

Freedom of Information

AUSTRALIAN DEMOCRATS ACTION PLAN FREEDOM OF INFORMATION ACCOUNTABILITY

The *Freedom of Information Act 1982* established a regime for people to access government documents. At that time there were few limitations on what could be accessed and the stated purpose of the legislation was “to give members of the public, rights of access to official documents of the Government of the Commonwealth and of its agencies”.

*“The Parliament
needs to re-visit the
FOI Act urgently in
the interests of open,
not secret
government”*

**Senator Andrew Murray,
Accountability
Spokesperson**

The Australian Democrats have always focussed on open and accountable government and integral to that is an effective Freedom of Information Act. In the last 25 years the ability of individuals and organisations to access information held by Government departments has been slowly eroded, until we now effectively have a Freedom **from** Information Act. Neither of the major parties supports a change to the legislation, so although the Australian Democrats have introduced legislation to amend the Act, reflecting the concerns of the Australian Law Reform Commission and the Commonwealth Ombudsman, there is no support for change.

It is accepted in liberal democracies around the world that unless citizens have the power to access and independently scrutinise government information, there is little prospect of having a genuinely deliberative and participatory democracy. FOI opens up the government’s activities to scrutiny, from the individual and from the media on behalf of society as a whole, it promotes discussion, comment and review, all of which are essential in a robust democracy.

Our Action Plan

- The Democrats introduced the *FOI Amendment (Open Government) Bill 2003* to address the concerns of the Australian Law Reform Commission and the Commonwealth Ombudsman about the effectiveness of the operation of the current FOI legislation.

The Democrats propose to:

- establish an independent FOI Commissioner to oversee and monitor the Act with the role to be conferred on the Commonwealth Ombudsman;
- broaden the scope of information that can be accessed under the Act;
- create a fairer, more reasonable fee structure, abolishing unnecessary fees;
- reduce the time limits for the processing of FOI requests to 21 days;
- require education strategies be developed and implemented to inform government agencies of their FOI responsibilities;



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- set up internal review systems and processes to enable audits of agencies;
- amend the FOI legislation to eliminate Ministerial discretion to issue conclusive certificates; and,
- amend the FOI legislation to ensure that there is a role for the Administrative Appeals Tribunal or the Courts to properly investigate the issues surrounding the issuing of conclusive certificates.

The Issues

The *Freedom of Information Act 1982* no longer works to its full potential.

The FOI Act established a regime for people to access government documents. However, with respect to some documents, including those termed 'internal working documents', ministers and secretaries of agencies can issue certificates to conclusively exempt documents from access.

In the case of *McKinnon v Secretary, Department of Treasury*, the Treasurer, Peter Costello had issued two conclusive certificates relating to FOI requests from a News Limited newspaper regarding tax bracket creep and the First Home Owners Scheme.

The minority of judges in *McKinnon v Secretary, Department of Treasury* said that, 'The declared object of the FOI Act is to extend as far as possible the right of the Australian community to access information in the possession of the Commonwealth Government.' The majority judges did not see it that way and the decision has further limited access to information for the community.

The FOI Act was passed to achieve open and accountable Government. The ability for Ministers to issue conclusive certificates with impunity effectively defeats that purpose. There is a danger that the Cabinet will use the majority decision of the High Court as an imprimatur for further unwarranted secrecy and concealment.

Government departments and agencies now charge excessive fees for the provision of documents and information is not provided in a timely manner.

FOI requests are increasingly costly, legalistic and adversarial which is, again at odds with the objects of the Act.

There is a lack of effective independent oversight of the administration of the Act and a persistent culture of secrecy in some government agencies. This has only been exacerbated by the decision in *McKinnon v Secretary, Department of Treasury*, because the High Court has accepted that the reasoning behind the issuing of conclusive certificates by the Minister is not a matter which can be scrutinised by the Court.