

# **Freedom of Information (Miscellaneous Provisions) Regulations (Amendment) 1994 No. 434**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 1994 No. 434**

Issued by the Authority of the Minister for Justice

#### 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 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".

Prescribed authority is defined to allow all statutory bodies and other agencies performing functions of the Commonwealth Government to come within the scope of the Act. It includes

(a) bodies corporate or unincorporated bodies, other than incorporated companies or associations, established for a public purpose in accordance with an enactment or an Order-in-Council;

(b) bodies declared by the Regulations to be prescribed authorities, ie.

- 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 or Order-in-Council.

#### **Principal officer** means

(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 (ie. 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** means

- (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; or
- (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 amended Schedules 1, 2 and 3 to reflect changes to prescribed authorities.

Schedule 1 of the Regulations has been amended by inserting "Coal Mines Insurance Pty Ltd" (CMI). CMI is a subsidiary of the Joint Coal Board which is established under joint NSW and Commonwealth legislation. As CMI is wholly owned by the Joint Coal Board it is appropriate that it be subject to the Commonwealth FOI Act. Schedule 1 of the Regulations has also been amended by deleting the reference to the Australian and Overseas Telecommunications Corporation and substituting Telstra Corporation Limited because of the change of name of that Corporation. Finally Schedule 1 of the Regulations has been amended by inserting "Aboriginal Hostels Limited" (AHL) at the request of the Minister for Aboriginal and Torres Strait Islander Affairs. AHL is a company over which the Commonwealth is in a position to exercise control.

Inserting CMI and AHL into Schedule 1 made it necessary to insert CMI and AHL into Schedule 3 of the Regulations to prescribe the Minister for Resources and the Minister for Aboriginal and Torres Strait Islander Affairs respectively as the responsible Ministers in accordance with the requirements of paragraph (d) of the definition of "responsible Minister" in the FOI Act.

Schedule 2 of the Regulations has been amended by deleting the Supreme Court of the Australian Capital Territory as the legislation establishing the Court is now an enactment of the Australian Capital Territory. The Court has been deleted from Schedule 3 of the Regulations for the same reason.

Other changes were made to Schedules 2 and 3 mainly because of changes to designations of a Minister and his or her Department, changes to the names of agencies and changes to persons to be "principal officers" of certain agencies. The Family Law Council has been deleted from Schedule 2 as it is intended that subparagraph (b)(ii) of the definition of "principal officer" apply so that the Chairperson of the Council is the "principal officer"; it has, therefore, become unnecessary to include the Family Law Council in Schedule 2. The references to the Australian Dried Fruits Corporation and the Australian Institute of Anatomy have been deleted as those bodies no longer exist. The Australian Honey Board has been deleted from Schedule 2 because of the repeal of the Act which established the Board. AHL has been added to Schedule 2 as the General Manager is to be the "principal officer" of AHL.

The Freedom of Information (Miscellaneous Provisions) Regulations (Amendment) commenced on the date the Regulations were notified in the Gazette.

