

REVIEW OF THE FREEDOM OF INFORMATION ACT 1982 AND THE AUSTRALIAN INFORMATION COMMISSIONER ACT 2010 - SUBMISSION BY THE DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

FaHCSIA appreciates the opportunity to make a submission in response to the Review of the *Freedom of Information Act 1982* and the *Australian Information Commissioner Act 2010* (the Review).

The Department makes the following comments in relation to certain of the Terms of Reference for the Review:

Term of Reference 1(a): the impact of reforms to the freedom of information laws in 2009 and 2010, including the new structures and processes for review of decisions and investigations of complaints under the FOI Act, on the effectiveness of the FOI system

The most notable impact of the reforms on FaHCSIA has been a considerable increase in the volume of FOI requests received and processed by the Department. This has led to a significant increase in the Departmental costs associated with processing the requests – see the table below, noting that the significant FOI reforms which came into effect on 1 November 2010 had an almost immediate impact on the number of requests received by the Department. The costs of processing were calculated by the agency responsible for producing annual reports under the FOI Act - currently the Office of the Australian Information Commissioner - based on information supplied by FaHCSIA.

Year	FOI Requests Received	Costs of Processing
2009/10	40	\$157,110
2010/11	68	\$285,053
2011/12	72	\$550,384
2012/13 (to 28/11/12)	42	Not available

While FaHCSIA has, since the introduction of the reforms, allocated additional resources to the processing of FOI requests, it remains a challenge to process requests within statutory timeframes. It is noted in particular that the large majority of FOI requests processed by FaHCSIA are complex and often voluminous, rather than simple requests for personal information.

Accordingly, FaHCSIA recommends the following modest changes to the FOI Act, which would assist it in dealing with the increased workload associated with processing FOI requests:

- **Change the statutory time limit for notifying FOI decisions from the current 30 (calendar) days to 30 business days (paragraph 15(5)(b)):** This change would better enable FaHCSIA to deal with the increased volume of FOI requests. In particular, it would recognise the difficulties associated with processing requests whose timeframes cover public holidays (e.g. Easter) or the substantial shut-down periods around Christmas/New Year (currently mandated in many APS Enterprise Agreements, including FaHCSIA's). A change to 30 business days would reduce the incidence of requesting extensions under ss15AA and 15AB (which in themselves generate more work for agencies, and more work for the Office of the Australian Information Commissioner in the case of s15AB requests). FaHCSIA notes that subsections 11C (6) and (7) of the FOI Act already recognise the concept of "working days", which excludes any day which is a Saturday a Sunday or a public holiday. We suggest that a similar definition could apply for "business days", but that it would also exclude shut-down periods.

- **Change the statutory time limit for third party consultation from 30 (calendar) days to 30 business days (subsection 15(6)):** Again, this change would better enable FaHCSIA to process the increased volume of FOI requests, many of which involve third party consultation. In a significant number of cases, FaHCSIA is required to consult with a considerable number of third parties. The process of consulting with third parties is often protracted and difficult, and third parties regularly do not provide responses to the Department within requested timeframes. In addition, FaHCSIA often expends substantial resources in clarifying the views of third parties.
- **Change the time limit on the extension of timeframes by agreement with the applicant from 30 (calendar) days to 30 business days (section 15AA):** Again, this change would better enable FaHCSIA to process the increased volume of FOI requests within statutory timeframes. The change would not prevent applicants from agreeing to lesser periods of time if they considered that 30 business days was excessive.
- **Insert a general rule that any communication received by the Department after standard business hours (i.e. 9.00am to 5.00pm on a business day) is treated as having been received on the next business day:** Under the current legislation, processing times are often considerably reduced by the receipt of communications after standard business hours. For example, an FOI request received in the Department at 6.30pm on a Friday would currently be treated as having been received on that day, when the Department would only be able to process the request on Monday.

Term of Reference 1(f): the role of fees and charges on FOI, taking into account the recommendations of the Information Commissioner’s review of the current charging regime

FaHCSIA generally supports the recommendations that are set out in the Report to the Attorney-General on the Review of Charges under the FOI Act (February 2012). However, the Department has serious reservations about Recommendation 9, which, if implemented, has the potential to significantly increase the burden on agencies to process review requests at first instance. FaHCSIA proposes instead that the current review regime be maintained but that an application fee of \$100 apply to applications for both internal review and review by the Information Commissioner. The application fee in both instances should not be subject to waiver. FaHCSIA considers that this approach would be more consistent with the principles underlying the current review regime than the approach recommended by the Information Commissioner.