



FAX UPDATE

No.5 of 1999

PROPOSED AMENDMENTS TO FOI ACT

On 15 December 1999 the Victorian Government passed the *Freedom of Information (Miscellaneous Amendments) Act* 1999. It received Royal Assent on 21 December 1999 and will commence on 1 January 2000. It amends the FOI Act to accord with the policies foreshadowed by Mr Bracks during the recent election campaign by doing a number of things.

1. It repeals Part IIIA of the FOI Act in relation to personal information. However, the definition of “information relating to the personal affairs of a person” in section 33 of the FOI Act has been amended to specifically include information:
 - (a) that identifies any person or discloses their address or location; or
 - (b) from which any person's identity, address or location can reasonably be determined.

The main issue will therefore be whether disclosure is unreasonable. In considering this, agencies must consider whether disclosure would endanger the lives or physical safety of persons identified in the information.

2. The amendments also narrow the test of whether a document is exempt on the basis that it contains information that is “commercial in confidence”. There must be “unreasonable disadvantage” arising as a result of the disclosure.
3. It makes it more difficult for documents to be classed as exempt Cabinet documents if they were not actually prepared as a submission to Cabinet. It will no longer be enough for them to merely have been considered by Cabinet.
4. If an agency proposes to apply for leave to appeal a decision of the VCAT to the Supreme Court, the Minister responsible for the agency must within strict time limits inform Parliament and publish in the Government Gazette a statement of reasons why it is in the public interest for the documents in question not to be released. The agency seeking to appeal must provide reasons in writing to the Minister very quickly as well.
5. The \$170 VCAT application fee has been removed in relation to deemed refusals.
6. There are also very detailed transitional provisions governing how requests to agencies and applications before VCAT are to be dealt with after 1 January 2000 regardless of when they were received.

If you require any further information about the proposed amendments and what it will mean for your agency please contact Mick Batskos on 9667 0233 or email: mbatskos@bigpond.com or fax 9667 0237.

24 December 1999