

**FREEDOM OF INFORMATION**  
**Memorandum No. 95**  
**Freedom of Information**

**(MISCELLANEOUS PROVISIONS) REGULATIONS**  
**GOVERNMENT GUIDELINES ON ADMINISTRATION OF THE**  
**FREEDOM OF INFORMATION ACT 1982**  
**LIST OF CURRENT FOI MEMORANDUMS**

The principal purpose of this memorandum is to explain the operation of the Freedom of Information (Miscellaneous Provisions) Regulations (FOI (MP) Regulations) made under the *Freedom of Information Act 1982* (FOI Act) and to remind Departments and other agencies of the need to consider the necessity for amendments to the FOI(MP) Regulations whenever there is a change to the Administrative Arrangements or a change to the administrative structure of an agency. The Information Access Unit of the Family and Administrative Law Branch of this Department should be notified whenever such changes are required.

This Memorandum supersedes FOI Memorandums No. 36, 51, 54, 78 and 87. Please note that FOI Memorandums No.s 22, 49, 50, 52, 53, 55, 62, 67, 68, 71, 72 and 81 are also obsolete.

The Memorandum also restates and re-emphasises the government's previous directions on the administration of the FOI Act (see para. 6 of FOI Memorandum No. 77, June 1985). Attachment B sets out a copy of a letter from the Minister for Justice, Mr Duncan Kerr, MP, re-endorsing the government's general approach to the administration of the FOI Act, including an emphasis on the principles underlying the FOI Act, and, in particular, the presumption in favour of disclosure and the careful and sparing use of the Act's exemptions.

As usual, the Information Access Unit is happy to provide additional advice on matters dealt with in this memorandum. Phone (06) 250 6818.

The Freedom of Information (Miscellaneous Provisions) Regulations, as they currently apply, are set out in Attachment A to this Memorandum.

Attachment C to this Memorandum sets out a list of current FOI Memorandums.

We welcome comments concerning the memorandum.

JUNE 1995 ATTORNEY-GENERAL'S DEPARTMENT  
CANBERRA

## **FOI Memorandum No. 95**

### **Freedom of Information (Miscellaneous Provisions) Regulations**

### **Freedom of Information Act 1982 - Reporting Obligations and Government Guidelines on Administration of the Act**

### **List of Current FOI Memorandums**

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LIST OF CURRENT FOI MEMORANDUMS I

## **FOI Memorandum No. 95**

### **Freedom of Information (Miscellaneous Provisions) Regulations**

### **Freedom of Information Act 1982 - Reporting Obligations and Government Guidelines on Administration of the Act**

### **List of Current FOI Memorandums**

## **1. Introduction**

1.1 This memorandum has the following five purposes:

- to explain the function of the Freedom of Information (Miscellaneous Provisions) Regulations (FOI(MP) Regulations) made under the Freedom of Information Act 1982 (FOI Act);
- to remind agencies to notify the Information Access Unit, Family and Administrative Law Branch, Attorney-General's Department whenever a change to the agency requires a change to the FOI(MP) Regulations;

- to remind agencies of the requirement that decisions under the FOI Act must be made by authorised persons;
- to publicise a letter from the Minister for Justice on the obligations of agencies under the FOI Act; and
- to circulate a list of current FOI Memorandums.

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## Function of the Regulations

1.2 Subsection 4(1) of the FOI Act defines the terms ‘prescribed authority’, ‘principal officer’ and ‘responsible Minister’. The three definitions provide that they may be varied by regulations under the FOI Act;

- the definition of ‘prescribed authority’ provides for certain bodies to be prescribed authorities if they are declared as such by the regulations (see Schedule 1 of the FOI(MP) Regulations);
- the definition of ‘principal officer’ permits the principal officer of a prescribed authority to be a person declared by the regulations to be the principal officer instead of the person who would otherwise be the principal officer (see Schedule 2 of the FOI(MP) Regulations); and
- the definition of ‘responsible Minister’ provides that where the definition of ‘responsible Minister’ does not otherwise provide who is the ‘responsible Minister’ of a prescribed authority, the responsible Minister in respect of the prescribed authority is the Minister declared by the regulations (see Schedule 3 of the FOI(MP) Regulations).

## Notify Attorney-General’s Department of changes requiring amendment to the regulations

1.3 The second purpose of this memorandum is to remind agencies of the need to notify the Information Access Unit, Family and Administrative Law Branch, Attorney-General’s Department whenever a change to the Administrative Arrangements, the internal administrative structure of an agency, the name of an agency or other change requires a change to the FOI(MP) Regulations. Whenever an agency is abolished or a new agency is established, the Department within whose portfolio the agency lies should notify this Department as soon as possible. A Department is to provide full details on the establishment, constitution and decision making structure of any new agency. Amongst other things this will allow a new agency to be

provided with a code for statistical reporting purposes and for the public to know all agencies subject to the FOI Act.

## **Updated version of the FOI (MP) regulations**

1.4 An updated version of the FOI(MP) Regulations is attached to this memorandum and agencies are requested to check the Schedules to the Regulations to ascertain whether the reference to any agency, principal officer or Minister requires amendment.

## **Decisions to be made by authorised persons**

1.5 The third purpose of this memorandum is to remind agencies of the requirement that decisions under the FOI Act must be made by authorised persons. An authorisation given under section 23 of the FOI Act in respect of an agency should be re-issued where –

- an authorisation is given by a Minister and the Minister is replaced or the designation of the Minister is changed;
- an authorisation is given by a principal officer and that officer is replaced or the designation of that officer is changed;
- an authorisation is given to a named officer and that officer ceases to hold the relevant position;
- an authorisation is given to a position number and the functions or number of the position are changed; or
- the designation of the agency is changed.

Where a new agency is created and decisions are to be made by officers other than the principal officer, it is essential that authorisations under section 23 of the FOI Act be arranged as soon as possible. Guidance on section 23 arrangements for decision makers may be found in revised FOI Memorandum No. 45/1 issued 7 December 1984.

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## **Letter from Minister For Justice**

1.6 The fourth purpose of this memorandum is to restate and re-emphasise the government's directions on the administration of the FOI Act. The government's position is re-endorsed in a letter from the Minister for Justice set out in Attachment B and referred to in paragraphs 7.1 to 7.4 of this memorandum.

## **Other matters**

1.7 The final purpose of this is to make available to agencies a list of the current FOI Memorandums. This list is set out in Attachment C.

1.8 There have been a number of different sets of regulations made under the FOI Act but the only current regulations are the FOI(MP) Regulations and the Freedom of Information (Fees and Charges) Regulations (FOI(FC) Regulations). The relevant FOI Memorandum for the FOI(FC) Regulations is NEW FOI Memorandum No.29 issued 4 November 1992 as modified by FOI Memorandum No.94 issued 30 June 1994.

1.9 The latest reprint of the *Freedom of Information Act 1982* is Reprint No. 5 – the Act was reprinted as at 31 January 1995.

## **2. “Prescribed Authority”**

2.1 Section 4(1) of the FOI Act defines "agency" for the purposes of the FOI Act as meaning a Department, a prescribed authority or an eligible case manager. "Prescribed authority" is in turn defined in section 4(1) as

(a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment or an Order-in-Council, other than:

- (i) an incorporated company or association;
- (ii) a body that, under subsection (2), is not to be taken to be a prescribed authority for the purposes of this Act;
- (iii) the Australian Capital Territory House of Assembly;
- (iv) the Legislative Assembly of the Northern Territory or the Executive Council of the Northern Territory;
- (v) the Legislative Assembly of the Territory of Norfolk Island; or
- (vi) a Royal Commission;

(b) any other body (other than Qantas Airways Limited or a company that is a subsidiary of that company), whether incorporated or unincorporated, declared by the regulations to be a prescribed authority for the purposes of this Act, being:

(i) a body established by the Governor-General or by a Minister; or

(ii) an incorporated company or association over which the Commonwealth is in a position to exercise control;

(c) subject to subsection (3), the person holding, or performing the duties of, an office established by an enactment or an Order-in-Council; or

(d) the person holding, or performing the duties of, an appointment declared by the regulations to be an appointment the holder of which is a prescribed authority for the purposes of this Act, being an appointment made by the Governor-General, or by a Minister, otherwise than under an enactment or an Order-in-Council;

2.2 The relevant paragraphs in the definition of "prescribed authority" for the purposes of the FOI(MP) Regulations are paragraphs (b) and (d) but currently no person is prescribed by the FOI(MP) Regulations under paragraph (d).

2.3 Four bodies have been prescribed in accordance with regulation 3 of the FOI(MP) Regulations in Schedule 1 of the Regulations. Three of these are limited companies and the fourth is the National Media Liaison Service. Note that the reference in paragraph (b) of the definition of "prescribed authority" in the FOI Act to "Qantas Airways Limited or a subsidiary of that company" is redundant as that company is not included in Schedule 1 of the Regulations.

2.4 The usual test of whether the Commonwealth is in a position to exercise control over an incorporated company is whether the Commonwealth is in a position to control the composition of the board of directors or its equivalent and to control more than half of the votes entitled to be cast at a general meeting of members. This test may also be applied to an incorporated

association. There are, however, no set rules that may be used to determine whether the Commonwealth is in a position to exercise control over a company. If there is any doubt in a particular instance whether the Commonwealth is in a position to control an incorporated company or an association this matter can be discussed with the Information Access Unit, Family and Administrative Law Branch of this Department.

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### **3. “Principal officer”**

3.1 Section 4(1) of the FOI Act defines "principal officer" 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 a prescribed authority:

(i) if the regulations declare an office to be the principal office in respect of the authority – the person holding, or performing the duties of, that office; or

(ii) in any other case – 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 is present; or

(c) in relation to an eligible case manager:

(i) if the eligible case manager is an individual – the individual; or

(ii) in any other case – the individual who has primary responsibility for the management of the eligible case manager;

3.2 For the purposes of paragraph (b) of the definition of "principal officer" and in accordance with regulation 4 of the FOI(MP) Regulations Schedule 2

of the Regulations lists "prescribed authorities" in column 2 of that schedule and in column 3 of that schedule opposite each prescribed authority lists the office of the person who is prescribed as the principal officer of that authority.

3.3 The purpose of Schedule 2 of the FOI(MP) Regulations is restricted to prescribing "principal offices" in accordance with paragraph (b)(i) of the definition of "principal officer" in the FOI Act where a prescribed authority wishes to nominate a person other than the person defined in paragraph (b)(ii) of the definition as the "principal officer" of that authority. The schedule is not, therefore, a complete list of agencies or even prescribed authorities for the purposes of the FOI Act.

3.4 Whether or not an office is prescribed in Schedule 2 of the FOI(MP) Regulations in respect of any prescribed authority is a matter for that prescribed authority and depends on how that it is constructed and administered. Many prescribed authorities have part-time boards with a part-time chairperson and are administered on a day to day basis by a full time executive officer. Such a prescribed authority often finds it more convenient for that authority's full time executive officer to be the principal officer for the purposes of the FOI Act; the authority is, therefore, listed in Column 2 of Schedule 2 of the FOI(MP) Regulations with the office of the full time executive officer listed in Column 3 in respect of that authority. If this is not done for such prescribed authorities the part time chairperson would be the principal officer of the prescribed authority in accordance with paragraph (b)(ii) of the definition of "principal officer" in the FOI Act.

3.5 Some small prescribed authorities do not have their own administrative structures or have very limited administrative support in that authority and rely wholly or largely on a Department or other larger prescribed authority for administrative support. Such authorities may find it more convenient to have the Secretary or other officer of the relevant Department or officer of the appropriate prescribed authority as principal officer for the purposes of the FOI Act.

3.6 The Attorney-General's Department should be notified whenever a change to Schedule 2 of the FOI(MP) Regulations is required either by a change to the administrative arrangements, the creation or abolition of a prescribed authority or for any other reason. See paragraph 4.5 of this Memorandum in respect of prescribed authorities established by Order-in-Council.

## **4. "Responsible Minister"**

4.1 Section 4(1) of the FOI Act defines "responsible Minister" as:

(a) in relation to a Department – the Minister administering the relevant Department of State;

(b) in relation to a prescribed authority referred to in 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 a prescribed authority referred to in paragraph (c) of that definition – 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; or

(e) in relation to an eligible case manager – the Minister administering the *Employment Services Act 1994*;

or another Minister acting for and on behalf of that Minister;

4.2 Departments should note that section 4(9) of the FOI Act modifies paragraph (a) of the definition of "responsible Minister" in section 4(1) of the FOI Act except in relation to section 8 (Publication of information concerning functions and documents of agencies) and section 93 (Reports to Parliament) of the FOI Act. In relation to other sections in the FOI Act the reference in the definition to the Minister administering a Department is a reference to the Minister to whom the Department is responsible in respect of the relevant matter.

4.3 The result of the definition of "responsible Minister" is that for the following list of persons or bodies it is necessary to prescribe the responsible Minister in accordance with regulation 5 of the FOI(MP) Regulations in Schedule 3 of the Regulations:

(a) any body that is a prescribed authority within paragraph (a) of the definition of "prescribed authority" where the prescribed authority is established by an Order-in-Council rather than by an enactment;

(b) any body that is a prescribed authority because it has been declared by the regulations (eg Schedule 1) in accordance with paragraph (b) of the definition of "prescribed authority";

(c) any person who is a prescribed authority in accordance with paragraph (c) of the definition of "prescribed authority" where

that person is holding or performing the duties of an office established by an Order-in-Council rather than by an enactment;

(d) any person who holds or performs the duties of an appointment declared by the regulations (eg Schedule 1) in accordance with paragraph (d) of the definition of "prescribed authority" to be an appointment the holder of which is a prescribed authority;

(e) a court deemed to be a prescribed authority in accordance with section 5 of the FOI Act; and

(f) each tribunal, authority or body deemed to be a prescribed authority because it is specified in Schedule 1 of the FOI Act in accordance with section 6 of the Act.

4.4 The Attorney-General's Department should be notified whenever a change to the Administrative Arrangements alters the Minister who should be listed in Schedule 3 of the FOI(MP) Regulations as the responsible Minister or whenever the abolition or creation of a prescribed authority or other change requires an alteration to the Schedule.

4.5 Prior to the amendment of the FOI Act by the *Freedom of Information Amendment Act 1991* bodies established by an Order-in-Council rather than an enactment were not separate agencies for the purposes of the FOI Act. All agencies established by Order-in-Council, whether established before or after the amendment of the FOI Act in 1991, are requested to notify this Department as soon as possible so that the appropriate Minister may be prescribed in respect of that agency in Schedule 3 of the FOI(MP) Regulations. At the same time such agencies should consider whether it would be appropriate to provide for the "principal officer" of that agency in Schedule 2 of the FOI(MP) Regulations.

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## **5. Furnishing of Information for reports to Parliament**

5.1 Regulation 6 of the FOI(MP) Regulations sets out the time limits for furnishing information required for quarterly and annual reports. This topic is covered in FOI Memorandum No.20 "Statistics and Reporting" issued 30 May 1993.

## **6. Copy of the regulations**

6.1 Attachment A to this Memorandum sets out the FOI(MP) Regulations as at 21 February 1995.

## **7. Government guidelines on Administration of the FOI act**

7.1 As a result of a Cabinet decision, the government directed in 1985 that agencies should not refuse access to non-contentious material simply because there are technical grounds of exemption under the FOI Act (see para. 6 of FOI Memorandum No. 77, issued June 1985). Agencies were reminded that proper compliance with the spirit of the FOI Act requires that an agency first determine whether release of a document would have harmful consequences before considering whether a claim for exemption might be made out. At the same time, agencies were reminded that adequate protection must be given to sensitive information relating to personal privacy and commercial confidentiality. New FOI Memorandum No. 19 deals with this matter in more detail (see paras 2.6 – 2.8).

7.2 The 1985 guidelines have been restated and re-endorsed by the Minister for Justice, Mr Duncan Kerr, MP. In the letter to his Ministerial colleagues of February 1994 which is attached at Attachment B, the Minister refers to the FOI Act's presumption in favour of disclosure and the need to use the Act's exemption provisions carefully and sparingly. He restated the 1985 directions not to seek to exempt material simply because an agency technically could do so, and that unless disclosure would result in real harm to government or third parties, information should be revealed.

7.3 The Minister also asked Ministers to remind their portfolio agencies of the importance of the guidelines in the FOI Memorandums issued by the Attorney-General's Department in order to achieve consistency in the interpretation and administration of the FOI Act.

7.4 The Minister also requested that all Ministers ensure that agencies within their portfolios comply with the reporting requirements of section 9(2)(b) of the FOI Act and that Ministers ensure that those agencies comply with the requirement to submit quarterly and annual statistical reports on FOI to the Attorney-General's Department.

## **8. Attachment C**

8.1 Attachment C to this Memorandum is a list of current FOI Memorandums which has been revised to delete Memorandums which have been superseded by this or other memorandums or which are obsolete.

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## ATTACHMENT A

# FREEDOM OF INFORMATION (MISCELLANEOUS PROVISIONS) REGULATIONS

In force under the *Freedom of Information act 1982*

*Updated as at 21 February 1995*

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Regulation

1. Citation

2. Interpretation

3. Prescribed authorities

4. Principal offices

5. Responsible Minister in respect of certain authorities

6. Prescribed requirements concerning the furnishing of information pursuant to subsection 93 (2) of the Act

### SCHEDULE 1

BODIES DECLARED TO BE PRESCRIBED AUTHORITIES

### SCHEDULE 2

PRINCIPAL OFFICES IN RESPECT OF PRESCRIBED AUTHORITIES

### SCHEDULE 3

RESPONSIBLE MINISTERS IN RESPECT OF PRESCRIBED AUTHORITIES

# **FREEDOM OF INFORMATION (MISCELLANEOUS PROVISIONS) REGULATIONS**

In force under the *Freedom of Information act 1982*

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## **Citation**

1. These Regulations may be cited as the Freedom of Information (Miscellaneous Provisions) Regulations.

## **Interpretation**

2. In these Regulations, "the Act" means the *Freedom of Information Act 1982*.

## **Prescribed authorities**

3. For the purposes of paragraph (b) of the definition of "prescribed authority" in sub-section 4(1) of the Act, each of the bodies specified in Schedule 1 is declared to be a prescribed authority for the purposes of the Act.

## **Principal offices**

4. (1) For the purposes of paragraph (b) of the definition of "principal officer" in sub-section 4(1) of the Act, an office specified in Column 3 of an item in Schedule 2 is declared to be the principal office in respect of the prescribed authority or the prescribed authorities, as the case may be, specified in Column 2 of that item in that Schedule.

(2) Unless the contrary intention appears, a reference to an office in Column 3 of an item in Schedule 2 is a reference to that office in the prescribed authority or prescribed authorities, as the case may be, specified in Column 2 of that item.

## **Responsible Minister in respect of certain authorities**

5. For the purposes of paragraph (d) of the definition of "responsible Minister" in subsection 4(1) of the Act, the Minister specified in Column 3 of an item in Schedule 3 is declared to be the responsible Minister in respect

of the prescribed authority specified in Column 2 of that item in that Schedule.

**Period for which a certificate remains in force**

5A

[Disallowed by the Senate on 24 March 1992]

**Revocation of a certificate**

5B

[Disallowed by the Senate on 24 March 1992]

**Prescribed requirements concerning the furnishing of information pursuant to subsection 93(2) of the Act**

6. For the purposes of sub-section 93(2) of the Act, the prescribed requirements concerning the furnishing of information required by the Minister are the following:

(a) in respect of information that is required to be furnished in relation to a quarter – that the information be furnished not later than 21 days after the last day of the quarter in relation to which the information is furnished;

(b) in respect of information that is required to be furnished in relation to a year ending on 30 June-that the information be furnished not later than 31 days after the last day of the year in relation to which the information is furnished.

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**SCHEDULE 1 Regulation 3**

**BODIES DECLARED TO BE PRESCRIBED AUTHORITIES**

Aboriginal Hostels Limited

Coal Mines Insurance Pty Ltd

National Media Liaison Service

**SCHEDULE 2** Regulation 4

**PRINCIPAL OFFICES IN RESPECT OF PRESCRIBED AUTHORITIES**

<b>Column 1</b>	<b>Column 2</b>	
<b>Item No.</b>	<b>Prescribed authority</b>	
1	Aboriginal Hostels Limited	General Manager
1A	Acute Care Advisory Committee	Human Services and Health
2	Administrative Appeals Tribunal	Registrar
3	Affirmative Action Agency	Director
4	Albury–Wodonga Development Corporation	Chief Executive Officer
5	Anglo–Australian Telescope Board	Secretary
6	Australia Council	General Manager
7	Australia–Japan Foundation	Executive Director
9	Australian Broadcasting Corporation	Managing Director
10	Australian Bureau of Statistics	Australian Statistician
11	Australian Centre for International Agricultural Research	Director
12	Australian Customs Service	Comptroller-General of Customs
14	Australian Drug	Secretary to the Department of Human Services and I

	Evaluation Committee	
15	Australian Electoral Commission	Electoral Commissioner
16	Australian Federal Police	Commissioner of Police
17	Australian Film Commission	Chief Executive
18	Australian Film, Television and Radio School	Director
19	Australian Government Solicitor	Secretary to the Attorney– General's Department
19A	Australian Hearing Services	General Manager
20	Australian Heritage Commission	Director
22	Australian Horticultural Corporation	Managing Director
23	Australian Industrial Court	Industrial Registrar
24	Australian Industrial Registry	Industrial Registrar
25	Australian Industrial Relations Commission	Industrial Register
26	Australian Institute of Aboriginal Studies	Principal
28	Australian Institute of Criminology	Director
29	Australian Institute of Family Studies	Director
30	Australian Institute of Health and Welfare	Director
31	Australian Institute of Marine Science	Secretary
32	Australian Institute of Multicultural Affairs	Director

33	Australian Maritime College	Principal
34	Australian Meat and Livestock Corporation	Managing Director
36	Australian National Maritime Museum	Director
37	Australian National University	Vice-Chancellor
38	Australian Nuclear Science and Technology Organisation	Executive Director
39	Australian Postal Corporation	Managing Director
40	Australian Science and Technology Council	Secretary
41	Australian Sports Commission	Executive Director
42	Australian Sports Drug Agency	Chief Executive
43	Australian Tourist Commission	Managing Director
44	Australian Trade Commission	Managing Director
45	Australian Trade Union Training Authority	National Director
46	Australian War Memorial	Director
47	Australian Wine and Brandy Corporation	General Manager
48	Bureau of Meteorology	Director
49	Central (Blacksmithing Trades) Committee	Secretary to the Department of Industrial Relations
50	Central (Boilermaking Trades) Committee	Secretary to the Department of Industrial Relations
51	Central (Electrical Trades) Committee	Secretary to the Department of Industrial Relations

52	Central (Engineering Trades) Committee	Secretary to the Department of Industrial Relations
53	Central (Sheetmetal Trades) Committee	Secretary to the Department of Industrial Relations
54	Children's Services Program National Advisory Committee	Secretary to the Department of Human Services and
55	Children's Services Program Planning Committees for the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia	Secretary to the Department of Human Services and I
56	Civil Aviation Authority	Chief Executive Officer
57	Coal Industry Tribunal	Secretary
58	Comcare	Chief Executive Officer
59	Commonwealth Employment Service Advisory Committee	Secretary to the Department of Employment, Educati
60	Commonwealth Explosives Transport Committee	Secretary to the Department of Transport
61	Commonwealth Scientific and Industrial Research Organisation	Chairperson
62	Copyright Tribunal	Secretary
63	Defence Force Discipline Appeal Tribunal	Registrar
64	Defence Force Remuneration Tribunal	Secretary
65	Deputy Industrial Registrars	Industrial Registrar
66	Designs Office	Commissioner of Patents

67	Economic Planning Advisory Council	Director
68	Family Court of Australia	Chief Executive Officer
70	Federal Court of Australia	Registrar
71	Federal Court of Bankruptcy	Registrar of the Federal Court of Australia
72	Federal Police Disciplinary Tribunal	Registrar
73	Financial Corporations Act Committees	Secretary to the Department of the Treasury
74	Health Insurance Advisory Committee	Secretary to the Department of Human Services and I
75	Health Insurance Commission	Managing Director
76	High Court of Australia	Clerk of the High Court of Australia
77	Human Rights and Equal Opportunity Commission	Human Rights Commissioner
78	Law Reform Commission	Deputy President
79	Local (Blacksmithing Trades) Committees	Secretary to the Department of Industrial Relations
80	Local (Boilermaking Trades) Committees	Secretary to the Department of Industrial Relations
81	Local (Electrical Trades) Committees	Secretary to the Department of Industrial Relations
82	Local (Engineering Trades) Committees	Secretary to the Department of Industrial Relations
83	Local (Sheetmetal Trades) Committees	Secretary to the Department of Industrial Relations
84	Management and Investment Companies Licensing Board	Executive Director
85	Marine Council	Secretary to the Department of Transport
86	Medical Benefits Advisory Committee	Secretary to the Department of Human Services and I

87	Medical Benefits (Dental Practitioners) Advisory Committee	Secretary to the Department of Human Services and Health
88	Medical Benefits (Dental Practitioners) Appeal Committee	Secretary to the Department of Human Services and Health
89	Medicare Benefits Advisory Committee	Secretary to the Department of Human Services and Health
91	National Capital Planning Authority	Chief Executive
91A	National Gallery of Australia	Director
92	National Library of Australia	Director-General
93	National Media Liaison Service	Director
94	National Museum of Australia	Director
95	National Occupational Health and Safety Commission	Chief Executive Officer
96	National Standards Commission	Executive Director
97	Nursing Homes Advisory Committees for New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia	Secretary to the Department of Human Services and Health
98	Nursing Homes Fees Review Committees of Inquiry for New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia	Secretary to the Department of Human Services and Health
99	Office of Parliamentary Counsel	First Parliamentary Counsel

100	Official Trustee in Bankruptcy	Inspector-General in Bankruptcy
101	Patent Office	Commissioner of Patents
102	Pharmaceutical Benefits Advisory Committee	Secretary to the Department of Human Services and Health
103	Pharmaceutical Benefits Remuneration Tribunal	Secretary
104	Pharmacy Restructuring Authority	Secretary to the Department of Human Services and Health
105	Private Health Insurance Administration Council	Secretary to the Department of Human Services and Health
106	Registration Committee established under Section 70 of the <i>National Health Act 1953</i>	Secretary to the Department of Human Services and Health
107	Remuneration Tribunal	Secretary
108	Reserve Bank of Australia	Governor
109	Royal Australian Air Force Veterans' Residences Trust	Secretary
110	Security Appeals Tribunal	Registrar
111	Social Security Appeals Tribunal	National Convenor
112	Special Broadcasting Service	Executive Director
113	Specialist Recognition Advisory Committees of Inquiry for the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia	Secretary to the Department of Human Services and Health
114	Specialist Recognition Appeal Committee	Secretary to the Department of Human Services and Health

115	Student Assistance Review Tribunal	Secretary to the Department of Employment, Education and Training
116	Standards Review Panels for the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia	Secretary to the Department of Human Services and Health
117	Supported Accommodation Assistance Program Ministerial Committees for the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia	Secretary to the Department of Housing and Regional Development
118	Supported Accommodation Assistance Program Ministerial Advisory Committees (Joint Officers Group) for the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia	Secretary to the Department of Housing and Regional Development
120	Tax Agents' Board (New South Wales)	Secretary
121	Tax Agents' Board (Queensland)	Secretary
122	Tax Agents' Board (South Australia)	Secretary

123	Tax Agents' Board (Tasmania)	Secretary
124	Tax Agents' Board (Western Australia)	Secretary
125	Tax Agents' Board (Victoria)	Secretary
125A	Telstra Corporation Limited	Chief Executive Officer
126	Textile, Clothing and Footwear Development Authority	Chief Executive
127	Therapeutic Device Evaluation Committee	Secretary to the Department of Human Services and I
128	Therapeutic Goods Committee	Secretary to the Department of Human Services and I
129	Tobacco Research and Development Council	Manager–Secretary
130	Trade Marks Office	Commissioner of Patents
131	Trade Practices Tribunal	Registrar
132	Trustees of the Royal Australian Air Force Welfare Trust Fund	Secretary
133	University of Canberra	Vice–Chancellor
134	Vocational Registration Appeal Committee	Secretary to the Department of Human Services and I
135	Vocational Registration Eligibility Committees for the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia	Secretary to the Department of Human Services and I

## SCHEDULE 3 Regulation 5

### RESPONSIBLE MINISTERS IN RESPECT OF PRESCRIBED AUTHORITIES

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item No.</b>	<b>Prescribed authority</b>	<b>Minister</b>
1	Aboriginal Hostels Ltd	Minister for Aboriginal and Torres Strait Islander Affairs
2	Australian Industrial Court	Attorney-General
3	Australian Industrial Relations	Minister for Industrial Relations Commission
4	Coal Industry Tribunal	Minister for Industrial Relations
4A	Coal Mines Insurance Pty Ltd	Minister for Resources
5	Deputy Industrial Registrars	Minister for Industrial Relations
6	Family Court of Australia	Attorney-General
7	Federal Court of Australia	Attorney-General
8	Federal Court of Bankruptcy	Attorney-General
9	High Court of Australia	Attorney-General
10	Industrial Registrar	Minister for Industrial Relations
11	National Media Liaison Service	Minister-for Administrative Services
12	Telstra Corporation Limited	Minister for Communications and the Arts

### ATTACHMENT B



**Minister *for* Justice**

*The Hon. Duncan Kerr MP*

Dear

In finalising the 1993–4 Annual Report on the Freedom of Information Act 1982 (copy enclosed), I have noticed that a number of Government Departments and agencies have failed to meet their reporting obligations under the Act. Accordingly, I seek your assistance and co-operation in remedying this situation.

Section 9(2)(b) of the Act requires agencies to make available at the Australian Archives a statement listing the decision-making manuals and guidelines which they use and which the public may inspect at their offices. This section is intended to make basic information about government administration freely accessible to the Australian public. However, overall compliance with section 9(2)(b) is poor (see Table 5.1 of enclosed Report). Accordingly, I ask that you require agencies within your portfolio to ensure that they observe the section's requirements.

Section 93 of the Act requires that Annual Reports contain statistics on matters such as numbers of requests and their outcomes, reviews sought and fees and charges collected. In accordance with that section, I and my predecessors have required agencies to which the Act applies to submit the statistics in quarterly and annual reports to the Attorney-General's Department. However, I am advised that reports are often not provided, and that the data they contain is sometimes incomplete or unreliable (see para 5.15 of enclosed Report). This limits the value of any conclusions that may be drawn from the statistics. I would be grateful if you would remind agencies in your portfolio of their reporting responsibilities and the need for accurate information.

More importantly, I am concerned to ensure the continuing efficacy of the Act and its continuing contribution to good government in Australia. In this regard it is most important that agencies comply with the spirit of the Act. In her 1993–4 Annual Report, Ms Phillipa Smith, the Commonwealth Ombudsman, states that some agencies are failing to adhere to the original principles of FOI. Those principles of access and accountability, of individual rights and democratic government, are as relevant today as they were when the Act was passed in 1982.

Those principles must be re-emphasised and applied with vigour if the Act is to have continuing value to the Australian community. Unfortunately, it would appear that entrenched attitudes of non-cooperation and non-disclosure persist in some agencies, resulting in decisions which are not defensible in terms of the government's policy on FOI. Cabinet directed agencies in 1985 to not seek to exempt material merely because they technically may do so. The Act is meant to be user friendly and I ask that you request agencies in your portfolio to actively assist applicants, to apply the Act's presumption in favour of disclosure and to use the Act's

exemption provisions carefully and sparingly. Unless disclosure would result in real harm to government or to third parties, information should be revealed.

Also important to the administration of the Act is adherence to the government's FOI policy, in part as set out in the Memoranda issued by the Attorney-General's Department. These Memoranda are progressively being updated and added to and, where relevant, they are the proper source of the guidelines to be used for the consistent administration of the Act. While a matter for the agency or Minister, individual FOI decisions should be made on the basis of a consistent interpretation of the Act. As noted in the first Annual Report on the FOI Act:

the Attorney General is responsible for the legal argument on the interpretation of the Act submitted to the (Administrative Appeals Tribunal) and to the courts by or on behalf of the Commonwealth. The Act imposes an obligation on the Attorney-General's Department to do what it can to ensure that agencies comply with their obligations under the Act. A particular aspect of that responsibility is the need to ensure, as far as practicable, consistency of administration ....

In this respect, it would assist if your portfolio agencies could be reminded of the importance of the guidelines in the Memoranda in achieving that consistency, and asked to adhere to them to the maximum extent practicable. Officers of the Attorney-General's Department are, of course, available to assist agencies in the interpretation of the Act.

Finally, you would be aware that a comprehensive review of the Act is now underway. An Issues Paper was released on 14 October (please find copy enclosed) and has been sent to all Commonwealth Departments and agencies. Submissions in response to the Issues Paper may be made to the Australian Law Reform Commission before 16 December 1994.

Yours sincerely

DUNCAN KERR

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## FOI MEMORANDA ATTACHMENT C

MEMO NO.	PART NO.	TITLE	DATE ISSUED
1	-18	SUPERSEDED	

19	(NEW)	Preliminary and Procedural Points	17/12/1993
20	(NEW)	Statistics and Reporting	30/05/1993
21	[1]	Documents in which a State or the NT has an interest	07/02/1984
22		SUPERSEDED	
23	[1]	FOI Act provisions re documents containing information relating to personal affairs	01/12/1984
24		S. 9: obligations to make documents available for inspection and purchase	13/09/1982
25		Section 8 Statements : Update No. 1	01/09/1988
26	(NEW)	Statements of Reasons	30/06/1993
27		The S. 36 internal working document exemption	10/09/1982
28		Part V: amendment of personal records	13/09/1982
29	(NEW)	Fees and Charges	04/11/1992
30		Suggested standard FOI request form	28/09/1982
31	[1]	Inter-Agency consultation & S. 16 transfer of requests	01/01/1985
32		SUPERSEDED	
33		Review of decisions	15/11/1982
34	[1]	Cabinet & Executive Council Documents (Ss 34 & 35)	01/12/1984
35		S.45 - breach of confidence	24/09/1982
36		SUPERSEDED	
37		S. 37 - documents affecting enforcement of law and protection of public safety	23/11/1982
38		S. 38 - secrecy provisions	08/11/1982
39		S. 39 - documents affecting financial or property interests of the Commonwealth or an agency	11/11/1982

MEMO NO.	PART NO.	TITLE	DATE ISSUED
40		S. 40 - documents concerning certain operations of agencies	22/11/1982
41		SUPERSEDED	
42		S. 42 - legal professional privilege	16/11/1982
43		S. 43 business affairs exemption & S. 27 reverse-FOI	29/10/1982

		procedures	
44		S. 44 - documents affecting the national economy	05/11/1982
45	[1]	Levels of decision makers	07/12/1984
46		S. 46 documents subject to orders of Courts, Tribs, Royal Commissions, or Parl. Privilege	12/11/1982
47		SUPERSEDED	
48		S. 33 Defence, Security & International Relations	12/11/1982
49	-55	SUPERSEDED	
56		FOI Amendment Bill 1983: administration pending enactment	06/07/1983
57		Consistency of argument before Tribunals & Courts	07/07/1983
58		New "D" Series of FOI Memoranda: decisions of the AAT	27/09/1983
59		FOI Amendment Bill 1983: administration pending enactment	23/09/1983
60		Passage of Freedom of Information Act 1983	26/10/1983
61		Information Access Offices	25/11/1983
62		SUPERSEDED	
63		Proclamation of FOI Amendment Act 1983	23/12/1983
64		FOI Amendment Act 1983 (provisions)	14/02/1984
65		Disclosure of the existence of documents to the AAT	13/03/1984
66		FOI Act 1982 - publicity	09/03/1984
67		SUPERSEDED	
68		SUPERSEDED	
69		FOI Act 1982 - publicity	21/06/1984
70	-72	SUPERSEDED	
<b>MEMO NO.</b>	<b>PART NO.</b>	<b>TITLE</b>	
73	[1]	S. 8 Statements	01/04/1986
73		S. 8 Statements	31/01/1985
74	[1]	S. 9 Statements; S. 19 Notices	01/04/1986
74		S. 9 Gazette Statements; S. 19 Notices	15/02/1985
75		SUPERSEDED	

76		AAT Practice Direction: filing affidavits and schedule of documents in FOI Act matters	03/06/1985
77		Government directions on administration of FOI Act	01/06/1985
78		SUPERSEDED	
79		Distribution of AAT decisions on FOI matters	04/06/1985
80		Change of address of Sydney Information Access Office	04/09/1985
81		SUPERSEDED	
82		S. 37(1)(c) - documents affecting enforcement of the law & protection of public safety	14/05/1986
83		SUPERSEDED	
84	[A]	SUPERSEDED	
84		FOI Laws Amendment Act 1986	01/11/1986
85	-88	SUPERSEDED	
89		Archive Act Decision Summaries	01/09/1987
90		SUPERSEDED	
91		SUPERSEDED	
92		Freedom of Information Amendment Bill 1991	01/10/1991
93		FOI and the Privacy Act	01/02/1992
94		Amendments to the FOI Act 1982 since the FOI Amendment Act 1991	30/06/1994
95		Freedom of Information (Miscellaneous Provisions) Regulations – Government Guidelines on Administration of the FOI Act - List of Current FOI Memorandums	30/06/1995
96		Freedom of Information Time Limits	30/06/1995