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FREEDOM OF INFORMATION AMENDMENT BILL 2007

An examination of issues relevant to the Freedom of Information Amendment Bill 2007. The paper includes a summary of the Bill and a discussion of its proposed legislative changes within the current legal context in Victoria. It also discusses Freedom of Information legislation in other jurisdictions.

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with Research Assistance from Roshena Dutta

This Current Issues Brief is part of a series of papers produced by the Library's Research Service. Current Issues Briefs see to provide an overview of a subject area for Members, and include information on key issues related to the subject.

NB: *Readers should note that the Freedom of Information Amendment Bill 2007 was passed through the Legislative Assembly on 7th February 2008 but was defeated in the Legislative Council on 28th of February 2008 and therefore none of the amendments were incorporated into the Freedom of Information Act 1982.*

Contents

Acronyms

AAT – Administrative Appeals Tribunal

ALRC – Australian Law Reform Commission

ARC – Administrative Review Council

FOI – Freedom of Information

SARC – Scrutiny of Acts and Regulations Committee

VCAT – Victorian Civil and Administrative Tribunal

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Introduction

The Freedom of Information Amendment Bill 2007 ('the Bill') was introduced into the Legislative Assembly of the Parliament of Victoria on 21 November 2007 by the Attorney-General the Hon. Rob Hulls. The Bill proposes to enhance the operation of the *Freedom of Information Act 1982* ('the Act') by implementing the recommendations made by the Ombudsman in his report *Review of the Freedom of Information Act* (2006), removing conclusive certificates in relation to Cabinet documents and modernising the Act by encouraging agencies to publish more information on the internet.

In his second reading speech on 22 November 2007, the Attorney-General recognised the reports of both the Ombudsman and the Scrutiny of Acts and Regulations Committee (SARC) as being influential in shaping the objectives of the amending Bill. The intention of the Bill, the Attorney-General stated, is to make information more available, thereby reducing the need for formalised requests for information.

Amending the Act is one of the six areas identified by Premier John Brumby as undergoing a range of reforms in order to make government more accountable and accessible to the Victorian people.[1]

1. About the Bill

The main provisions of the Bill are to:

- modernise the application of FOI by requiring agencies to publish information on the internet;
- remove FOI application fees;
- remove conclusive certificates in relation to Cabinet documents, thereby allowing independent review of Cabinet decisions of non-disclosure of documents;[2]
- implement the recommendations made by the Ombudsman in relation to the Ombudsman's role, namely to:
  - clarify the role of the Ombudsman in relation to investigating FOI complaints by altering definitions within the Victorian *Ombudsman's Act 1973* to state that the Ombudsman has jurisdiction over authorities prescribed in the FOI Regulations for the purpose of investigating complaints about FOI processes;
  - give the Ombudsman jurisdiction over administrative actions taken by the Victoria Police under the Act; and
  - remove the 28 day time period in which the Ombudsman has to deal with complaints relating to voluminous requests.
- extend the time period with which to process requests from 45 days to 75 days where consultation with third parties is needed; and
- establish a regime to handle vexatious applicants.

[1] Office of the Premier (2007) *Brumby Vows to Strengthen Accountability in Victoria*, media release, 7 August.

[2] Conclusive certificates refers to a certificate issued by the Secretary of the Department of Premier and Cabinet that is to be taken as evidence that complying with the provisions of the FOI Act would constitute an infringement of the privileges of Cabinet confidentiality.

2. Background

2.1 History of the *Freedom of Information Act 1982*

The *Freedom of Information Act 1982* was introduced by the then Premier John Cain in 1982 and received Royal Assent on 5 January 1983. Victoria was the first state to introduce FOI legislation, following the passing of Commonwealth FOI legislation months prior in 1982.

In his second reading speech introducing the Act, Premier Cain said that:

> Freedom of information is very closely connected with the fundamental principles of a democratic society and is based on three major premises:
> 1. The individual has a right to know what information is contained in Government records about him or herself.
> 2. A Government that is open to public scrutiny is more accountable to the people who elect it.
> 3. Where people are informed about Government policies, they are more likely to become involved in policy making and in government itself.[3]

Despite apprehension that the legislation would be burdensome for public servants, Mr. Cain stated in his second reading speech that access to information is a 'central need in a democracy'.[4] Premier Cain's speech identifies the philosophy underlying the practice and policy of Freedom of Information. However, throughout the legislation's 25 year history, the Act has had to balance the competing objectives of information access with the protection of personal privacy, commercial-in-confidence considerations and Cabinet confidentiality. From an administrative perspective, the Act is often criticised for its exemptions, delays in processing requests and costs involved. Likewise, agencies dealing with requests have complained about the strain on government resources that information access can often produce. Legislative amendments over the Act's history have tried to find a balance between providing information and retaining the functionality of government. Thus, the Act has been a feature in many of the election campaigns of the major parties and has undergone significant changes in the course of successive governments. It has been amended on 26 occasions to date.

In particular, the 1993 amendments introduced by the then Attorney-General Jan Wade under the Kennett Government made significant changes to the application and implementation of the Act. Introducing application fees, widening Cabinet exemptions and broadening the Act's jurisdiction to include local governments were among the changes made. Further changes were made by the Kennett Government in 1999 following the Coulston case where the names of three nurses were released through FOI to a convicted murderer.[5]

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[3] Victoria (1982) Legislative Assembly, *Debates*, 14 October, p. 1061.
[4] ibid.
[5] Victoria (1999) Legislative Assembly, *Debates*, 6 May, p. 815; and see Victorian Civil and Administrative Tribunal (VCAT) Ruling Coulston v. Mornington Peninsula and District Hospital no. 1998/017288.

2.2 The Victorian Ombudsman's Recommendations

The Victorian Ombudsman initiated an investigation of FOI and in June 2006 he released a review of the Act. In accordance with the *Ombudsman's Act 1973*, the Ombudsman may conduct an investigation either on his or her own motion, or as a consequence of a complaint by a person affected by the administrative action in question, or pursuant to a reference from Parliament.

The Ombudsman's recommendations regarding legislative changes were influential in the development of the Bill. They are discussed in detail in section three below.

2.3 Use of Freedom of Information

The Attorney-General reported that a record 23,977 FOI requests were received by 1,026 agencies across Victoria in 2006-07. This represents a 12 per cent increase since the previous year and a 68 per cent increase in the number of requests received since the first year of the current Labor government.[6] The majority of FOI requests are for the applicant's personal information held by public authorities, such as public school records, welfare, police or health records. The Ombudsman's report states that only a relatively small number of requests are for political or media use, although these 'public' requests constitute a high proportion of requests that are subsequently reviewed.[7]

Of the top 30 agencies receiving the most requests, two thirds were hospitals or health care providers. Other agencies receiving a substantial amount of requests included Victoria Police, the Department of Human Services, WorkCover, the Transport Accident Commission, VicRoads, the Department of Infrastructure and the Department of Education.[8]

The following table illustrates the top 10 agencies receiving the most requests. 'Personal requests' refers to requests that are for personal documents and personal information and constitute the majority of requests made, while non-personal requests may concern an agency's functions, business relationships or other such matters that are not defined as personal information for the applicant.

Table 1, overpage, shows that Bayside Health received the most FOI requests of any agency in 2006-07 (1,926), followed by the Victoria Police (1,736) and Southern Health (1,475).

[6] Statistical data is provided by agencies in accordance with the requirements of sections 64 and 65AA of the Act, see Attorney-General (2007) *Freedom of Information: Annual Report 2006-07*, Melbourne, Department of Justice, pp. 4-5.
[7] Ombudsman Victoria (2006) *Review of the Freedom of Information Act*, Melbourne, Ombudsman Victoria, p. 4.
[8] Attorney-General (2007) op. cit., p. 10.

Table 1: Top 10 Agencies Receiving the Most FOI Requests in 2006-07

	Agency	Personal Requests	Non-personal Requests	Total Requests
1	Bayside Health	883	1,043	1,926
2	Victoria Police	1,157	579	1,736
3	Southern Health	767	708	1,475
4	Victorian WorkCover Authority	647	759	1,406
5	Department of Human Services	1,157	238	1,395
6	Melbourne Health	518	544	1,062
7	Royal Melbourne Hospital (Member of Melbourne Health)	475	529	1,004
8	Eastern Health	369	595	964
9	Royal Children's Hospital	467	365	832
10	Transport Accident Commission	672	51	723
	TOTALS	7,112	5,411	12,523

Source: Attorney-General (2007) Freedom of Information: Annual Report 2006-07

Table 1 also illustrates that Victoria Police and the Department of Human Services received a significantly higher number of requests for personal information than other agencies.

3. Main Changes

The following six sections discuss the principal changes introduced by the Bill in the context of the current Act and in light of the recommendations put forward in various reports and reviews.

3.1 Internet Publication of Government and Agency Information

Premier John Brumby stated that one of his aims in amending the Act is to modernise the process of obtaining government information. In a media release dated 20 November 2007, Mr. Brumby said, 'The FOI Act was written long before the internet was a daily part of modern life. These reforms will bring Freedom of Information laws into the 21st century and result in easier, cheaper access to a lot more information'.[9]

[9] Office of the Premier (2007) *Brumby Government Introduces FOI Reforms*, media release, 20 November.

This follows from recommendations made in 2005 by the Scrutiny of Acts and Regulations Committee (SARC) tabled in their *Inquiry into Electronic Democracy*. This inquiry was intended to be considered in conjunction with the Ombudsman's review. For this reason the SARC inquiry limited its scope to focus on the ways in which Information and Communication Technologies (ICTs) can 'be employed to improve the administration of the *Freedom of Information Act 1982*'.[10] The SARC report noted that the current Act is 'a product of the technology of the 1980s… based within a paradigm that largely envisaged paper document management processes' and that the legislation operates in an 'environment vastly different from that envisaged by the drafters'.[11]

Part II of the Act requires every agency to publish annual statements detailing information about the agency, such as the agency's organisation and functions, reports received by the agency, categories of documents kept by the agency and how they may be accessed, and used by the agency in administering laws. The Ombudsman's investigation revealed that few Victorian agencies fully comply with the publication requirements set out in the Act.[12]

The Bill intends that government agencies will provide for the regular update and review of the information published on the internet thereby obviating the need for FOI applications which might be otherwise obtained through publicly available means (see Part 2 of the Bill). It is intended that this will reduce the administrative burden of agencies dealing with FOI requests, reduce the need for making requests for information and provide more information to the public in an easily accessible format.

3.2 Removal of Application Fee

Information access carries costs. The costs associated with administering the Act can be substantial. The Ombudsman noted that he received a complaint about an excessive charge of $3,500 for processing information in relation to the Wimmera Catchment Management Authority.[13] While such instances are rare, requested information can involve extensive and costly searches. In this respect, it is rarely the fixed application fee that is burdensome for applicants but the additional costs of agency search time, supervised inspection time and the duplication of relevant documents.

FOI requests involve two costs: the application fee and the access charges. The application fee in section 17(2A) of the Act is a relatively straight-forward non-refundable fixed cost that is currently two fee units ($22.00). The current Act does allow agencies to exercise discretion in the waiver or reduction of the application fee where 'the payment of the fee would cause hardship to the applicant' (s. 17(2B)). The Bill proposes to remove the application fee entirely by repealing section 17(2A) of the Act.[14] This fee was first introduced in the 1993 amendments of the Act.[15]

[10] Scrutiny of Acts and Regulations Committee (2002) *Inquiry into Electronic Democracy*, Melbourne, Parliament of Victoria, p. 43.
[11] ibid., p. 44.
[12] Ombudsman Victoria (2006) op. cit., p. 50.
[13] ibid., p. 64.
[14] Section 17(2B) of the Act is also, thus, repealed.

The access charges relate to the costs involved in searching for and producing the relevant documents. Table 2 shows information obtained on the government's FOI Online website specifying the costs associated with the various access charges.[16]

Table 2: Current FOI Access Charges

Service	**Cost**
Search charges	$20 per hour or part of an hour
Supervision charges	$5 per quarter hour
Photocopying charges	20c per black and white A4 page
Providing access in a form other than photocopying	The reasonable costs incurred by the agency in providing the copy
Charge for listening to or viewing a tape	The reasonable costs incurred by the agency in making the arrangements to listen to or view (Supervision charges also apply)
Charge for making a written transcript out of a tape	The reasonable costs incurred by the agency in providing the written transcript

Source: Department of Justice (2007) Freedom of Information Online

In regards to access charges, section 22(1)(h) of the Act requires that a charge, other than charges incurred by an agency in making copies of documents, shall not be made if:

i) the applicant's intended use of the document is a use of general public interest or benefit; or
ii) the applicant is a member of the Legislative Council or of the Legislative Assembly of Victoria; or
iii) the request is for access to a document containing information relating to the personal affairs of the applicant.

The Act also allows for the charges incurred by the agency in making copies of the documents to be waived if the applicant is impecunious and the request is for access to a document containing information relating to the personal affairs of the applicant (s 22(1)(i)). Section 22(1)(g) of the Act also provides for the waiver of access charges 'if a request is a routine request for access to a document' but does not define what is meant by 'routine request'.

The Ombudsman's investigation found that many agencies frequently waive charges but that the criteria on which charges are waived vary between departments. This is despite section 22(8) of the Act stating that 'the charges set by the regulations shall be uniform for all agencies and there shall be no variation of charges as between different applications in respect of like services'.

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[15] Despite the Legal and Constitutional Committee's 1989 inquiry into FOI recommending that no application fees be introduced, see Legal and Constitutional Committee (1989) *A Report to Parliament Upon Freedom of Information in Victoria*, Melbourne, Parliament of Victoria, p. 59.

[16] Department of Justice (2007) Freedom of Information Online, 'Costs', viewed 18 January 2008, <http://www.foi.vic.gov.au/CA256BE9002028C5/page/How+to+apply-Costs?OpenDocument&1=20-How+to+apply~&2=20-Costs~&3=~>.

The reforms proposed by the Bill in regards to access charges are to remove a charge of less than one fee unit 'if the agency considers it reasonable to do so' (see section 12 of the Bill). This would mean that applicants who are not relieved from any other provisions relating to charges in s. 22(1)(h) and s. 22(1)(i), as described above, would not be required to pay the access charges should these charges be less than $11.00 and should the agency consider it reasonable to do so.

To summarise: the Bill removes the application fee and allows agencies to waive access charges of less than one fee unit. Sections 22(1)(h), 22(1)(i) and 22(1)(g) of the Act concerning other forms of waiver are retained.

3.3 Exemptions and the Removal of Certain Conclusive Certificates

The following section has been divided into three parts; a brief examination into exemptions permitted within the Act, a closer examination of the Act's section 28 exemption relating to Cabinet documents and, lastly, a discussion of the legislative changes proposed by the Bill in relation to section 28 of the Act, namely the removal of conclusive certificates.

Exemptions

There are many reasons why a request for information may be denied. The Attorney-General's Annual Report identified that the five most frequently cited exemptions used in 2006-07 were:

- *Section 33:* the protection of an individual's personal affairs;
- *Section 38:* where another enactment (other than the Act) categorises particular documents as confidential;
- *Section 35:* information provided in confidence to government bodies;
- *Section 30:* internal working documents containing opinions, advice or recommendations of officials or Ministers where it would not be in the public interest for those documents to be released; and
- *Section 31:* law enforcement documents.

More than one exemption can be applied to a document and often a document can be released with exempt material deleted from the document. The following table, overpage, shows the FOI exemptions cited and what stages of review these have undergone in 2006-07. The left column refers to what section of the Act is cited as the reason for non-disclosure, followed by the number of exemptions for each section under 'Original Decision'. Of the total number of exemptions cited, 1.3 per cent sought an internal review by the agency concerned, while 0.5 per cent lodged an appeal with the Victorian Civil and Administrative Tribunal (VCAT).

Table 3: FOI Exemptions Cited 2006-07

Section of the Act	Original Decision	Internal Reviews	VCAT Appeals
25a: Voluminous Requests	130	18	1
28: Cabinet Documents	67	10	10
29: Intergovernmental Relations	130	0	0
29a: National Security	14	1	0
30: Internal Working Documents	975	74	12
31: Law Enforcement	730	52	8
32: Legal Professional Privilege	480	46	6
33: Personal Affairs	3,146	194	22
34: Commercial Confidentiality	203	40	5
35: Information Gained in Confidence	1,011	87	10
36: Contrary to Public Interest	24	7	0
38: Exempted by Another Enactment	1,748	68	5
38a: Council Documents	24	6	0

Source: Attorney-General (2007) Freedom of Information: Annual Report 2006-07

As Table 3 shows, 'personal affairs' (3,146) is the most commonly used exemption, followed by documents exempted by another enactment (1,748). Relatively few requests were exempt through being classified as Cabinet documents (67).

Section 28: Cabinet Documents

The rationale behind keeping the deliberations of Cabinet confidential derives from the convention of collective ministerial responsibility. Cabinet – while not formally recognised by the Victorian *Constitution Act 1975* – sets the direction of the affairs of the state, determining policy to be submitted to Parliament and coordinating the activities of departments and agencies of state. Confidentiality in Cabinet meetings allows for individual members to discuss policies freely and debate a wide range of views before reaching a final decision which speaks for the government, as is the conventional practice in the Westminster system. For this purpose, the deliberations of Cabinet have traditionally been kept secret and FOI legislation provides for documents that would compromise Cabinet confidentiality to be exempt.

The Act stipulates that a document is an exempt document under Cabinet exemption s. 28(1) if it is:

a) the official record of any deliberation or decision of the Cabinet;
b) a document that has been prepared by a Minister or on his or her behalf or by an agency for the purpose of submission for consideration by the Cabinet;
ba) a document prepared for the purpose of briefing a Minister in relation to issues to be considered by the Cabinet;
c) a document that is a copy or draft of, or contains extracts from, a document referred to in paragraph (a), (b) or (ba); or
d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.

This broad definition of what documents are eligible for Cabinet exemption protects documents at each stage of the Cabinet process, these being pre-decisional, deliberative and post-decisional stages. Evidently, it is not only official records that are exempt, but documents that have been prepared for briefing purposes as well. These provisions do not apply to documents that contain *purely* statistical, technical or scientific material 'unless the disclosure of the document would involve the disclosure of any deliberation or decision of the Cabinet' (see s. 28(3) of the Act). In other words, a document that contains *purely* statistical information can be exempt if it would disclose *any* deliberation or decision of Cabinet.

Conclusive Certificates

Accountability over the use of the Cabinet exemption can be strained by the current legislation which restricts independent review of decisions of non-disclosure. Presently, the Secretary of the Department of Premier and Cabinet can issue a certificate stating that a document is subject to Cabinet exemption under the Act (see s. 28(4)). These are called 'conclusive certificates' and are to be taken as evidence that complying with the provisions of the Act will constitute an infringement of the privileges of Cabinet confidentiality. Certificates can also be issued by a Department Head or the Chief Commissioner of Police in relation to documents affecting national security, defence or international relations (s. 29A(2) of the Act).

Once a certificate is issued in relation to Cabinet documents, VCAT and the Ombudsman are limited in their ability to review decisions; they can only address the question of whether the document has been properly classified by the Secretary as a Cabinet document within the meaning of s. 28(1) and not the merits of a decision to issue a certificate. Likewise, it has been questioned by lobby groups, the opposition and the media whether politically sensitive material cannot simply be passed through Cabinet to enable documents to receive an exemption. As Cabinet documents are not released for thirty years following their deliberation, it is difficult to monitor potential abuses of these exemptions. The government says that it has not relied on conclusive certificates in relation to cabinet documents.[17]

The Bill does not make any changes to the classification of the exemptions listed above in Table 3. However, the Bill does remove the issuing of conclusive certificates in relation to Cabinet documents by repealing the relevant provisions (see section 15 of the Bill). The removal of conclusive certificates in relation to Cabinet documents is designed to enhance the ability of VCAT and the Ombudsman to review decisions.[18] Finally, the Bill does retain the provision governing the issuing of conclusive certificates in relation to matters of national security.

[17] See the Attorney-General's second reading speech, Victoria (2007) Legislative Assembly, *Debates*, 22 November, p. 4108.

[18] The removal of conclusive certificates was one of the reforms suggested to be implemented federally by the Australian Law Reform Commission (ALRC) in 1995. These reforms are still under consideration by the federal government according to the ALRC website, see Australian Law Reform Commission (2005) 'Open Government', viewed 23 January 2008, <http://www.alrc.gov.au/inquiries/title/alrc77/index.htm> and Australian Law Reform Commission (1995) *Open Government: A Review of the Federal Freedom of Information Act 1982 (ALRC 77)*, Canberra, Commonwealth of Australia.

3.4 Reviewing Decisions: Clarifying the Role of the Ombudsman

The Attorney-General is responsible for the Act, while the Ombudsman and VCAT fulfil a review capacity by which complaints and appeals concerning decisions can be lodged. According to the Attorney-General, 301 (1.3 per cent) of the 23,977 requests made in 2006-07 sought an internal review and 117 appeals were lodged at VCAT.[19] The Ombudsman states that a disproportionate number of requests for review of decisions, complaints to the Ombudsman's office and applications to VCAT concern requests made for 'public' purposes, such as political or media requests.[20]

In regards to departments and some agencies, an internal review of a decision can be lodged, such as with the Health Services Commissioner for information relating to health records. These bodies have the power to reverse a decision withholding documents, however there is no one person or organisation solely responsible for overseeing the administration of the Act in the manner of the Information Commissioner in Western Australia or the United Kingdom. This can lead to confusion as to which body an applicant should address their appeal or complaint.

An earlier report published in 1995 by the federal Australian Law Reform Commission (ALRC) and the Administrative Review Council (ARC) recommended that an independent monitor in the form of an FOI Commissioner be established for the specific purpose of tending to FOI concerns.[21] No such body has been established for the specific purpose of overseeing FOI administration therefore complaints are generally made to the Ombudsman and appeals to VCAT.

The Attorney-General's annual report outlines the usual process of appeal as initially one of internal review, where a written request is made to the principal officer of the agency asking that a 'fresh decision' on the request be made.[22] The report goes on to state that 'if the applicant is not satisfied with the outcome of an internal review, he or she may then appeal to VCAT'.[23] The Act itself does not stipulate a time in which internal reviews must be completed, however, an application to VCAT is allowed if the internal review decision is not completed within 14 days (see s. 51(2)(b) of the Act).

The Role of the Ombudsman

The primary function of the Ombudsman is to investigate administrative action taken in a government department, or public statutory body, or by an officer or employee of a council. However, FOI legislation applies to 'prescribed authorities', that is, government bodies or agencies supported by government funding (as prescribed in the Freedom of Information Regulations 1998). These authorities may not fall within the definition of 'public statutory body' over which the Ombudsman has jurisdiction. The Attorney-General notes in the second reading speech that this anomaly is due to a difference in the relevant definitions in the Act and the Ombudsman's Act. The Bill

[19] Attorney-General (2007) op. cit., p. 5.
[20] Ombudsman Victoria (2006) op. cit., p. 17.
[21] The report suggested that such a Commissioner could assist in overcoming some of the major deficiencies in the administration of the Act by providing training and legislative advice to agencies and facilitating communication with other bodies, such as the Privacy Commissioner.
[22] Attorney-General (2007) op. cit., p. 11.
[23] ibid.

amends the Ombudsman's Act to clarify that the Ombudsman has jurisdiction over authorities prescribed in the FOI Regulations for the purpose of investigating complaints about FOI processes. It also gives the Ombudsman jurisdiction over administrative actions taken by the Victoria Police under the Act.

Importantly, there are different time periods in which the Ombudsman and VCAT are required to deal with complaints or appeals, which may affect an applicant's decision over which body they direct their grievance to. An applicant may appeal to either body if their request is denied in full or in part. In addition, if on the last day of the relevant time period in which an FOI request is required to be processed the request is delayed, an applicant may assume that the decision is a refusal of access to the document and an application of appeal may be made (s. 53 of the Act). However, applicants appealing against an elapsed time period are met with additional delays in the reviewing process.

Statistics from VCAT suggest that in the first half of 2006-07, 60 per cent of matters were resolved within 18 weeks and 80 per cent within 35 weeks.[24] Similarly, while the current legislation requires the Ombudsman to deal with a complaint within 28 days, the amending Bill removes this time period in relation to certain complaints (see section 14 of the Bill). The complaints referred to in the legislation relate to a refusal by agencies or Ministers to grant access to documents on the basis that processing the request would substantially or unreasonably strain the agencies' resources. The Ombudsman reports that the time frame of 28 days to process requests should not be applicable to voluminous requests because of the extensive investigation involved in dealing with complaints of this nature.[25]

There are currently no fees payable to appeal an FOI decision provided that the appeal is made within 60 days of receiving the decision, that the applicant is not a corporation or company and that the information relates to personal affairs.[26]

In summary, the Bill will alter the definition in the Ombudsman's Act to clarify that the Ombudsman has jurisdiction over 'prescribed authorities' rather than 'public statutory bodies' and gives the Ombudsman jurisdiction over the Victorian Police for the purpose of investigating complaints about FOI processes (see section 22 of the Bill). It also removes the time frame within which the Ombudsman has to process complaints regarding voluminous requests.

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[24] This length of time refers to the time between an application being made to VCAT and the time taken for cases to be finished. See VCAT's website for more information, <www.vcat.vic.gov.au>.
[25] Ombudsman Victoria (2006) op. cit., p. 63.
[26] If this is not the case (i.e. it is a company or corporation requesting the information) a fee of $192.80 is payable, see VCAT (2007) 'Fees', viewed 14 January 2008, <http://www.vcat.vic.gov.au/CA256DBB0022825D/page/Fees-Forms-Brochures-Fees?OpenDocument&1=15-Fees-Forms-Brochures~&2=10-Fees~&3=~>. The NSW and Commonwealth legislation requires a further fee be payable in an application for internal review. NSW Attorney-General (2007) 'FOI Fees', viewed 16 January 2008, <http://www.lawlink.nsw.gov.au/lawlink/Corporate/ll_agdinfo.nsf/pages/community_relations_foifees > and Australian Government Attorney General (2008) 'Cost of FOI Application', viewed 16 January 2008, <http://www.ag.gov.au/www/agd/agd.nsf/Page/FreedomofInformation_CostofFOIapplication>.

3.5 Extension of Time for Third Party Consultation

The Ombudsman identified delays in processing requests as the largest single cause for complaint to his office.[27] In his review he noted that of the FOI decisions by government departments in 2003-04, only 56 per cent were made within the 45 day time period for processing requests, while 21 per cent of decisions took more than 90 days.[28] The Department of Human Services processed 44.5 per cent of all requests to government agencies in 2003-04 and its decisions on requests were made within the statutory time frame only 43 per cent of the time, taking over 90 days to process 37.5 per cent of requests.

In comparison to some other jurisdictions, Victoria currently provides a longer time period for the notification of decisions. The time period for processing FOI requests in Victoria is currently 45 days, while in the Commonwealth and the ACT the period is 30 days.[29] New South Wales by contrast allows 21 days and Queensland 45 days.[30] However, Victoria currently allows no time period for third party consultation, while other states and territories allow for between two weeks and a month for third party consultation.

The Ombudsman investigated the reasons for the delays in processing requests and found that lengthy document searches, time taken in identifying and contacting third parties, lengthy assessments and noting by executive and ministers' offices were among the main reasons for delay.[31] The Ombudsman stated that he does not see grounds for the time to be extended for multiple requests but does recommend that up to a further 30 days be allowed for the purpose of consulting with affected third parties.

Third party consultation is needed in a minority of cases, usually where the information affects commercial information, trade secrets, information obtained in confidence or information in relation to personal affairs.[32] The Act specifically recognises the rights of third parties in relation to personal information (s. 33), trade secrets and other commercial information (s. 34) and information obtained in confidence (s. 35). The Act requires agencies to consult with third party providers of commercial interests but does not explicitly provide for third party consultation in matters of personal privacy, except where such provisions are covered in other legislation, such as the *Information Privacy Act 2000*. These provisions are in place to protect the rights of third parties against the disclosure of sensitive or damaging information. The Ombudsman recommended that this consultation occur by telephone

[27] ibid., p. 18.
[28] ibid.
[29] *Freedom of Information Act 1989* (ACT) s. 18(1)(d).
[30] *Freedom of Information Act 1989* (NSW) s. 18(3).
[31] The Ombudsman advises that delays caused by noting by a Minister might be perceived by the applicant as being delayed for political reasons, therefore he advises FOI Officers to use the guidelines issued by the Attorney-General in 2002 and wait only five days for the noting process, see Ombudsman Victoria (2006) op. cit., p. 24. See also Department of Justice (2002) *Improved Accountability Guidelines for Freedom of Information*, Melbourne, State Government of Victoria.
[32] A definition of third party is contained within the Victorian *Information Privacy Act 2000*. In relation to personal information, it defines third party as 'a person or body other than the organisation holding the information and the individual to whom the information relates' (s. 3).

or in person. In most cases, where contact was made by telephone, the response from the third party was received within one day.[33]

In brief, the Bill inserts a new sub-section into section 21 of the Act to allow a further 30 days to process a request if the agency or Minister makes a determination that third party consultation is needed (see section 11 of the Bill).

3.6 Regime to Handle Vexatious Applicants

A particular feature of the Bill is its proposal to set up a regime to handle 'vexatious applicants'. The term vexatious has a recognised technical meaning in litigation, referring to an action which is unsustainable and which 'no reasonable person could properly treat as bona fide and contend that he had a grievance which he was entitled to bring before a Court'.[34] In this context, 'vexatious applicants' refers to persons who make repeated FOI requests which abuse the right of access and who are not acting in good faith.[35]

The Act confers a general right of access to government information and personal information held by the government irrespective of an applicant's reasons for seeking information. As such, an applicant is not required to demonstrate a particular need or specify a reason for seeking the information requested and a proposal to introduce a system allowing applicants to be labelled vexatious may unavoidably entail an assessment of the motives of applicants for making FOI requests.[36] This was a concern in the 1989 Legal and Constitutional Committee report which advised that introducing the concept of motive into FOI has the potential to undermine the general right of access conferred by the Act.[37]

Contained within the *Victorian Civil and Administrative Tribunal Act 1998* ('the VCAT Act') is the directive that VCAT may dismiss a proceeding that 'in its opinion' is 'frivolous, vexatious, misconceived or lacking in substance; or is otherwise an abuse of process' (s. 75(1)). The decision to dismiss a proceeding for these reasons can be made by the Tribunal as constituted for the proceedings, a presidential member or a member who is a legal practitioner (s. 75(3)) and can be made on the application of a party or on the Tribunal's own initiative. The VCAT Act states that 'the question whether or not an application is frivolous, vexatious, misconceived or lacking in substance or is otherwise an abuse of process is a question of law' (s. 75(5)). It is assumed that the decision to declare an applicant vexatious in regards to FOI requests will also be 'a question of law'. The difference between the legislation allowing VCAT to dismiss proceedings and the proposed amendments in the Bill allowing VCAT to make an order declaring a person to be a vexatious applicant is that the former relates to an *application* and the latter, an *applicant* (see Part 4 of the Bill). In terms of current Tribunal proceedings it is the application that is declared to be vexatious not the applicant in the case of FOI requests.

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[33] Ombudsman (2006), op. cit., p. 21.
[34] Norman v. Mathews (1916) 85 L.J.K.B. 857 per Lush J. at p.859.
[35] On the issue of multiple requests under FOI see Ombudsman Victoria (2006) op. cit., p. 62.
[36] Legal and Constitutional Committee (1989) op. cit., p. 68.
[37] Rather, the Committee considered sufficient measures to deal with the problem of vexatious appeals were present in the *Administrative Appeals Tribunal Act 1984* (today's equivalent body being VCAT under the *Victorian Civil and Administrative Tribunal Act 1998*).

The issue over voluminous and repeated requests was addressed in the 1993 amendments which allowed agencies to reject such requests that may strain agency time and resources. The 1993 amendments also removed the ceiling on processing charges. This Bill goes further to call the applicants of such requests vexatious and refers their requests to VCAT. The Bill states that repeated applications means applications or requests relating to *the same matter or different matters*. This might appear to suggest that persons are not permitted to make more than one request, even when they relate to entirely separate matters; however the Bill adds that these repeated applications shall be considered vexatious if they were 'made for the purpose or have had the effect of obstructing or otherwise unreasonably interfering with the operations of the agency or agencies' (see section 20 of the Bill).[38]

The Bill proposes to set up a regime to handle vexatious applicants by allowing agencies to refer 'vexatious' requests to VCAT which will be given the authority to declare that a person is a vexatious applicant. The Bill outlines the process as requiring '2 or more agencies or Ministers or both' to make an application to the Attorney-General to administer a certificate to allow an agency or Minister to then apply to the Tribunal for an order declaring a person to be a vexatious applicant.[39] For the applicant, the Bill states that the 'determination period' with which the Tribunal first receives the application to declare the applicant vexatious and ending on the day that the application is determined or withdrawn are not to be counted in the statutory time period in processing requests.[40]

An applicant declared vexatious must not without leave of the Tribunal make any further requests under the Act. New section 61F(2) states that 'leave must not be given unless the Tribunal is satisfied that the request or application is not or will not be an abuse of the right of access, amendment or review provided for by this Act'. The Tribunal is given the power to vary, set aside or revoke an order to declare an applicant vexatious at any time 'if it considers it proper to do so'.[41]

A provision is contained in the Bill that allows the Tribunal to consider applications prior to the commencement of the Bill in determining whether to make an order declaring an applicant to be a vexatious applicant.[42]

[38] See new section 61C. The Ombudsman notes that MPs can make multiple requests for sensitive documents which can strain government resources. It is his view that this does not warrant statutory amendment to label multiple requests as vexatious since this does not make the requests improper and since these requests 'relate to an equally fundamental object of the Act', that is, the public's right to know, see Ombudsman Victoria (2006) op. cit., p. 33.
[39] See new section 61A(2).
[40] See new section 61A(4).
[41] In the Annual Report, the Attorney-General leaves it to the president of VCAT to set out the terms under which an individual can make further applications, see Attorney-General (2007) op. cit., p. 67.
[42] See new section 61H.

4. Other Jurisdictions

The following review of other Australian jurisdictions and New Zealand is not intended to be comprehensive. Its purpose is to summarise the approaches adopted in other jurisdictions pertaining to Freedom of Information legislation and to offer some comparisons with the Victorian legislation.

4.1 Commonwealth

Third Party Consultation
The *Freedom of Information Act 1982* (Cth) provides for consultation where a request is made for access to a document containing information relating to the business or professional affairs of a person, the business, commercial or financial affairs of an organisation or undertaking, the personal information of someone other than the applicant or Commonwealth and State relations. In such circumstances the third party is to be consulted before a decision is made and if the access is granted the third party may seek internal review or appeal to the Administrative Appeals Tribunal (AAT).[43]

External Review and Appeal
Under the *Freedom of Information Act 1982* (Cth) complaints are made to the Ombudsman and appeals can be initiated with the Australian Administrative Appeals Tribunal. The Ombudsman only has the power to make recommendations, not set aside a decision or substitute it for another.[44]

Conclusive Certificates
The Commonwealth Act provides for the issuing of conclusive certificates.[45] The AAT does not have the power to review the decision to give the certificate.[46]

Following the *McKinnon* decision,[47] then Labor Shadow Attorney-General, Ms Nicola Roxon, attempted to abolish conclusive certificates with the introduction of a Private Members Bill.[48] Conclusive certificates have already been removed by amendment in Tasmania and South Australia. It is yet to be seen what approach will be taken to the issue by the new Federal Labor Government.

Criticism and Reform
Commonwealth Ombudsman Professor John McMillan found in his 2006 review that the Commonwealth Act had widespread problems in decision making and probable misuse of exemption provisions. The Ombudsman found excessive delays in processing requests, problems with charges and inconsistent quality in the standard of decisions and letters of explanation. He argued for the creation of an Information Commissioner to monitor performance and provide guidance. This position already exists in Queensland, Western Australia and the United Kingdom where decisions of

[43] *Freedom of Information Act 1982* (Cth) ss. 26A-27A.
[44] ibid., ss. 55-58.
[45] ibid., ss. 33-36.
[46] ibid., s. 58.
[47] The High Court upheld the decision of then Treasurer, Mr Peter Costello, to issue a conclusive certificate under the *Freedom of Information Act 1982* (Cth). See *McKinnon v Secretary, Department of Treasury* [2006] HCA 45.
[48] *Freedom of Information Amendment (Abolition of Conclusive Certificates) Bill 2006* (Cth).

the Commissioner are binding on agencies but are still subject to appeal. In September 2007 the Federal Attorney-General announced that he had asked the Australian Law Reform Commission (ALRC) to undertake a review of FOI including possible harmonisation of federal and state laws, technological changes and reduction of the administrative burden on government agencies. The Commission is not required to report before the end of 2008.

4.2 New South Wales

Third Party Consultation

The *Freedom of Information Act 1989* (NSW) makes provision for consultation when the documents requested affect inter-governmental relations, personal affairs, business affairs or the conduct of research. The NSW Act requires that access to a document not be granted unless the agency has taken such steps as are reasonably practicable to obtain the views of the person concerned.[49]

External Review and Appeal

In New South Wales the Ombudsman acts as a Freedom of Information compliance monitor. The Ombudsman has the powers to make recommendations but not change or reverse decisions. An applicant can also appeal to the Administrative Decisions Tribunal which is empowered to affirm, vary or set aside a decision or remit it to the agency with recommendations.[50]

Ministerial Certificates

If a Ministerial Certificate is issued then access must be refused. Only the Premier can issue a Ministerial Certificate and they are only issued in relation to Cabinet documents, Executive Council documents, documents relating to law enforcement and public safety and documents affecting counter-terrorism measures.[51] Once a Ministerial Certificate is issued neither the Ombudsman nor the Administrative Decisions Tribunal can review the decision. The only avenue for appeal is to the Supreme Court which looks at whether there were reasonable grounds to claim the document was restricted. The Minister may confirm certificates relating to the Executive Council and Cabinet despite a Supreme Court order but must account to Parliament.[52]

Criticism and Reform

Then Opposition leader Bob Carr commented in 1988 during the second reading debate on the New South Wales Freedom of Information Bill that the legislation 'will give a false impression of openness which will be dispelled through the bitter experience of applicants seeking to utilise the legislation… The Bill is littered with clauses and schedules that even the most inept bureaucrat will be able to use to secrete embarrassing material from public gaze'.

The New South Wales Ombudsman has called for a comprehensive review of the *Freedom of Information Act 1989* (NSW) over the past decade in various annual

[49] *Freedom of Information Act 1989* (NSW) ss. 30-33.
[50] ibid., ss. 52-58.
[51] ibid., s. 59 and G. Griffith (2007) *Freedom of Information - Issues and Recent Developments in NSW,* Briefing Paper No. 06/2007, Sydney, Parliament of New South Wales.
[52] *Freedom of Information Act 1989* (NSW) ss. 58A-58C.

reports. The Ombudsman has noted a trend of increasing refusals of access. He also noted complaints about charges and inappropriate use of exemption clauses.

The New South Wales Government has not responded to calls for change and opposed a bill moved by the Greens last year calling for an independent review. In 2006 the Attorney-General directed the New South Wales Law Reform Commission to undertake an inquiry but its central purpose is to investigate uniformity of privacy protection across Australia. The findings are expected in 2008.[53]

4.3 Queensland

Third Party Consultation
The *Freedom of Information Act 1992* (QLD) requires an agency or Minister to only grant access to documents where disclosure would cause substantial concern to a government, agency or person if they first take such steps as are reasonably practicable to consult with the third party. If the agency decides the matter is not exempt but the third party believes it is exempt then the agency must give the third party written notice of the decision, reasons and their rights for review. They must defer giving the applicant access until the third party gives notice they do not intend to seek review, fail to seek review by the end of the review period or a review is conducted.[54]

External Review and Appeal
Queensland differs significantly from Victoria where external review is conducted by the Ombudsman and appeal is to VCAT. Although Queensland does not have a generalist administrative appeals tribunal like VCAT it does have an Information Commissioner with powers to make determinations as part of an external review.[55] As a matter of practice the Ombudsman has been the Information Commissioner to reduce an excess of bodies.

Conclusive Certificates
The Minister may issue a certificate to exempt a document from being accessed. Certificates may be issued to exempt documents such as Cabinet matters, Executive Council matters and matters relating to law enforcement or public safety.[56]

The Information Commissioner may consider the grounds for which a certificate was issued and if the Commissioner decides there were no reasonable grounds for the issue then the certificate ceases to have effect unless the Minister confirms the certificate. If the Minister decides to confirm a certificate they must account to Parliament and give notice to the applicant and Commissioner with reasons.[57]

The Information Commissioner also has the power to declare a person a vexatious applicant. The Commissioner must be satisfied the person has made repeated applications and that they involve an abuse of the right of access. Factors that suggest an abuse of the right are if the applications have the purpose or effect of harassing or

[53] G. Griffith (2007) op. cit.
[54] *Freedom of Information Act 1992* (QLD) s. 51.
[55] ibid., Part V.
[56] ibid., ss. 36, 37, 40, 42 42A.
[57] ibid., s. 84.

intimidating an individual or employee of the agency or unreasonably interfere with the operations of the agency. The Commissioner must give the applicant an opportunity to be heard before making such a declaration.[58]

Criticism and Reform

The Legal, Constitutional and Administrative Review Committee of the Queensland Parliament expressed concern about the Ombudsman holding the position of Information Commissioner in its December 2001 report.[59] The Committee was concerned by the perception the two roles were not entirely independent and recommended the Commissioner be appointed separately from the Ombudsman.[60]

Queensland Premier Anna Bligh announced in September 2007 that there would be an independent review of the *Freedom of Information Act 1992* (QLD).

4.4 Western Australia

Third Party Consultation

The *Freedom of Information Act 1992* (WA) provides that for documents containing personal information about an individual other than the applicant or documents containing commercial or business information, access cannot be granted unless the agency takes such steps as are reasonably practicable to consult with the third party. Consultation is not required if the relevant information is deleted.

Following consultation, if the third party expresses the view the document is exempt but the agency grants access, the agency must give the third party notice including reasons and information about their rights of review and appeal. Access must be deferred until the time for review or complaints has elapsed and the third party has not lodged an application or on appeal the agency's decision has been confirmed.

The agency may apply to the Commissioner to waive the requirement of consultation. The Commissioner must be satisfied that it would unreasonable to consult with third parties due to the number of third parties and that the document does not contain a matter exempt under the Schedule.[61]

External Review and Appeal

Unlike Queensland, the Information Commissioner in Western Australia is a completely independent and separate office. Decisions can be confirmed, varied or reversed. In addition to dealing with complaints the Commissioner also serves a public awareness function and informs the public and agencies about their rights and obligations.

In addition to review by the Information Commissioner, appeal to the Supreme Court is provided for in the Western Australian Act. Grounds for appeal include decisions of

[58] ibid., s. 96A.
[59] Legal, Constitutional and Administrative Review Committee (2001) *Freedom of Information in Queensland*, Brisbane, Queensland Parliament.
[60] ibid., p. 135
[61] *Freedom of Information Act 1992* (WA) ss. 32-35.

the Commissioner on a question of law and the Premier confirming an exemption certificate.[62]

Exemption certificates

In Western Australia only the Premier may issue a conclusive certificate, referred to as an exemption certificate. The Premier need not confirm the existence of such a document but can issue a certificate on the basis that if such a document did exist it would contain an exempt matter. The effect of issuing such a certificate is that it establishes that the document mentioned is an exempt matter.[63]

Applicants may seek review by the Commissioner who can consider the grounds on which it was claimed the document contains an exempt matter. The agency is able to respond and the Premier is entitled to be a party to the proceedings. If the Commissioner finds there were no reasonable grounds for claiming the document contained an exempt matter, the Commissioner can make a decision to that effect but must provide reasons. The exemption certificate ceases to have effect 28 days after such a decision unless the Premier confirms the certificate by written notice to the Commissioner before that time elapses. The Premier must also account to Parliament. If the Premier confirms a certificate the applicant can appeal to the Supreme Court.[64]

Criticisms and Reform

At the time of writing, the Information Privacy Bill 2007 which would amend the *Freedom of Information Act 1992* (WA) has undergone the second reading in the Legislative Council. The bill establishes the office of Privacy and Information Commissioner which encompasses the existing office of Information Commissioner. The change has been criticised by the Information Commissioner but the practical ramifications are yet to be seen.

The Freedom of Information Amendment Bill 2007, which at the time of writing had also undergone the second reading in the Legislative Council, makes significant changes to Freedom of Information Law in Western Australia. The bill gives the State Administrative Tribunal jurisdiction to deal with complaints, similar to external review in other states. It also confines the jurisdiction of the Commissioner in external review to endeavouring to conciliate complaints. A new exemption would be created to protect matter the disclosure of which is prohibited by the traditions, observances and customs of Aboriginal people. The bill would abolish exemption certificates but the Explanatory Memoranda states these have not been used in Western Australia.

4.5 New Zealand

The most significant difference between the law in Victoria and New Zealand is in relation to the Cabinet exemption. In New Zealand the *Official Information Act 1982* (NZ) does not provide a blanket exemption for Cabinet documents. Under the New Zealand Act a request for the release of Cabinet records must be considered on its merits. When a Department or Minister is given a request for a release of Cabinet documents of a current government they must make the decision after consulting with other affected Ministers, Departments and agencies but they need not consult with the

[62] ibid., Part IV.
[63] ibid., ss. 36-38.
[64] ibid., Part IV.

Cabinet Office unless the request relates to Cabinet documents of a previous administration.[65]

Rick Snell argues that the copious amount of Cabinet papers, minutes and internal policy documents that have been released under the *Official Information Act 1982* (NZ) have often embarrassed the New Zealand Government.[66] As the decision about release is made on a case by case basis, there is an individual assessment of the benefit and risk of releasing the information unlike in Australia where no regard is given to these factors. In 2005 the New Zealand Privacy Commissioner stated that the lack of Cabinet exemption forced writers of Cabinet papers to ensure the accuracy of their facts, provide comprehensive reasons and to carefully consider their recommendations with the result being that their advice was balanced, accurate and comprehensive. According to Snell, the New Zealand situation is at odds with the arguments made by Australian politicians and public servants that it would be inappropriate for the public to access Cabinet documents under the Westminster system.[67]

5. Position of Other Parties and Stakeholder Views

5.1 Position of Other Parties

The Opposition said in 2006 that a Liberal Government will establish an FOI Commissioner and an Office of the FOI Commissioner, impose strict time limits on FOI decisions and extend the power to investigate complaints made by public servants.[68] In regards to the Bill, Opposition Leader Ted Baillieu has been quoted as being in favour of greater transparency.[69]

Groups interested in FOI legislation have included libertarians, the media, academics and those in the legal profession. Many individuals and groups who fall into the above categories have contributed to the journal *Freedom of Information Review* which published bimonthly reviews and articles from 1986-2004 and offers a critique of both state and federal governments FOI legislation, documenting the various amendments made during this time.

5.2 The Media

The media are often vocal critics of the implementation and administration of FOI as they can be affected by delays and costs in processing requests, which may conflict with their deadlines and the monetary resources available to them. Various media groups, corporations and individual journalists have criticised aspects of both state

[65] Department of the Prime Minister and Cabinet (2001) 'Cabinet Office' viewed 22 January 2008, <http://www.dpmc.govt.nz/cabinet>.
[66] R. Snell (2007) 'Failing the Information Game' *Public Administration Today*, January - March 2007, pp. 5-9.
[67] ibid.
[68] Leader of the Opposition (2006) *Liberals to Overhaul Parliament*, media release, 20 November.
[69] P. Ker (2007) 'Brumby Vows More Open Government', *The Age*, 8 August.

and federal FOI administration, particularly following the *McKinnon v Secretary, Department of Treasury* case.[70]

'Australia's Right to Know Coalition' is an alliance of different media agencies and corporations such as News Limited, ABC, Fairfax, SBS, AAP, Commercial Radio Australia, Free TV Australia and the *West Australian* newspaper. In 2007 they conducted an inquiry into the state of free speech in Australia. The media coalition states that while FOI laws work effectively and reasonably consistently when they are used to provide access to personal information 'a range of factors limit their effectiveness in ensuring access to documents relevant to government accountability—the very reason they were set up in the first place'.[71] The report is critical of the delays and high costs which at times 'could be seen to be obstruction, often suggesting attempts to protect politically sensitive information'.[72]

5.3 Lobby Groups

Many of the groups lobbying government for changes to FOI legislation and its implementation have focused primarily on the Federal Government, such as the Democratic Audit of Australia. Another such group that has offered a review of both federal and Victorian legislation is the Accountability Working Party.

In 2006, the Australasian Study of Parliament Group's Accountability Working Party conducted a study specifically into accountability in Victoria.[73] In relation to Cabinet documents the report emphasised that 'Papers are to be brought before Cabinet only when genuinely related to Cabinet deliberations and not as a pretext for giving them such status'.[74] The report maintained that while a degree of Cabinet confidentiality was needed to uphold the quality of debate in Cabinet and the decisions made by it, the report questioned whether every document that goes to Cabinet is deserving of protection from disclosure, particularly those that are 'merely passed across the Cabinet table'.[75]

The Accountability Working Party's report was endorsed by Liberty Victoria (the Victorian Council of Civil Liberties). Liberty Victoria is of the opinion that FOI is being slowly eroded and is in need of reform.[76] It prepared a submission in 2007 to the Public Accounts and Estimates Committee outlining their concerns with several aspects of government accountability in Victoria. In particular, the submission was concerned with the potential for an abuse both of national security/anti-terrorism exemptions and of private-public partnerships in government where commercial-in-

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[70] Herman, Jack (2004, 21 August) *The urgent need for reform of Freedom of Information in Australia*, Public Right to Know Conference, University of Technology, Sydney, viewed 29 January 2007, <http://www.presscouncil.org.au/pcsite/fop/foi.html>.
[71] Australia's Right to Know Coalition (2007) *Report of the Independent Audit into the State of Free Speech in Australia*, Sydney, Independent Audit into the State of Media Freedom in Australia, p. iv.
[72] ibid.
[73] Accountability Working Party (2006) *Renewing Accountable Government: Reforming Government Accountability in Victoria*, Melbourne, Australasian Study of Parliament Group.
[74] ibid., p. 22.
[75] ibid., p. 6.
[76] Liberty Victoria (2007) Submission to the Public Accounts and Estimates Committee on Strengthening Government and Accountability in Victoria, 3 August, viewed 24 January 2008, <http://www.libertyvictoria.org.au/uploads/downloads/Submissions/Publicaccounts3aug2007.pdf>.

confidence reasons can be used to undermine public scrutiny. In addition, the submission recommended that an appropriate balance between confidentiality and disclosure be ensured in relation to documents regarding national security, Cabinet documents or documents regarding the administration of justice. Liberty Victoria recommended that not all such documents be exempt but only those that are specifically protecting the national or state interest.

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Relevant Victorian Legislation

Freedom of Information Act 1982 (Vic)
Ombudsman's Act 1973 (Vic)
Victorian Civil and Administrative Tribunal Act 1998 (Vic)
Administrative Appeals Tribunal Act 1984 (Vic) (repealed)
Information Privacy Act 2000 (Vic)

Legislation in Other Jurisdictions

Freedom of Information Act 1982 (Cth)
Freedom of Information Act 1989 (ACT)
Freedom of Information Act 1989 (NSW)
Freedom of Information Act 1992 (QLD)
Freedom of Information Act 1992 (WA)
Freedom of Information Act 1991 (Tas)
Freedom of Information Act 1991 (SA)
Information Act 2002 (NT)
Official Information Act 1982 (NZ)

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