

## **Freedom of Information (Miscellaneous Provisions) Regulations (Amendment) 1991 No. 321**

### **EXPLANATORY STATEMENT**

#### **Statutory Rules 1991 No. 321**

Freedom of Information (Miscellaneous Provisions) Regulations (Amendment)

#### Freedom of Information Act 1982

Section 94 of the Freedom of Information Act 1982 (the FOI Act) empowers the Governor-General to make Regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the Act. Sections 33, 33A, 34, 35 and 36 of the FOI Act provide that certificates may be issued which conclusively determine that material in documents is exempt from public disclosure under the Act. Section 36A of the FOI Act, which was inserted by the Freedom of Information Amendment Act 1991, provides that the regulations may provide maximum periods during which such certificates may remain in force and may provide the manner in which such certificates may be revoked.

The amending Regulations amend the Freedom of Information (Miscellaneous Provisions) Regulations (the Principal Regulations) to provide that such certificates remain in force for 5 years unless earlier revoked. The amending Regulations also provide that such certificates may be revoked at any time in full or in part.

Details of the amending Regulations are at Attachment A.

#### ATTACHMENT

#### Details of amendments to the Freedom of Information (Miscellaneous Provisions) Regulations (the amending Regulations)

Regulation 1 amends the Freedom of Information (Miscellaneous Provisions) Regulations (the Principal Regulations) as set out in the proposed Regulations.

#### Regulation 2

Certain sections of the FOI Act (ss. 33, 33A, 34, 35 and 36) provide for certificates to be issued which determine conclusively that documents are exempt from disclosure under the FOI Act on the grounds that disclosure would prejudice national security, defence, international relations, Commonwealth/State relations; or that they are Cabinet or Executive Council documents; or that they are internal working documents the disclosure of which would be contrary to the public interest. Section 36A provides that the Regulations may provide maximum periods for which certificates remain in force and may prescribe the manner in which certificates may be revoked.

Regulation 2 inserts a new regulation 5A in the Principal Regulations to provide certificates remain in force for 5 years from the date they are issued.

Regulation 2 also inserts a new regulation 5B in the Principal Regulations to prescribe the manner in which certificates may be revoked.

New sub-regulation 5B.(1) provides that a certificate issued under the FOI Act may be revoked in writing and in whole or in part.

New sub-regulation 5B(2) provides that a certificate issued under the Cabinet document exemption in section 34 of the FOI Act may be revoked by the Secretary to the Department of Prime Minister and Cabinet.

New sub-regulation 5B(3) provides that a certificate issued under the Executive Council document exemption in section 35 of the FOI Act may be revoked by the Secretary to the Executive Council.

New sub-regulation 5B(4) provides that a certificate issued in respect of an official document of a Minister under the national security, defence, international relations, Commonwealth/State relations, or internal working document exemptions in sections 33, 33A or 36 of the FOI Act may be revoked by the Minister.

New sub-regulation 5B(5) provides that a certificate issued in respect of a document of an agency under the national security, defence, international relations, Commonwealth/State relations, or internal working document exemptions in sections 33, 33A or 36 of the FOI Act may be revoked by the responsible Minister or principal officer of the agency.

(Authorised by the Attorney-General).