PUBLIC INTEREST ADVOCACY CENTRE

Australian Law Reform Commission - Review of the *Freedom of Information Act*, 1982 (Cwth)

Submission in Response to Discussion Paper No 59

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Overview

The Public Interest Advocacy Centre ("PIAC") is pleased to respond to the Australian Law Reform Commission's Discussion Paper concerning the Freedom of Information Act, 1982 (Cwth). We welcome the Review's recognition of the important place of government information in the workings of a democratic society.

In PIAC's view the Discussion Paper advocates a number of vitally necessary reforms. We hope these will be reflected in the Final Report and quickly adopted by the Government and Parliament. We are pleased to see that the Review has adopted a significant number of the proposals suggested by PIAC in our earlier submission and no doubt by other organisations.

We have concerns however that the Discussion Paper has not gone sufficiently far in respect of some of the proposals. There are also a number of issues that were raised in the Issues Paper that have not resulted in any firm proposals. Whilst our concerns are set out in greater detail in our submission, in summary they are:

(1) Whilst the Review's recommendation not to extend FOI legislation to the private sector is probably correct, the suggestions regarding extension of the Privacy Act (and specifically IPP granting a right of access) are not sufficiently strongly worded. It is possible that little reform may arise in this area based on the proposals as presently drafted.

(2) There is an urgent need for separate legislation relating to access to medical records. The matter should not be left to the Privacy Commissioner.

(3) PIAC had hoped that the Review would be able to make more concrete proposals for altering AAT procedures in relation to FOI. We are in favour of maintaining the AAT as the only external review body (prior to the Federal Court) however this is predicated on the need to address a number of problems with AAT review, including cost, delays, formality and quality of decisions.

(4) Public interest tests are not incorporated in a sufficient number of the exemptions, and no firm proposals are made in relation to rationalising the tests;

(5) In certain cases where such tests are incorporated, they apply only to limited types of documents, eg s33(1) - documents received from international organisations (only); and s 43 - documents relating business affairs, but only if created by a government source.

We have attempted to indicate our position in respect of most of the proposals. Where necessary we have expanded our reasons and made a number of suggestions in relation to the outstanding issues in respect of which input is sought.

Where we have agreed with a submission and already provided reasons in our earlier submission addressing the Issues Paper we have not repeated those reasons. We have rather cross referred to the equivalent part of our earlier submission.

If you would like any further information please contact Bill McManus on 299 7833.

Chapter 3 - A new approach

Proposal 3.1: FOI Act preamble (p13)

We agree with this approach and the suggested preamble. The current form of words in the Act is inadequate. The words "and Citizens" should be added to the second item of the proposed preamble along with the community. Information access is not just a matter of privacy, it is a manifestation of rights and responsibilities of democratic citizenship.

Whatever the final form of words chosen they need to be consistent and reflected in an expanded objects clause.

Proposal 3.2: rewording objects clause (p16)

We agree in principle with the suggested rewording, but make the following observations:

(a) re 1 (a), no extra weight should be given to the second limb of this paragraph.

(b) re 1(b) mention should also be made of "citizens".

(c) Para (2) should state that the right of access is limited *only* by specified exceptions.

(d) Re (3) : It is not only "discretions" that should be interpreted in favour of disclosure, but the Act as a whole.

It should also be reinforced here that the right of access does not depend on whether the documents being sought are personal in nature. The access principle should apply equally to all government held documents.

Proposal 3.4: compliance with FOI Act incorporated into public service best practice (p19)

We agree.

Proposal 3.5: independent monitor - role (p22)

PIAC agrees that there should be an independent monitor, incorporating complaint handling, statistic collecting and the preparation of an annual report. The tasks are too fragmented at present between Attorney General's Department, agencies and the Ombudsman.

The monitor should specifically have the complaint investigatory role of the Ombudsman.

The monitor should also have power to conduct reviews of agencies' compliance with the Act independently of particular complaints. This is a constraint on the Ombudsman's current operations.

Proposal 3.6: Independent monitor - facilitation role (p23)

We agree.

Issue 3.7: prescription of situations where monitor has a role. (p23)

The situations where the monitor's assistance can be utilised should be set out in a non-exclusive and reviewable list, though not necessarily in the Act. Possibly the list could be issued and revised by the monitor itself after consultation.

Issue 3.8: feasibility of facilitation - compatibility with monitoring role (p23)

Such a role is necessary and feasible. However the facilitator would have to have a right of full access to the documents in question in order to properly assist the process. If the documents have not yet been ascertained the monitor should be briefed by the agency on the range of documents that may come within the purview of the request.

There are far too frequently communication problems in the way in which requests are dealt with, especially in relation to non-personal information requests. This is accentuated in the case of applicants who have no legal knowledge, let alone a working knowledge of the FOI Act.

Facilitation would assist the processing of potentially contentious requests and limit the number of rejections through request reframing or agency reconsideration.

Facilitation is compatible with a monitoring role because it provides the monitor with practical experience and exposure to the Act.

Proposal 3.9: Independent monitor - no role in reviewing agency decisions (p23)

This is a difficult issue as PIAC believes that there are problems with the way the AAT hearings are conducted in the FOI area. However the answer to this question is more appropriately to address the AAT problems directly rather than to give the monitor determinative review powers and accordingly institute another layer of review.

Realistically, if the independent monitor was given a determinative review role the next appeal would still have to be to the AAT before the Federal Court, otherwise applicants or agencies could forum shop as to what body they perceived would give them the better result.

Proposal 3.10 -13: independent monitor - other roles (p27-8)

We agree that the independent monitor should have the other roles suggested. Resources should be applied to enable the tasks to be carried out effectively.

Training should also be available to community organisations as outlined and suggested in our earlier submission.

Issue 3.14: who should be the independent monitor? (p30)

The independent monitor role should be undertaken by the Commonwealth Ombudsman, with expanded powers and resources. A separate office would require too many resources.

PIAC notes that the Review has expressed some reservations on the basis that the Ombudsman's role of investigating maladministration of agencies may send the wrong message. Further that the Ombudsman's role has not traditionally involved a public profile on policy. These are not considerations which militate against the Ombudsman being given a widened role.

Indeed the Commonwealth Ombudsman has already moved towards a broader approach of facilitating agency compliance.

The first reservation may be an initial problem, but would be overcome with education and publicity as to the expanded role. Most of the public would also recognise that the Ombudsman acts in a conciliatory, relatively informal manner. It would not be too great a step to undertaking the wider responsibilities that would be required.

Chapter 4 - Using the FOI Act

Proposal 4.1: amend Act to allow applicant to seek summary of documents(p32)

We agree with this course, but it should only be available at the applicant's option. Such a course should not be imposed upon an applicant by an agency, although it could be offered, with the rider that the agency must explain that the applicant is under no obligation to accept.

This process would have to be closely monitored by the independent monitor, as there is potential for abuse. Some agencies could get into a practice of recommending summaries to cut costs. Some might even deter applicants by overstating the cost of a request and then offering a summary at reduced cost.

Perhaps the applicant should have the right to have the independent monitor verify that the summary is accurate if there are questions in this regard.

Proposal 4.4: amend Act so information pre 1977 but less than 30 years old is accessible. (p33)

We agree.

Proposal 4.6: compliance with s8&9 overseen by monitor. (p36)

We agree.

Proposal 4.7: agencies seeking approval from the monitor to extend time for complying with a request requiring consultation. (p37)

We agree, subject to the agency being able to provide valid reasons why such an extension is required (inability to locate third parties etc).

Issue 4.8: should the monitor have a discretion to grant extensions? (p37)

Yes, but subject to guidelines as to how the discretion should be exercised. It should be stated that the onus is on the agency to supply the reasons why an extension should be granted and the presumption is against any extension unless in exceptional circumstances.

Issue 4.9: should agencies be penalised for not processing requests within statutory time limit? (p38)

Yes, especially in cases where the delay is negligent or where an applicant has explained the need for documents within a particular reasonable time and the agency has failed to deliver.

The penalty should at the least take the form of a refund on charges or a removal of the right to collect charges if they have not already been paid.

Issue 4.10: is s16 unnecessarily detailed?

The section is unnecessarily detailed and should be redrafted at the least to remove the duplication of provisions.

Proposal 4.11: redraft s24 re agencies consulting with applicants about their requests. (p39)

We agree. Agencies should be required to consult before taking this course.

It should also be added that the fact that the material being sought is of a non personal nature is irrelevant in deciding whether there will be an unreasonable diversion of resources. This issue was raised in PIAC's submission to the Issues Paper, and a case example was there cited where PIAC was involved as solicitor for a number of applicants and s24 was invoked.

Proposal 4.12: agency should be required to consult with the monitor before invoking s24. (p39)

We agree. Agencies should be required to obtain the independent monitor's views before taking his course.

Proposal 4.13: s24(5) should be repealed. (p39)

We agree. Agencies should be required to check documents before invoking the section, and make decisions concerning each on their merits. To do otherwise would be to contrary to the principle of disclosure.

Proposal 4.14: amend Act to allow agencies to reject "vexatious" requests. (p40)

We agree, so long as the agency is required to submit to the independent monitor its reasons why a request is vexatious.

The monitor should then be entitled to comment on the request before the agency makes any decision. Whilst the monitor's views would not be determinative, they could be used in any AAT hearing if the applicant wishes to take the matter further.

Proposal 4.15: monitor should monitor the quality of agencies' statements of reasons. (p41)

We agree. The monitor should be permitted to do so irrespective of a complaint being lodged.

Proposal 4.16: encourage agencies to use improved technology. (p41)

We agree.

Proposal 4.17: Archives Act should be amended (p42)

We agree.

Proposal 4.18: monitor should, with Archives, monitor agencies' information management practices. (p42)

We agree.

Chapter 5 - Exemptions - General Principles

Proposal 5.1: Pt IV of the Act should be prefaced with a statement of purpose etc. (p46)

Yes, but the statement should also include the rider that the Act, and in particular the exemptions are to be interpreted in favour of a right of access on behalf of the applicant.

Proposal 5.2: redraft exemptions to make agencies focus on whether harm would result from disclosure. (p47)

We agree, but the actual harm contemplated needs to be specified in the particular exemption. Some thought needs to be given to the specific requirements of particular exemptions, as of course the harm will be different for each.

The decision as to what the particular harm should be for each exemption prior to any drafting is something that needs to be established after considerable consultation with agencies and other interested parties. If only agencies are involved in the process the resultant identified harm is in danger of being too widely specified, allowing for illegitimate objections to requests.

Proposal 5.3: Act should provide that agencies must not disclose information under s37(1)(c),s41 and s43. (p49)

We agree in respect of sections 37 (1) (c) and 41.

In respect of s43 the position is somewhat different. There may be reasons why business affairs documents should be permitted to be disclosed even though an exemption could be claimed, although this will partially depend on the final version of a redrafted s43.

Proposal 5.5: monitor should issue guidelines on how to apply a public interest test. (p53)

We agree with this approach, though there are a number of issues to be considered, as set out below. The list of factors to be considered should not be static, it should be reviewed over time with input from the public and agencies.

Proposal 5.6: guidelines should list facts that should or should not be considered in applying public interest test. (p53)

We agree with the general approach. The guidelines should specify, in respect of the matters to be considered, that if the information falls within the guideline access is to be favoured (or otherwise).

Issue 5.7: other factors that should be included in guidelines? (p53)

With respect to whether the information being sought is the applicant's personal information, it must be specified that the fact that the information might be non-personal cannot be considered as a reason to refuse access. Section 11 (2) must be adhered to.

The fact that the information is non-personal should be specifically listed as a factor that can not be considered.

Proposal 5.8: statement of reasons to include factors considered by agency in applying any public interest test. (p53)

We agree, however the applicant should be provided with a copy of the guidelines applicable to the exemption, and also be provided with a copy of the wording of the exemption. In this way applicants will then be better informed as to the basis of any decision by the agency, and would be able to make decisions as to whether they appeal the matter or otherwise.

Proposal 5.9: maximum duration of conclusive certificates to be 2 years. (p53)

We agree.

Proposal 5.10: monitor should monitor use of conclusive certificates and report on use and failure to revoke certificates after no reasonable grounds for exemption claim. (p56)

We agree.

Chapter 6 - Specific Exemptions

PIAC notes that in its Issues Paper the Review canvassed whether public interest tests should apply to all exemptions, and sought views as to the rationalisation of the various forms of public interest test. It would be helpful if the Review itemised in its final report the exemption provisions which it believes should incorporate a public interest test, and provide reasons for why those exemptions (if any) not incorporating such a test do not do so.

As to rationalisation of the tests, despite the comments at paragraph 5.15, there do not appear to be any proposals directly dealing with rationalisation. Rationalisation should be provided for specifically, even if it is believed that proposals 5.5 to 5.8 deal with the issue, as it is not perfectly clear.

Proposal 6.1: s33(1)(b) should be redrafted so that exemption of information communicated in confidence by an international organisation is subject to public interest test. (p59)

We agree with this step, for the reasons set out in the equivalent part of our submission in relation to the Issues Paper. However in our view the proposal does not go nearly far enough, and should apply to some foreign government information.

Whilst recognising that there is a prerogative for protecting information communicated by foreign governments, such information comes from a vast range of sources with varying levels of confidentiality. A good example is information effecting health and the environment received from instrumentalities of foreign governments.

A public interest test should apply to such information. Our earlier submission should be consulted if more information is required.

Proposal 6.2: no conclusive certificates order33A(2) (p59)

We agree, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Proposal 6.3: s 34 should encourage agencies not to claim an exemption where no harm to Cabinet decision making. (p60)

We agree, however this needs to be expanded to give greater guidance to decision makers.

Proposal 6.4: s34(1)(a) should be re-worded so that documents are not exempt merely because they have been submitted to Cabinet. (p60)

We agree. A document needs to be specifically prepared for Cabinet to claim the exemption, although this may simply lead to documents being drafted for Cabinet deliberation rather than simply submitting them to claim the exemption. A proper form of words needs to be devised to achieve maximum allowable disclosure.

Proposal 6.5: "officially published" to be defined in the Act. (p61)

We agree.

Proposal 6.6: amend s34 so Cabinet documents only exempt for 20 years after creation. (p62)

We agree.

Proposal 6.7: s35 should be repealed. (p62)

We agree, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Proposal 6.8: rename s36 'deliberative process documents'. (p63)

We agree.

Proposal 6.9: remove conclusive certificates for s36. (p63)

We agree, for the reasons set out in the equivalent part of our submission in relation to the Issues Paper.

Issue 6.10: should s36 be restricted, eg to policy formulation documents? (p63)

Yes, some form of restriction is required. Policy formulation would be the minimum.

Proposal 6.11: should s36 should be amended to exclude purely statistical information? (p64)

We agree.

Proposal 6.12: s37, except for37(1)(c), should be subject to a balancing public interest test. (p64)

We agree, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Proposal 6.13: s37(1)(c) should be a non-waivable exemption.(p64)

We agree.

Proposal 6.14: s37(1)(a), (2)(b) and (2)(c) should only be available where disclosure would prejudice a current investigation. (p64)

We agree.

Proposal 6.15: s37(1) should be amended to include '(d)' endanger the security of a building, structure or vehicle'.

We agree so as to make the Act as consistent as possible with other State's Acts.

Proposal 6.16: s38 should be amended to lapse in three years (p65)

We agree, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Proposal 6.17: s39 should be repealed. (p66)

We agree, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Issue 6.18: should s40(1)(d) be retained. (p67)

No, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Proposal 6.19: s40(1)(e) should be deleted. (p67)

Yes.

Proposal 6.21: s44 should be repealed. (p68)

We agree, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Proposal 6.22: should s41 be amended so personal information of a person other than the applicant is exempt unless: ...(p71)

We agree.

Proposal 6.25: Agencies must ascertain whether an applicant wants to access to third party personal information before consulting the third party. (p73)

We agree.

Proposal 6.26: an agency should be able to seek advice of monitor as to whether consultation is necessary. (p73)

We agree.

Proposal 6.27: s42 should be redrafted to reflect the current legal privileged provisions in the Evidence Act 1995 (Cth). It should also include a public interest test.

We agree. This would ensure the consistency of the provision with other relevant Commonwealth legislation.

Proposal 6.28: s43(1)(a) and (b) should be repealed. (p75)

We agree.

Proposal 6.29: amend s43 to clarify application to competitive commercial activities of agencies. (p76)

We agree.

Proposal 6.30: s43 should be subject to a balancing public interest test in respect of information relating to government activities. (p76

We agree, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Proposal 6.31: should s43(c)(i) be subject to a balancing public interest test in respect of information relating to the affairs of a private sector body? (p76)

Yes, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Proposal 6.32: re-draft s45 to be self-contained and not common law of breach of confidence, and be subject to a balancing public interest test. (p77)

We agree, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Proposal 6.33: s47 should be repealed. (p78)

We agree.

Proposal 6.34: s47A should be repealed. (p78)

We agree.

Proposal 6.35: parliamentary departments to be a prescribed authority order s4 of the Act. (p79)

We agree.

Proposal 6.36: Schedule 2 Part I should be repealed. (p81)

We agree, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Proposal 6.37: Schedule 2 Part II should be repealed. (p81)

We agree, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Proposal 6.38: Schedule 2 Pt III should be repealed. (p81)

We agree, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Chapter 7 - The Cost of Seeking Access to Information under the FOI Act

Proposal 7.1: access under the FOI Act to an applicant's personal information should be free. (p86)

We agree, for the reasons set out in equivalent part of our submission in relation to the Issues Paper.

Issue 7.2: should there be a different system of fees and charges for non-personal information? (p87)

This is a difficult issue.

Any attempt to allocate different charges depending on the type of non-personal information sought would inevitably result in applicants attempting to characterise the information at a lesser scale. (It is a fair assumption that persons seeking non personal information would be more sophisticated in terms of their dealings with the FOI Act).

Ideally PIAC believes the charges for non-personal information should be set at minimum levels, and that there should not be any differentiation between charges paid for policy and academic information, for example. The preferable course would be to give greater effect to the fee remission provisions. Detailed guidelines could be issued directing remission in a range of circumstances depending on the financial position of the applicants.

Issue 7.3: should the $30 application fee include a prescribed amount of search and retrieval time? (p87)

Yes. This would act to encourage people to use the Act and minimise the deterrent effect of the fee regime.

A minimum time of two hours would be an appropriate starting point.

Issue 7.4: should agencies be able to charge for deliberation time? (p88)

Definitely not. It is not the applicant's fault that exemption provisions may apply to a particular document that require the agency to conduct the deliberations.

Agencies could exaggerate the potential cost involved in an effort to deter requests.

Proposal 7.5: photocopying should be charged at a reasonable commercial rates. (p89)

There is a case for an increase from the 10 cents currently charged, but the increase should only be to "at reasonable cost" levels, or at the lowest end of commercial rates, whatever is the lower. Agencies should not be permitted to build in extonious factors to any "at cost" calculation.

Proposal 7.6: the Act should make clear that public interest considerations in the context of fees and charges are the same as those in the context of the exemption provisions. (p90)

We agree.

Point 7.22:

We agree that the services of the independent monitor should be free of charge.

Chapter 8 - Amendment of Personal Information

Proposal 8.1: delete 'lawfully' should be deleted from the FOI Act s48 (p93)

We agree. Section 48 should be consistent with IPP 7.

Proposal 8.4: where an agency considers personal information to be incorrect etc, it must amend the record. (p94)

We agree.

Proposal 8.5: Act should allow the deletion of material to ensure information is up to date and correct. Deleted material is to be kept. (p95)

We agree.

Proposal 8.7: s24 should apply to requests for amendment as well as access to personal information. (p96)

We disagree.

Chapter 9 - Review Mechanisms

Proposal 9.1: Internal review of FOI decisions should continue to be available but not prerequisite to external review. (p98)

We agree.

This would assist in improving the original decision making process within the agency to ensure that judgments are made within the terms of the legislation. Agencies would know that potentially they would be immediately accountable to external review.

Such a course would also benefit applicants in that costs and delay could be minimised if the issue appeared to be one that was so contentious it was heading for an external review in any case.

Proposal 9.2: there should be no fee for internal review of an FOI decision. (p99)

We agree. The current $40 fee acts as a deterrent and would also do so if non compulsory internal reviews were available.

Proposal 9.3: Ombudsman's role in reviewing FOI decisions should not be changed. (p101)

We agree.

We have commented earlier that the Ombudsman's Office would be the best place to locate the independent monitor. The monitor should specifically have the complaint investigatory role of the Ombudsman.

The monitor should also have power to conduct reviews of agencies' compliance with the Act independently of particular complaints. This is a constraint on the Ombudsman's current operations. However the question of determinative powers is more difficult.

PIAC believes that there are problems with the way the AAT hearings are conducted in the FOI area. However the answer to this question is more appropriately to address the AAT problems directly rather than to invest the monitor with determinative powers.

The $300 fee for review by the AAT is certainly a deterrent in favour of providing some more affordable form of review, but again the preferable solution would be to fix the fee problem at the source rather than to institute another layer of more affordable review by the Ombudsman.

Realistically, if the independent monitor was given a determinative review role the next appeal would still have to be to the AAT before the Federal Court. Otherwise applicants or agencies could forum shop as to what body they perceived would give them the better result.

Proposal 9.4: AAT should remain the sole determinative external review body for FOI decisions.

For the reasons stated above in relation to the Ombudsman's review powers, we agree.

Issue 9.5: have the procedural changes introduced by the AAT improved its handling of FOI appeals?

It is too early to tell whether the changes to AAT procedures have resulted in more procedural fairness as they were only instituted 7 months ago, however they appear to hold promise.

A major problem has been the inconsistency of decisions by differently constituted AATs. This may be addressed by the amendments.

PIAC had hoped that the Review would be able to make more concrete proposals for altering AAT procedures in relation to FOI. We are in favour of maintaining the AAT as the only external review body (prior to the Federal Court) however this is predicated on the need to address a number of problems with AAT review, including cost, delays, formality and quality of decisions.

Proposal 9.6: amend s64 to allow AAT to inspect documents claimed to be exempt after lodgement of application for review. (p106)

We agree. This would result in a vast improvement in AAT procedures, as at the moment it is often working in the dark until the hearing stage.

Chapter 10 - Application of FOI to GBE's

Proposal 10.1: GBEs should be subject to FOI Act. (p114)

We agree.

Issue 10.2: should GBEs be compensated for cost of complying with FOI Act? (p115)

We agree, if it is the case that GBEs' competitive ability would be compromised if they had to include such an overhead that would not otherwise apply to their competitors.

Chapter 11 - The Private Sector - should FOI be extended?

Proposal 11.1: FOI Act should not be extended to private sector. (p121)

PIAC believes that it is a basic right that persons have access to information concerning themselves. It is irrelevant where that information is held, be it the private or public sector. The question is how such rights of access should be established, given certain existing limited rights in FOI and other legislation.

We agree in principle that the FOI Act should not be extended to the private sector. The FOI Act deals principally with government held information. We note the approach taken by the Review that the Privacy Act should be the vehicle for establishing broader rights of access. This is principally through enabling the Privacy Commissioner to establish codes in respect of a particular industry and to make use of IPP6 which entitles individuals to an access right.

PIAC has a number of concerns with these proposals. Firstly, whilst an IPP6 right of access to personal information is relevant to ensuring privacy, it is only a means to that end, rather than an end in itself. In many ways a right of access to personal information should be seen as an end in itself - persons should be entitled to be informed of information held by others concerning themselves, not only to ensure its accuracy and the scope of any intended disclosure, but because the information vitally concerns them.

Some issues, such as access to medical records are so important that we believe separate legislation is necessary. This would be preferable to the approach adopted by the Review of urging the Privacy Commissioner to review the question with the hope of instituting a code and thereby installing an access right. We believe that this does not give due recognition to the fact of a right of access to medical records as an end in itself. If done in the way proposed the right may arise, but it would be ancillary to the privacy issues which are the focus of privacy legislation.

Our second concern is that the Review has in reality left it up to the Privacy Commissioner to make relevant decisions as to any extended right of access to personal information. We believe the Review should be much firmer in its proposals in this regard. The approach adopted gives the Privacy Commissioner a lot of leeway, but little direction.

In our view the Review, if it proposes to adhere to the course outlined, should set out much more definite proposals as to what the Privacy Commissioner should accomplish and what industries/areas should be focused upon.

Proposal 11.2: if in a particular area of private sector there is a need for greater disclosure of information, relevant legislation should be amended or new legislation introduced. (p121)

We agree with this approach, but it is really a statement of principle without more specific recommendations. Please see our comments under 11.1.

Proposal 11.3: If there is information that ought to be disclosed upon request directly to a member of the public, 'right to know' legislation should be introduced. (p121)

We agree, but again it is really a statement of principle without more specific recommendations. In PIAC's view, as set out in its earlier submission to the Issues Paper, there is a need for specific right to know information, especially in the toxics field.

We urge the Review to look at the recommendations in that earlier submission in this regard and the Right to Know report attached, so that more specific proposals can be suggested.

Proposal 11.4: FOI rights should not be reduced as a result of government functions be outsourced. (p121)

We agree.

Proposal 11.5: Privacy Act should be extended to cover private sector. (p125)

Subject to our comments above we agree, however this proposal is watered down by Proposal 11.7. The Review should make more specific proposals in this regard.

Proposal 11.6: Privacy Act should be extended to cover any part of public sector and any GBE not currently subject to the Act. (p125)

We agree.

Proposal 11.7: Privacy Act should be extended to private sector in following way .... (p126)

This proposal is not worded strongly enough. The proposal really leaves the matter to the Privacy Commissioner. The Review should make more specific proposals in this regard.

Proposal 11.8: A Privacy Commissioner to be directed to give highest priority to developing a code under Privacy Act for private medical and health industry. (p128)

In PIAC's view there is an urgent need for separate legislation relating to access to medical records. The matter should not be left to the Privacy Commissioner.

If the Review is not prepared to recommend separate legislation, it should *propose* that the Privacy Act be extended in this way, rather than just suggesting the Privacy Commissioner give priority to the health and medical industry. This proposal really leaves the matter to the Privacy Commissioner. The Review should make more specific proposals in this regard.

Proposal 11.9: Privacy Commissioner to be able to develop codes under Privacy Act for particular government departments. (p128)

We agree.

Chapter 12 - A single Information Act

Proposal 12.1: FOI Act, Privacy Act and Archives Act should be combined into a single Act. (p132)

There is some merit in this proposal. It is preferable to taking the personal information access provisions out of the FOI Act and incorporating them in the Privacy Act. This would have involved massive duplication of all the exemption provisions.

The reduced symmetry between State and Federal FOI Acts is a cause for some concern, however the benefits outweigh the disadvantages. The main consistency would have to be between the exemption provisions in the various Acts. It is acknowledged that if many of the amendments proposed by this Review are adopted by the legislature then the symmetry will be damaged in any case.

PIAC is concerned however that in an attempt to have one overriding piece of legislation dealing with information in the public sector the scope of privacy legislation will be narrowed. Privacy principles should ideally apply equally across both government and private sectors. Privacy legislation is relatively new and its development should occur in an unfettered atmosphere where principles are put in place regardless of the source of information.

At this stage PIAC is not convinced that a single Information Act would be the correct approach.