

EXPLANATORY STATEMENT

Select Legislative Instrument No. _____, 2017

Issued by the authority of the Attorney-General

Freedom of Information (Prescribed Authorities, Principal Offices and Annual Report) Regulations 2017

Introduction

The *Freedom of Information Act 1982* (FOI Act) gives members of the public a legally enforceable right of access to government-held documents, subject to exemptions and exceptions.

Section 94 of the FOI Act provides in part that the Governor-General may make regulations prescribing all matters required or permitted by the FOI Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the FOI Act.

Purpose and Operation of the Instrument

The *Freedom of Information (Miscellaneous Provisions) Regulations 1982* (the current Regulations):

- declare one agency to be a prescribed authority for the purposes of the FOI Act;
- declare who are the principal officers of some authorities and offices for the purposes of the FOI Act; and
- set timeframes when an agency or Minister must provide information to the Australian Information Commissioner for the purposes of the Commissioner's annual report (as required by section 93 of the FOI Act).

Under section 50 of the *Legislative Instruments Act 2003* the current Regulations are due to sunset on 1 April 2018.

The purpose of the *Freedom of Information (Prescribed Authorities, Principal Offices and Annual Report) Regulations 2017* (the new Regulations) is to remake the current Regulations with the same effect to ensure their continued operation. Minor amendments have been made to ensure fitness for purpose and to remove obsolete or unnecessary provisions. The new Regulations are retitled in accordance with contemporary drafting practice.

Consultation

Consistent with the requirements of the *Legislation Act 2003*, the Department of the Prime Minister and Cabinet, the Department of Employment, the Department of Defence, the Department of Foreign Affairs and Trade, the Department of Industry, and Treasury were consulted on the Regulations. The Office of the Australian Information Commissioner, the Australian Public Service Commission and Safe Work Australia were also consulted.

The Office of Best Practice Regulation (OBPR) was consulted and advised that a Regulation Impact Statement is not required. The OBPR reference is ID: 23061.

Other Details

Details of the new Regulations are at **Attachment A**. A Statement of Compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is at **Attachment B**.

The new Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Freedom of Information (Prescribed Authorities, Principal Offices and Annual Report) Regulations 2017

Section 1 – Name

This section provides that the title of the Regulations is the *Freedom of Information (Prescribed Authorities, Principal Offices and Annual Report) Regulations 2017*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after the Regulations are registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Freedom of Information Act 1982* (FOI Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

Section 5 – Definitions

This section defines ‘Act’ in the Regulations to mean the *Freedom of Information Act 1982*.

Section 6 – Prescribed authorities

Under paragraph 11(1)(a) of the FOI Act, every person has a legally enforceable right to obtain access in accordance with the FOI Act to a document of an agency other than an exempt document. Subsection 4(1) of the FOI Act defines ‘agency’ to include a prescribed authority. Paragraph (b) of the definition of ‘prescribed authority’ in subsection 4(1) of the FOI Act states that the term includes any other body declared by the regulations to be a prescribed authority.

This section declares Aboriginal Hostels Limited to be a prescribed authority for the purposes of paragraph (b) of the definition of ‘prescribed authority’ in subsection 4(1) of the FOI Act. This means that the Aboriginal Hostels Limited is subject to the FOI Act.

Section 7 – Principal offices

Subsection 23(1) of the FOI Act provides that the ‘principal officer’ of an agency may make decisions on an FOI access request made to the agency or authorise other officers for this purpose. The list of authorities and offices in the current Regulations (the *Freedom of Information (Miscellaneous Provisions) Regulations 1982*) has been revised to remove

references to authorities that no longer exist or are already covered by the definition of ‘principal officer’ in subsection 4(1) of the FOI Act.

Section 7 declares an office mentioned in column 2 of an item in the table in section 7 to be the principal office of the prescribed authority listed in column 1 of the item. Item 4 of the table refers to Safe Work Australia, which has taken over the functions of the National Occupational Health and Safety Commission.

Section 8 – Information Commissioner’s annual report—giving information

Section 93 of the FOI Act provides for an agency and Minister to provide information to the Australian Information Commissioner for the preparation of the Commissioner’s annual report required under section 30 of the *Australian Information Commissioner Act 2010*. Section 8 of the proposed Regulations replicates the existing obligation in the current Regulations (the *Freedom of Information (Miscellaneous Provisions) Regulations 1982*) for information to be provided on a quarterly and annual basis. The information must be provided in accordance with *FOI Guidelines* issued by the Australian Information Commissioner under section 93A of the FOI Act.

Schedule 1 – Repeals

Schedule 1 repeals the current Regulations (the *Freedom of Information (Miscellaneous Provisions) Regulations 1982*).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Freedom of Information (Prescribed Authorities, Principal Offices and Annual Report) Regulations 2017

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Freedom of Information (Prescribed Authorities, Principal Offices and Annual Report) Regulations 2017* (the new Regulations) remakes the *Freedom of Information (Miscellaneous Provisions) Regulations 1982* (the current Regulations) to:

- declare one agency (Aboriginal Hostels Limited) to be a prescribed authority for the purposes of the FOI Act;
- declare who are the principal officers of some authorities and offices for the purposes of the FOI Act; and
- set timeframes when an agency or Minister must provide information to the Australian Information Commissioner for the purposes of the Commissioner's annual report (as required by section 93 of the FOI Act).

The new Regulations remake the current Regulations with the same effect to ensure their continued operation. Minor amendments have been made to ensure fitness for purpose and to remove obsolete or unnecessary provisions. The new Regulations have been retitled in accordance with contemporary drafting practice.

Human rights implications

The new Regulations engage the right to information in Article 19(2) of the *International Covenant on Civil and Political Rights*. The right to information is not absolute. Relevantly, Article 19(2) provides:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

In General Comment No. 34 on Article 19 (CCPR/C/GC/34) the Human Rights Committee noted the importance of States parties proactively putting into the public domain Government information of public interest to give effect to the right of access to information and the need to make every effort to ensure easy, prompt, effective and practical access to

such information (at paragraph 19). The new Regulations are consistent with these requirements and the objects of the FOI Act.

The new Regulations are compatible with the right to information in that it provides for ongoing practical and administrative processes associated with the FOI Act.

These measures are not intended to prevent or limit access to information and do not disproportionately affect any particular group.

Conclusion

This Legislative Instrument engages the right to information. It is compatible with human rights because it is consistent with the right to information and, to the extent that it may limit the right to information, those limitations are reasonable, necessary and proportionate.