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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 19 August 1986

(Attorney-General)

FREEDOM OF INFORMATION LAWS AMENDMENT BILL 1986

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

A BILL

FOR

An Act to amend the *Freedom of Information Act 1982* and the Freedom of Information (Charges) Regulations, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Freedom of Information Laws Amendment Act 1986*.

Commencement

2. This Act shall come into operation on the fourteenth day after the day on which it receives the Royal Assent.

PART II—AMENDMENTS OF THE FREEDOM OF INFORMATION ACT 1982

Principal Act

3. The *Freedom of Information Act 1982*¹ is in this Part referred to as the Principal Act.

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Interpretation

4. Section 4 of the Principal Act is amended—

(a) by omitting “a request” from the definition of “request” in sub-section (1) and substituting “an application”; and

(b) by adding at the end the following sub-section:

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“(8) For the purposes of this Act, where regulations for the purposes of this sub-section declare that an application fee is applicable in respect of an application under sub-section 15 (1) or 54 (1), there shall be taken to be an application fee in respect of the application.”.

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Publication of information concerning functions and documents of agencies

5. Section 8 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

“(3) The information to be published in accordance with this section shall be published by including it—

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(a) in the annual report of the agency to the responsible Minister of the agency relating to the activities, operations, business or affairs of the agency; or

(b) if there is no such report—in the annual report of the Department, or a Department, administered by the responsible Minister of the agency relating to the activities, operations, business or affairs of the Department.”.

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Certain documents to be available for inspection and purchase

6. Section 9 of the Principal Act is amended—

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(a) by omitting paragraphs (2) (b) and (c) and substituting the following paragraphs:

“(b) cause to be prepared by a day not later than the relevant day in relation to the agency, and as soon as practicable after preparation to be made available, for inspection and for purchase by members of the public, at each Information Access Office, a statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, available in accordance with paragraph (a) and the place or places where copies may be inspected and may be purchased; and

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- (c) cause to be prepared within 3 months, if practicable, and in any case not later than 12 months, after the preparation of the last preceding statement prepared in accordance with paragraph (b) or this paragraph, and as soon as practicable after preparation to be made available, for inspection and for purchase by members of the public, at each Information Access Office, a statement bringing up to date the information contained in that last preceding statement.”;
- (b) by inserting after sub-section (2) the following sub-section:
- “(2A) For the purposes of sub-section (2)—
- (a) the relevant day in relation to an agency is—
- (i) in the case of an agency that was in existence before the commencement of the *Freedom of Information Laws Amendment Act 1986*—the first day after the commencement of that Act by which the agency, if the amendments made by that Act to sub-section (2) of this section had not been made, would have been required under that sub-section to publish a statement in the *Gazette*; and
- (ii) in the case of an agency that comes into existence on or after the commencement of the *Freedom of Information Laws Amendment Act 1986*—the day that occurs 12 months after the day on which the agency comes into existence; and
- (b) ‘Information Access Office’ means a place that is an Information Access Office for the purposes of section 28.”;
- (c) by omitting from sub-section (8) “published in the *Gazette* in pursuance of” and substituting “prepared and made available in accordance with”;
- (d) by omitting from sub-section (9) “Sub-sections (2) and (3) apply” and substituting “Sub-section (3) applies”; and
- (e) by omitting from sub-section (9) “references in those sub-sections to the commencement of this Part were references” and substituting “reference in that sub-section to the commencement of this Part were a reference”.

Requests for access

7. Section 15 of the Principal Act is amended by omitting from sub-section (1) “make a request in writing to the agency or Minister for” and substituting “, by application in writing to the agency or Minister accompanied by any application fee in respect of the application, request”.

Requests involving use of computers, &c.

8. Section 17 of the Principal Act is amended by omitting from paragraph (1) (a) “in writing and”.

Access to documents to be given on request

9. Section 18 of the Principal Act is amended by omitting from paragraph (1) (a) "in writing and".

Processing of requests, &c.

10. Section 19 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) "is made in writing and";
- (b) by omitting paragraphs (3) (b) and (c) and substituting the following word and paragraph:
 "and (b) in a case where the request is received on or after
 1 December 1984—45 days."; and
- (c) by omitting from sub-section (4) "or (c)".

Requests may be refused in certain cases

11. Section 24 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-sections:

"(1) Where—

- (a) a multi-document request is made; and
- (b) the agency or Minister is satisfied at any time after the receipt of the request that, apart from this sub-section, the likely total work for the agency or Minister in dealing with the request and, in the case of a request that is a multi-document request by reason of being one of a series of related requests, the other requests in that series would—
 - (i) substantially divert the resources of the agency from its other operations or would interfere substantially with the performance by the Minister of the functions of the Minister,

as the case may be; or
 (ii) result in substantial delays in dealing with other requests,
 the agency or Minister may refuse to grant access to the document or documents to which the request relates.

"(1A) For the purposes of sub-section (1) and this sub-section—

- (a) 'multi-document request' means a request—
 - (i) that is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject matter;
 - (ii) that relates to a number of specified documents; or
 - (iii) that is one of a series of related requests; and
- (b) 2 or more requests made to an agency or Minister, whether at the same time or at different times (including a time before the commencement of this paragraph), shall be taken to constitute a series of related requests if they are made by the same person or by

persons whom the agency or Minister believes on reasonable grounds to have acted in concert in making the requests.

“(1B) In determining for the purposes of sub-section (1) the likely total work involved for an agency or Minister in dealing with a request or requests, regard shall be had to—

- (a) the number and volume of the documents concerned in the request or requests;
- (b) the difficulty in identifying, locating or collating the documents concerned having regard to the filing system of the agency or the office of the Minister and the usual location of the documents in the ordinary course of business within the agency or office;
- (c) the likely need for, and extent of, any consultation with any other person or body in dealing with the request or requests (whether or not the agency or Minister is obliged under this Act to consult with that person or body);
- (d) the time, and extent of resources, reasonably likely to be required to examine the documents concerned for exempt matter and to make decisions in relation to the deletion of such matter; and
- (e) the likely work necessary to formulate and notify the applicant or applicants and other persons affected of any interim or final decisions in relation to the request or requests.”.

Persons to be notified of liability to pay charges

12. Section 29 of the Principal Act is amended by inserting “(not being an application fee)” after “pay a charge”.

Charge may, in certain circumstances, be remitted in whole or in part

13. Section 30 of the Principal Act is amended—

- (a) by inserting in paragraph (3) (a) “or to a person on whose behalf the application was made” after “applicant”; and
- (b) by omitting paragraphs (3) (b) and (c) and substituting the following word and paragraph:

“and (b) whether the document to which the applicant seeks access relates to the personal affairs of the applicant or a person on whose behalf the application was made.”.

14. After section 30 of the Principal Act the following section is inserted:

Remission of application fees

“30A. (1) Where—

- (a) there is, in respect of an application to an agency or Minister under sub-section 15 (1) requesting access to a document or under sub-section 54 (1) requesting a review of a decision relating to a document, an application fee (whether or not the fee has been paid); and

(b) the agency or Minister is satisfied that—

(i) the payment of the fee or of a part of the fee would cause or caused financial hardship to the applicant or a person on whose behalf the application was made; and

(ii) the document relates to the personal affairs of the applicant or a person on whose behalf the application was made,

the agency or Minister may remit the fee or the part of the fee.

“(2) Where the whole or a part of an application fee is remitted under sub-section (1), then, to the extent of the remission, there shall not, for the purposes of sub-section 15 (1) or 54 (1), as the case may be, be taken to be an application fee in respect of the application.”.

Documents containing material obtained in confidence

15. Section 45 of the Principal Act is amended by adding at the end of sub-section (2) “unless the disclosure would constitute a breach of confidence owed to a person or body other than—

(a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or

(b) an agency or the Commonwealth.”.

Internal review

16. Section 54 of the Principal Act is amended—

(a) by inserting in paragraph (1) (b) “(not being an application fee)” after “charge”; and

(b) by omitting from sub-section (1) “apply in writing to the principal officer of the agency for” and substituting “by application in writing to the principal officer of the agency accompanied by any application fee in respect of the application, request”.

Applications to Administrative Appeals Tribunal

17. Section 55 of the Principal Act is amended by omitting from paragraph (1) (c) “referred to in section 29” and substituting “to which section 29 applies”.

Reports to Parliament

18. Section 93 of the Principal Act is amended—

(a) by omitting paragraph (3) (a) and substituting the following paragraph:

“(a) particulars of the operations of each agency and Minister under this Act during the year to which the report relates, including, in relation to each agency and Minister—

5 (i) the number of requests under section 19 for access to documents received during the year;

(ii) the number of requests received at any time in respect of which during the year—

10 (A) access other than partial access was granted to the document or all of the documents to which the request related;

(B) access was refused to the document or all of the documents to which the request related; or

(C) partial access was granted;

15 (iii) the number of applications made during the year for the review of decisions under section 54 and particulars of the results of such reviews;

20 (iv) the number of applications made during the year to the Tribunal for the review of decisions and particulars of the results of such reviews;

(v) particulars of the total charges and application fees collected during the year in dealing with requests and other applications whenever received; and

25 (vi) the number of requests received during the year to amend records under section 48 and particulars of the results of such requests;” and

(b) by inserting after sub-section (3) the following sub-section:

30 “(3A) For the purposes of sub-paragraph (3) (a) (ii), partial access shall be taken to have been granted in respect of a request if either or both of the following conditions are satisfied in relation to the request:

(a) access was granted to a copy of the document or of any of the documents to which the request related with deletions;

35 (b) the request related to 2 or more documents and access was refused to any one or more of the documents.”.

Regulations

19. Section 94 of the Principal Act is amended by omitting paragraphs (2) (b) and (c) and substituting the following paragraph:

40 “(b) shall, if a charge is made for time that is spent by an agency or a Minister in undertaking any of the following activities:

(i) searching for or retrieving a document;

(ii) making, or doing things related to making, a decision on a request for access,

provide for the charge in respect of that activity to be calculated at a single hourly rate that shall be applied by the agency or Minister in respect of any request, regardless of the classification or designation of the officer who undertakes the work involved; and”.

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Schedule 2

20. Schedule 2 to the Principal Act is amended—

- (a) by omitting from Part I “Health Insurance Commission”; and
- (b) by inserting after the item in Part II relating to the Department of the Treasury the following item:

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“Health Insurance Commission, in relation to documents in respect of its competitive commercial activities”.

Application

21. The amendments made by paragraphs 13 (a) and (b) apply to the remission of charges in respect of which applications were or are made either before or after the commencement of this Act.

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PART III—AMENDMENTS OF THE FREEDOM OF INFORMATION (CHARGES) REGULATIONS

Freedom of Information (Charges) Regulations

22. The Freedom of Information (Charges) Regulations are in this Part referred to as the Regulations.

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Citation

23. The citation of the Regulations is amended by inserting “Fees and” before “Charges”.

Liability to pay charges

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24. Regulation 3 of the Regulations is amended by adding at the end of sub-regulation (1) “, other than an application fee.”.

25. Regulations 5, 6 and 7 of the Regulations are repealed and the following regulations are substituted:

Application fees

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“5. For the purposes of sub-section 4 (8) of the Act—

- (a) an application fee of \$30 is, subject to regulation 6, applicable in respect of an application under sub-section 15 (1) of the Act; and
- (b) an application fee of \$40 is, subject to regulation 6, applicable in respect of an application under sub-section 54 (1) of the Act.

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Charges and fees not applicable in relation to certain documents

“6. (1) In this regulation, ‘prescribed benefit’ means a pension, allowance or benefit payable under—

- (a) the *Seamen’s War Pensions and Allowances Act 1940*;
- (b) the *Social Security Act 1947*;
- (c) the *Student Assistance Act 1973*; or
- (d) the *Veterans’ Entitlements Act 1986*,

and any payment of a like nature the purpose of which is to provide income support to persons of inadequate means.

“(2) Regulation 4 does not apply in relation to a request for, or the provision of, access to a document—

- (a) that contains information (in this sub-regulation referred to as ‘relevant information’) relating to a claim for, or a decision in relation to, the payment to the applicant of a prescribed benefit; and

- (b) to which the applicant—

- (i) has not, pursuant to a request, had access during the period of 3 months immediately preceding the day on which the first-mentioned request was made; or

- (ii) has, pursuant to a request, had access during the period referred to in sub-paragraph (i) but the contents of which, in so far as they relate to relevant information, have (whether by way of addition, omission or alteration) been modified in a material particular after the day on which the applicant last had, pursuant to a request, access to the document.

“(3) Regulation 5 does not apply in relation to—

- (a) an application under sub-section 15 (1) of the Act requesting access to a document; or

(b) an application under sub-section 54 (1) of the Act requesting the review of a decision relating to a request for access to a document, being a document—

- (c) that contains information (in this sub-regulation referred to as ‘relevant information’) relating to a claim for, or a decision in relation to, the payment to the applicant of a prescribed benefit; and

- (d) to which the applicant—

- (i) has not, pursuant to a request, had access during the period of 3 months immediately preceding the day on which the application referred to in paragraph (a) or the request for access referred to in paragraph (b), as the case may be, was made; or

- (ii) has, pursuant to a request, had access during the period referred to in sub-paragraph (i) but the contents of which, in so far as they relate to relevant information, have (whether

by way of addition, omission or alteration) been modified in a material particular after the day on which the applicant last had, pursuant to a request, access to the document.”.

Charges to be paid before access is granted

26. Regulation 11 of the Regulations is amended by omitting from sub-regulation (2) “, or in item 1 of Part III,”. 5

Schedule to Regulations

27. The Schedule to the Regulations is amended—

- (a) by omitting item 1 of Part I;
- (b) by omitting from item 2 of Part I “\$12.00” and substituting “\$15.00”; 10
and
- (c) by adding at the end of Part I the following item:
 “5 A charge in respect of the time that is spent (other than \$20.00
 on an application under section 54 of the Act for the review of a decision) by an agency or Minister in deciding whether to grant, refuse or defer access to the document or to grant access to a copy of the document with deletions, including time spent— per hour
 (a) in examining the document;
 (b) in consultation with any person or body;
 (c) in making a copy with deletions; or
 (d) in notifying any interim or final decision on the request ”; and
 (d) by omitting Parts III and IV. 15

Application

28. The amendments of the Regulations made by this Part apply in relation to—

- (a) an application under sub-section 15 (1) of the *Freedom of Information Act 1982* requesting access to a document, being an application that is received by or on behalf of an agency or Minister after the commencement of this Act; 20
- (b) the provision of access to a document pursuant to an application under sub-section 15 (1) of the *Freedom of Information Act 1982* requesting access to a document, being an application that is received by or on behalf of an agency or Minister after the commencement of this Act; and 25
- (c) an application under sub-section 54 (1) of the *Freedom of Information Act 1982* requesting the review of a decision, being an application that is received by or on behalf of the principal officer of an agency after the commencement of this Act. 30

Amendment or repeal of Regulations

29. The amendment of the Regulations by this Part does not prevent the amendment or repeal, by regulations, of the Regulations as amended by this Part. 35

NOTE

1. No. 3, 1982, as amended. For previous amendments, see Nos. 7 and 81, 1983; No. 63, 1984; and No. 187, 1985.

