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New South Wales Council for Civil Liberties

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Submission concerning the draft bills for achieving freedom of information reform in NSW, June 2009

The New South Wales Council for Civil Liberties (CCL) is committed to protecting and promoting civil liberties and human rights in Australia.

CCL is a non-government organisation in special consultative status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

CCL was established in 1963, and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive use of power by the State against its people.

1. CCL is supportive of the general thrust of the legislation. Because we made a substantial submission to the Ombudsman's inquiry, this submission is confined to a few significant points.

2. Clause 3.
In our view, the object clause should be strengthened. It should refer to a fundamental entitlement (a human right) of people to have input into the formation and implementation of policies that affect them. It should note that one of the principal reasons that a democracy is to be preferred to other forms of government is that policies and administration are improved and mistakes avoided by input from people who have knowledge of their impact. For these purposes, it is essential that information held be government agencies and by private ones which contract to offer government services is freely available.

3. Subclause 6(2).
As it is written, the clause leaves it open to an agency to limit the accessibility of its information—for example, by requiring an enquirer to visit a particular office. The clause should require agencies to provide electronic access unless that involves the conversion of an unreasonably large amount of material from another form.

4. Clause 12.
CCL would prefer to see a list included here of typical considerations which favour disclosure. Such a list might be included in a separate subclause, or included in a note. Leaving it to an administrator to start from scratch in thinking of reasons for disclosure is likely to mean that important considerations are overlooked. A suitable list is to be found in the Solomon Report, section 39. It should continue to be made clear, however, that there will be other considerations, not in the list, which will favour disclosure.

5. Clause 14.
Conclusive assumptions against disclosure are likely to be expanded over time; and the terms in them are likely to be stretched. For some of the categories, there will nearly always be overwhelming reasons against disclosure; however, for some, there will be occasions when the public interest favours disclosure, and in all cases such circumstances are possible. The clause should allow for these possibilities.

6. Clause 50.
The qualifications 'reasonable' (subclauses) (2) and (3) and 'unreasonable and substantial diversion' (subclause (5) are open to abuse. CCL recognises the need to deal with vexatious and unreasonable requests. It would diminish the risk of abuse if agencies were required to report to the Information Commissioner any rejection of a request made under this clause.

7. Clause 52.
The motives of the person seeking the information are irrelevant to the issues of public interest. This material should be removed.

8. Clause 61.
This clause would allow an agency to charge excessively by using wasting time when searching for information, or by searching inefficiently. It would be better if the charge were on the basis of the number of pages of material, at least where it is not already in electronic form.

9. Subclause 105(1).
The term 'repeatedly' should be defined.
The CCL looks forward to a subsequent review of how the Act should be applied to the two Houses of the NSW Parliament.

Martin Bibby
Convenor, Civil and Indigenous Rights Subcommittee
June 4, 2009