

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 271

Issued by the authority of the Minister for Privacy and Freedom of Information

Freedom of Information Act 1982

*Freedom of Information (Miscellaneous Provisions) Amendment Regulations
2010 (No. 1)*

Subsection 94(1) of the *Freedom of Information Act 1982* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient for the carrying out or giving effect to the Act.

The *Freedom of Information (Miscellaneous Provisions) Regulations 1982* (the Principal Regulations) prescribe the bodies declared to be prescribed authorities (Schedule 1); the principal offices in respect of prescribed authorities (Schedule 2); the responsible ministers in respect of prescribed authorities (Schedule 3); and prescribe the requirements concerning the furnishing of information, pursuant to subsection 93(2) of the Act, for FOI annual reports (Regulation 6).

The Regulations amend the Principal Regulations to reflect changes made to the act by the *Freedom of Information Amendment (Reform) Act 2010* (the Reform Act).

As a consequence of amendments to section 93 of the Act, the requirements relating to the provision of information for the FOI annual reports will change from 1 November 2010 so that agencies or Ministers must give to the Australian Information Commissioner (AIC) the information the AIC requires to prepare reports under section 30 of the *Australian Information Commissioner Act 2010*.

The purpose of the *Freedom of Information (Miscellaneous Provisions) Amendment Regulations 2010 (No. 1)* is to amend the Principal Regulations to prescribe reporting arrangements for the year 2010-11, such that Ministers and agencies will report under the current arrangements for the first four months of 2010-11 (rather than quarterly) and then for a two month period ending 31 December 2010 and for two quarters in 2011, Ministers and agencies will be reporting to the AIC and thereafter returning to quarterly reporting to the AIC. Thus, there will be two “annual” reports for 2010-11, one from the Minister for Privacy and Freedom of Information for the period 1 July to 31 October 2010 and one from the AIC, for the period 1 November 2010 to 30 June 2011. Thereafter the AIC will be presenting annual reports.

Under the Act, the “principal officer” of an agency may make decisions on access requests or authorise other officers for this purpose. The Reform Act expands the definition of principal officer in subsection 4(1) of the Act, with the aim of reducing the need to prescribe agencies to determine the office holder for this purpose.

The purpose of the *Freedom of Information (Miscellaneous Provisions) Amendment Regulations 2010 (No. 1)* is also to amend the Principal Regulations to remove two references to prescribed authorities, as they no longer exist; lists principal offices in respect of prescribed authorities that are not caught by the expanded definition of principal office; deletes the references to responsible Ministers, in respect of prescribed authorities, as the entities no longer exist or there is no reason to continue to prescribe them in this manner.

The Regulations give effect to these purposes.

Details of the proposed Regulations are set out in the [Attachment](#).

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 November 2010.

ATTACHMENT

Details of the Freedom of Information (Miscellaneous Provisions) Amendment Regulations 2010 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Freedom of Information (Miscellaneous Provisions) Amendment Regulations 2010 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 November 2010.

Regulation 3 – Amendment of *Freedom of Information (Miscellaneous Provisions) Regulations 1982*

This regulation provides that the *Freedom of Information (Miscellaneous Provisions) Regulations 1982* (the Principal Regulations) are amended as set out in the Schedule 1.

Schedule 1– Amendments

Item [1] – Regulations 4 to 6

Provides for a substitute regulation 4 that, for paragraph (b) of the definition of principal officer in subsection 4(1) of the Act, specifies that an office in the new schedule 2 is the “principal office” for the authority mentioned in the item. This reflects modern drafting practices.

Provides for a substitute regulation 5 that, for paragraph 93 (3) (a) of the Act, specifies the new times for giving information for the purpose of the FOI annual report, consequent upon changes in responsibility (from the Minister for Privacy and Freedom of Information to the Australian Information Commissioner) to take place on 1 November 2010, five months into the reporting year.

Item [2] – Schedule 1

Omits “Coal Mines Insurance Pty Ltd” and “National Media Liaison Service” from the list in the Schedule, as neither exists.

Item [3] - Schedule 2

Substitutes a new Schedule 2 -Authorities and offices (under regulation 4) comprising 21 Authorities and Offices as listed, consequent upon the expanded definition of “principal officer” in the Act, taking effect on 1 November 2010. The definition was changed to reduce the need to prescribe.

Item [4] – Schedule 3

Omits schedule 3 as the entities no longer exist or there is no reason to continue to prescribe them in the current manner.