



5 March 2010

Senate Standing Committee on Finance and Public Administration  
The Senate  
Parliament House  
CANBERA ACT 2600

**BY E-MAIL ONLY: [tegan.gaha@aph.gov.au](mailto:tegan.gaha@aph.gov.au)**

Dear Committee,

**Answers to Questions on Notice from public hearing on 15 February 2010 in relation to the Freedom of Information Amendment (Reform) Bill 2009**

PIAC takes this opportunity to provide its comments about two outstanding issues in respect of the Freedom of Information Amendment (Reform) Bill 2009 (FOIR Bill).

**a) Reversal of the onus of proof**

PIAC does not support proposed section 61, which provides that if any party, including an applicant or an agency, applies to the Administrative Appeals Tribunal (AAT) for a review of the Information Commissioner's decision, that party shall bear the onus of proof in the AAT proceedings, for two reasons.

Firstly, PIAC considers that this provision is not consistent with the general thrust of the reforms contained in the FOIR and IC Bills, namely to encourage a pro-disclosure culture.

Second, there is an inherently uneven relationship between freedom of information (FOI) applicants and agencies. Agencies have access to the document(s) in dispute, are able to see the contents of the document(s) and are therefore in a much better position to prove that any relevant exemptions apply. In contrast, individuals are effectively 'in the dark', ie, without access to the document or its contents, and therefore less likely to be able to mount a cogent argument for disclosure, even if there is one. In many cases, an applicant also has fewer resources available to them to pursue a review of an initial FOI decision. PIAC contends that proposed section 61 would reinforce these difficulties and therefore the onus of proof should remain with the agency or Minister in any AAT merits review.

**b) Reduction of charges for journalists and not-for-profit organisations**

PIAC's experience is that agencies are generally prepared to reduce or remit charges when applicants can demonstrate financial hardship, for example, by providing a pensioner card. However, they are generally extremely reluctant to reduce fees on the basis of public interest.

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PIAC therefore broadly agrees with the Government's policy proposal to ensure that discounts are more readily given to organisations such as not-for-profit organisations (NFPOs) that make FOI requests for public interest reasons.

In relation to journalists being given a similar discount, PIAC is more equivocal. While journalists may make FOI requests in order to further the public interest, for example to raise awareness of an issue or hold the government accountable, on the other hand, they may be seeking disclosure to sell a story.

Further, many journalists are employed by commercial organisations that have sufficient funds to pay for FOI requests and may recoup the costs through sales. On balance, PIAC contends that it is better that journalists be required to apply for a discount on the basis of public interest on a case-by-case basis.

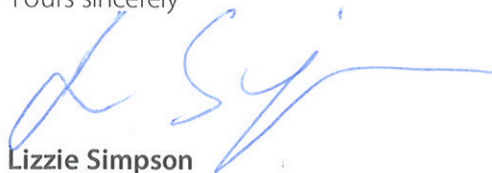
Finally, PIAC would prefer that the proposed discount be included in the current reforms to the *Freedom of Information Act 1982* (Cth) (the FOI Act) itself, rather than subsequent changes to regulations.

PIAC submits that in addition to amending section 94(2)(a) of the FOI Act, consideration should be given to amending section 29(5) by inserting a new sub-section that states that an agency or Minister, in determining whether to reduce or not impose a processing charge, must take into account whether or not the request is made by a not-for-profit organisation, in addition to the existing financial hardship and general public interest criteria.

PIAC also submits that consideration should be given to issuing guidelines or amending section 29 of the FOI Act to require an agency or Minister to consider giving a discount to a not-for-profit organisation or where disclosure would be in the general public interest, even if an applicant has not specifically requested such a discount. The Information Commissioner should facilitate this pro-active approach through the detailed guidelines and training provided to agencies about when an FOI request should be considered to be 'in the general public interest'.

If you have any questions about the matters raised in this letter, I would be happy to respond to them and can be contacted on the number and e-mail address below.

Yours sincerely



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