

Freedom of Information (Miscellaneous Provisions) Regulations (Amendment) 1991 No. 399

EXPLANATORY STATEMENT

Statutory Rules 1991 No. 399

Issued by the Authority of the Minister for Justice and Consumer Affairs

FREEDOM OF INFORMATION ACT 1982

FREEDOM OF INFORMATION (MISCELLANEOUS PROVISIONS) REGULATIONS (AMENDMENT)

These regulations made under section 94 of the Freedom of Information Act 1982 ("the FOI Act") amend the Freedom of Information (Miscellaneous Provisions) Regulations ("the Regulations").

Section 94 of the Freedom of Information Act 1982 (the FOI Act) empowers the Governor-General to make regulations for the purposes of the Act.

Subsection 4(1) of the FOI Act includes definitions of "prescribed authority", "principal officer" and "responsible Minister".

The definition of "prescribed authority" is in wide terms to bring all statutory bodies and other agencies performing functions of the Commonwealth Government within the scope of the Act. "Prescribed authority" is defined as including

- (a) bodies corporate or unincorporated bodies, other than incorporated companies or associations, established for a public purpose in accordance with an enactment;
- (b) bodies declared by the Freedom of Information (Miscellaneous Provisions) Regulations (the Regulations) to be prescribed authorities, i.e.
 - bodies established by the Governor-General or a minister, or
 - incorporated companies or associations over which the Commonwealth can exercise control(Schedule 1 to the Regulations lists bodies in this category of prescribed authorities.); and
- (c) persons holding or performing the duties of an office established by an enactment.

"Principal officer" is defined as

- (a) in relation to a department - the person holding, or performing the duties of, the office of Secretary of the Department; and
- (b) in relation to an agency which is not a department (a prescribed authority under the FOI Act)
 - the person who constitutes that authority or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which he or she is present, or
 - the person holding or performing the duties of an office prescribed in the Regulations.

(Schedule 2 of the Regulations prescribes offices for this last category of principal officer.)

"Responsible Minister" is defined as

- (a) in relation to a department - the Minister administering the relevant department;
- (b) in relation to paragraph (a) of the definition of prescribed authority - the Minister administering the part of the enactment by which, or in accordance with the provisions of which, the prescribed authority is established;
- (c) in relation to paragraph (c) of the definition of prescribed authority - the Minister administering the part of the enactment by which the office is established; or
- (d) in relation to any other prescribed authority - the Minister declared by the Regulations to be the responsible Minister in respect of that authority.

(Schedule 3 of the Regulations prescribes Ministers for this last category of responsible Ministers.)

The amendments to the Regulations have omitted the existing Schedules 1, 2 and 3 and substituted new Schedules 1, 2 and 3. The new schedules have been introduced to reflect changes to prescribed authorities.

A large number of alterations to the schedules have been required because of the transfer of responsibilities to the Australian Capital Territory Government. Other changes have been required by the sale or reorganisation of government business enterprises or the renaming of principal officers of prescribed authorities.

Subject to the following exception, the amendments to the Regulations commenced on the date the proposed Regulations were notified in the Gazette. The amendments required because of the enactment of the Australian and Overseas Telecommunications Corporation Act 1991 (the ROTC Act) will commence on the date fixed by proclamation for the commencement of that Act (other than Parts 1 and 6) which is the date for the commencement of section 24 of the Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991 (the TTPCA Act) referred to in regulation 1 of the amending Regulations. Amendments consequential to the ROTC Act are made by the TTPCA Act to the FOI Act.

Details of the Regulations are attached.

ATTACHMENT

DETAILS OF THE FREEDOM OF INFORMATION (MISCELLANEOUS PROVISIONS REGULATIONS (AMENDMENT) (THE REGULATIONS)

Regulation 1 provides that subregulations 3.2, 4.2, 4.3, 4.4 and 5.2 will commence on the date of commencement of section 24 of the TTPCA Act. The remaining regulations will commence on the date the Regulations are notified in the Gazette.

Regulation 2 amends the Freedom of Information (Miscellaneous Provisions) Regulations as set out in these Regulations.

Subregulation 3.1 omits Schedule 1 and substitutes a new Schedule 1.

All but two of the bodies previously listed have been deleted. The principal reason for the deletions is the transfer of responsibilities to the Australian Capital Territory Government. The remaining deletion is the result of the sale of Commonwealth Accommodation and Catering Services Ltd.

Subregulation 3.2 will omit "OTC Limited" from the new Schedule 1 and substitute "Australian and Overseas Telecommunications Corporation Limited" when section 24 of the TTPCA Act commences.

Subregulation 4.1 omits Schedule 2 and substitutes a new Schedule 2.

The number of prescribed authorities listed in the Schedule has been reduced, a principal reason being the transfer of responsibilities to the Australian Capital Territory Government. Included in these changes is the transfer of the Australian Capital Territory Magistrates Court and the Coroner's Court; the Supreme Court of the Australian Capital Territory will be retained pending its later transfer, scheduled for 1992. Changes have also become necessary because of the reorganisation of responsibilities within the portfolio of the Minister for Health, Housing and Community Services (previously Community Services and Health).

Secondly, alterations have been required by changes to government business enterprises such as the Australian Postal Commission, which has become the Australian Postal Corporation, and the Australian Telecommunications Commission, which has become the Australian Telecommunications Corporation. The Australian Telecommunications Corporation will be deleted later by subregulation 4.3 as noted below. Commonwealth Accommodation and Catering Services Limited has also been deleted from Schedule 2.

Thirdly, some items have been deleted and others inserted. These include the Canberra College of Advanced Education and the Australian Tobacco Board, which have been deleted, and the University of Canberra and the Tobacco Research and Development Council, which have been inserted. Some items such as the Specialist Recognition Advisory Committees of Inquiry for each State and the Australian Capital Territory and Northern Territory have been grouped as one item to shorten the Schedule and corrections have been made which include the deletion of the Tag Agents Board of Victoria and the substitution of a Tax Agents' Board for each State.

Subregulation 4.2 will insert a new item 8 to refer to the Australian and Overseas Telecommunications Corporation and its principal office (Managing Director) for the purposes of paragraph (b) of the definition of "principal officer" in subsection 4(1) of the FOI Act when section 24 of the TTPCA Act commences.

Subregulation 4.3 will omit item 42A (the Australian Telecommunications Corporation and its principal office) from the new Schedule 2 when section 24 of the TTPCA Act commences.

Subregulation 4.4 will omit item 100A (OTC Ltd and its principal office) from the new Schedule 2 when section 24 of the TTPCA Act commences.

Subregulation 5.1 omits Schedule 3 and substitutes a new Schedule 3.

The number of prescribed authorities in the Schedule has been reduced, the principal reason being the transfer of responsibilities to the Australian Capital Territory Government. The Australian Capital Territory Magistrates Court and the Coroner's Court have also been deleted from this Schedule; the Supreme Court of the Australian Capital Territory is retained pending its later transfer, scheduled for 1992.

Commonwealth Accommodation and Catering Services Limited has also been deleted from this Schedule. The Flight Crew Officers Industrial Tribunal has been deleted as this tribunal has been abolished.

Subregulation 5.2 will insert item 1 in Schedule 3 to refer to the Australian and Overseas Telecommunications Corporation and the responsible Minister (the Minister of State for Transport and Communications) for the purposes of paragraph (d) of the definition of 'responsible Minister' in subsection 4(1) of the FOI Act when section 24 of the TTPCA Act commences.