

EXPLANATORY STATEMENT

Statutory Rules 1990 No 132

Issued by the Authority of the Attorney-General

Subject - Freedom of Information Act 1982:

Freedom of Information (Miscellaneous Provisions)
Regulations (Amendment)

These regulations made under sections 4 and 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 FOI Act empowers the Governor-General to make Regulations prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 4 of the FOI Act is an interpretation provision and sub-section 4(1) includes a definition of the expression of prescribed authority. Sub-section 4(1) is in wide terms so as to bring all statutory bodies and other agencies performing functions of the Commonwealth Government within the scope of the FOI Act.

Paragraph (a) of the definition includes within the phrase prescribed authority bodies corporate or unincorporated bodies, other than incorporated companies or associations, established for a public purpose in accordance with an enactment. Paragraph (b) of the definition includes within the phrase bodies declared by the Regulations to be prescribed authorities, being 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 last category of prescribed authorities.

The proposed amendment to Schedule 1 of the Regulations is required to take account of the restructuring of a Commonwealth agency. The OTC (Conversion into Public Company) Act 1988, the operative provisions of which came into effect on 1 April 1989, converted the Overseas Telecommunications Commission into a public company, changing the status of the agency for the purposes of the FOI Act. The new company, OTC Limited, ceased to fall within the scope of paragraph (a) of the definition of prescribed authority and is now not covered by the Act. The proposed amendment declares OTC Limited to be a prescribed authority within the scope of paragraph (b) of sub-section 4(1) of the Act. This is consistent with the substitution, by the Schedule to the OTC (Conversion into Public Company) Act, of OTC Limited for Overseas Telecommunications Commission (Australia) in Part II of Schedule 2 of the FOI Act as an agency exempt from the FOI Act in relation to documents in respect of its competitive commercial activities.

The amendment to Schedule 2 is required to take account of a change in the office which will serve as the principal office for OTC Limited for the purposes of the Act. The Principal office is now to be the Chief Executive.

Details on the proposed Regulations are attached.

The Minute recommends that regulations be made in the form proposed.

Authority: Section 94 of the
Freedom of
Information Act 1982

Details on the Freedom of Information (Miscellaneous Provisions) Regulations (Amendment)

Regulation 1 - Commencement

Regulation 1 defines the term Principal Regulations as meaning the Freedom of Information (Miscellaneous Provisions) Regulations.

Regulation 2 - Schedule 1

Regulation 2 inserts OTC Limited into the list of bodies declared to be prescribed authorities.

The Overseas Telecommunications Commission (the Commission) was a body within paragraph (a) of the definition of prescribed authority in the Freedom of Information Act 1982 (the FOI Act). By virtue of the OTC (Conversion into Public Company) Act 1988 the Commission was replaced by a public company, OTC Limited, over which the Commonwealth is able to exercise control. The company was incorporated on 1 April 1989. In order to keep the organisation, restructured as an incorporated company, within the scope of the FOI Act it is necessary to specifically declare, by listing in Schedule 1 of the Regulations, that the company is a prescribed authority for the purposes of the FOI Act. This is consistent with the inclusion of OTC Limited in Part II of Schedule 2 of the Act as an agency exempt from the FOI Act in relation to documents in respect of its competitive commercial activities.

Regulation 3 - Schedule 2

Regulation 3 alters the office within the company which is declared to be the principal office for the purposes of the FOI Act. The principal office is now the Chief Executive.