in the matter;
- (b) the precedential value of the case;
- (c) the financial means of the complainant;
- (d) the complainant's prospects of success; and
- (e) the reasonableness of the agency's action in withholding the information (paragraph 29.23).

77. The Ombudsman's powers in Reverse-FOI cases, in relation to people seeking to prevent the release of information which they have submitted to government, should include the power of investigation and conciliation but not include the power to act as counsel before the Administrative Appeals Tribunal on their behalf (paragraph 29.25).

78. The Ombudsman should be empowered to advise agencies, at their request, concerning their obligations under the Freedom of Information Act and, in his reports to Parliament, to offer suggestions for improvement and reform in relation to freedom of information in general (paragraph 29.28).

79. The relevant powers and duties should be vested in the Commonwealth Ombudsman for delegation to a Deputy Ombudsman appointed for freedom of information purposes (paragraph 29.31).

Proceedings before the Administrative Appeals Tribunal

80. For the purposes of freedom of information, the time within which an application for review must be made to the Administrative Appeals Tribunal should be extended from twenty-eight days to sixty days commencing on the day on which notice in writing of the decision is furnished to the applicant (paragraph 30.5).

81. Where an applicant, having pursued his right of review through the Ombudsman, proceeds for review before the Administrative Appeals Tribunal without representation by the Ombudsman, and he substantially prevails in his case, the Tribunal should be empowered, in its discretion, to recommend to the Attorney-General that costs be awarded in the applicant's favour (paragraph 30.15).

82. In deciding whether to exercise its discretion to recommend an award of costs, the matters to which the Administrative Appeals Tribunal is to have regard should include:

- (a) the public benefit;
- (b) the possible commercial benefit to the applicant; and
- (c) the reasonableness of the agency's action in withholding the document or (in the case of a Reverse-FOI action) deciding to release it (paragraph 30.17).

83. In relation to appeals under clauses 23 (relating to security, defence, or international relations) 24 and 25 (relating to Cabinet and Executive Council documents) and 27 (relating to law enforcement documents) the Administrative Appeals Tribunal should be empowered, if it regards it as appropriate to do so, to announce its findings in terms which neither confirm nor deny the existence of the document in question (paragraph 30.31).

Administrative monitoring

84. In order to facilitate the administrative monitoring of the Freedom of Information legislation and to provide a basis for agency reports to Parliament, agencies should, in consultation with the Attorney-General's Department and the Public Service Board, assemble in common form information relating to the following matters:

- (a) requests made;
- (b) the handling of rejections;
- (c) the costs of freedom of information;
- (d) internal procedures; and
- (e) staff training and development (paragraph 31.5).

85. The Attorney-General's Department should be provided with sufficient resources to enable it to undertake its responsibilities in implementing the legislation and monitoring its operation (paragraph 31.11).

86. The Department of the Prime Minister and Cabinet should in its annual report to Parliament, report not only upon its internal implementation of the Freedom of Information Act, but also upon its advisory role as to the Act's implementation in relation to other agencies (paragraph 31.13).

87. The Public Service Board should continue to develop special monitoring processes which will make possible an assessment of any additional workloads generated as a result of the implementation of the legislation (paragraph 31.15).

Parliamentary monitoring

88. Agencies should include in their annual reports to Parliament sufficient information concerning their operations in relation to freedom of information as will enable adequate parliamentary review (paragraph 32.4).

89. Clause 48 of the Freedom of Information Bill should be extended to expressly state the matters on which the Attorney-General, as Minister responsible for administration of the legislation, should report to Parliament. These should include:

- (a) the number of requests for the year per agency;
- (b) the number of refusals;
- (c) the number of deferments;
- (d) exemptions claimed under the legislation;
- (e) the secrecy provisions invoked under clause 28;
- (f) the level of persons refusing access;
- (g) information on appeals activities;
- (h) administrative manhours, costs and fees collected in relation to freedom of information requests;
- (i) average time for compliance;
- (j) extra staff positions sought and/or approved;
- (k) changes in administrative procedures occasioned by freedom of information;
- (l) guidelines issued by the Attorney-General's Department; and
- (m) a description of efforts by the Department to encourage compliance with the legislation (paragraph 32.7).

90. The Attorney-General's first report to Parliament should contain an extensive account of agencies' compliance with the publication requirements of clauses 6 and 7. Subsequent reports should detail agencies' efforts to update the information published or made available under clauses 6 and 7 (paragraph 32.9).

91. Clause 48 (1) should be amended to require the minister administering the Freedom of Information Bill to report to Parliament as soon as practicable after the end of each year ending on 30 June and in any case no later than 31 October (paragraph 32.11).

92. The Ombudsman should report to Parliament on the operations of his office in relation to freedom of information as part of his annual report to Parliament and by way of special reports to Parliament concerning freedom of information as required (paragraph 32.13).

93. The operation of the Freedom of Information legislation should be subject to review by the Senate Standing Committee on Constitutional and Legal Affairs three years after the first proclamation of the legislation (paragraph 32.21).

The scope of the Archives Bill

94. The open access period defined in clause 3 (7) of the Archives Bill should remain at thirty years (paragraph 33.16).

95. (a) Part V, Division 1 of the Archives Bill should be amended so that no category of records is excluded from the open access provisions of the Bill.

- (b) The Director-General of the Australian Archives should be given express power in the Bill to enable him to organise all Commonwealth records so that the Archives can respond to requests received pursuant to the Bill (paragraph 33.29).

96. Clause 31 of the Archives Bill, which contains the exemptions, should be dealt with in the following way:

- (a) paragraph 31 (a), protecting defence, security or international relations, should be retained;
- (b) paragraph 31 (b), protecting information obtained in confidence from other governments, should be deleted;
- (c) paragraph 31 (c), protecting Commonwealth–State relations, should be deleted;
- (d) paragraph 31 (d), protecting the financial and property interests of the government, should be amended by the addition of a phrase providing that information referred to in that paragraph is protected only if disclosure would be contrary to the public interest;
- (e) paragraph 31 (e), protecting pending or likely legal proceedings involving the Commonwealth, should be deleted;
- (f) paragraph 31 (f), protecting information where disclosure would constitute a breach of confidence, should be deleted;
- (g) in paragraph 31 (g), protecting law enforcement, sub-paragraphs (i) and (iv) should be redrafted so that they are identical with the comparable paragraphs in the Freedom of Information Bill;
- (h) paragraph 31 (h), protecting personal privacy, should be retained; and
- (i) paragraph 31 (j), protecting commercial or financial information, should be amended so that it is consistent with clause 32 (1) (a) of the Freedom of Information Bill (paragraph 33.45).

97. Clause 35 should be amended to provide:

- (a) that it is mandatory for the Director-General to provide a copy of a document withheld from public inspection pursuant to clause 35 if in his opinion this can be done without detriment to the preservation of the record; and
- (b) that details of any decision by the Director-General pursuant to the clause should be tabled at a meeting of the Advisory Council on Australian Archives (paragraph 33.48).

98. Clauses 32 and 37 (4) of the Archives Bill should be amended so that a certificate issued by a minister in respect of a document is not conclusive, but can be reviewed by the Administrative Appeals Tribunal in the same way, and to the same extent, as any other decision by the Australian Archives classifying a document as exempt from public access (paragraph 33.51).

Procedures under the Archives Bill

- 99.** (a) Power should be conferred upon the Administrative Appeals Tribunal to review the amount of a fee imposed on access to documents under the Archives Bill; and
- (b) Clause 33 of the Archives Bill should be amended to provide that the arrangements made by the Director-General in consultation with the responsible minister pursuant to clause 33 (1) for the review of records shall be recorded in writing and tabled before the Advisory Council on Australian Archives (paragraph 34.4).

100. When the Archives is considering a request for special access to documents made pursuant to clause 39 (2), the Archives should also consider the question whether the documents could be released generally to the public or to other special applicants (paragraph 34.8).

101. Clause 39 of the Archives Bill should be amended to provide that the following matters will be tabled by the Director-General at a meeting of the Advisory Council on Australian Archives:

- (a) details of all decisions made pursuant to clause 39 (2) either granting or refusing to grant special access to records; and
- (b) arrangements approved by the Prime Minister, pursuant to clause 39 (2), for regulating special access to documents (paragraph 34.11).

102. (a) Where it is clear from the Australian National Guide to Archival Material that a record is exempt, an applicant who seeks access to that record should be permitted to seek an internal review of the decision pursuant to clause 38 of the Archives Bill without being required to make an initial application for access to the document;

(b) The Archives Bill should be amended to require the Australian Archives to make a decision on any request for a document within sixty days of receiving the request; and

(c) The Australian Archives should be required to notify an applicant who has been refused access to a document on the ground that it is exempt of the right to seek an internal review of that decision under clause 38 of the Bill (paragraph 34.14).

103. The Archives Bill should be amended to make it clear that no residual discretion is conferred upon the Administrative Appeals Tribunal to order that an exempt document be released (paragraph 34.17).

104. Powers should be conferred upon the Ombudsman in relation to the matters arising under the Archives Bill similar to those which we recommend (in paragraphs 29.9, 29.11, 29.13, 29.23, 29.28) in relation to freedom of information matters (paragraph 34.22).

105. The Archives Bill should be amended to provide that the Australian Archives shall not permit or approve the destruction of a Commonwealth record until the proposal to destroy the record has first been notified to a meeting of the Advisory Council on Australian Archives (paragraph 34.28).

106. The administration of the Archives Bill should be reviewed by a parliamentary committee after the Bill has been in operation for three years (paragraph 34.30).

Report

The Committee having examined the matter referred, and having considered the evidence given and submissions received, now reports back to the Senate.

ALAN MISSEN
Chairman

The Senate
Canberra
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