



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES
FREEDOM OF INFORMATION (REMOVAL
OF CONCLUSIVE CERTIFICATES
AND OTHER MEASURES) BILL 2008

Second Reading

SPEECH

Tuesday, 15 September 2009

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Tuesday, 15 September 2009
Page 9659
Questioner
Speaker Byrne, Anthony, MP

Source House
Proof No
Responder
Question No.

Mr BYRNE (Holt—Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Trade) (7.17 pm)—I thank those on both sides of the House who have contributed to the debate, particularly the member for Isaacs. The Freedom of Information (Removal of Conclusive Certificates and Other Measures) Bill 2008 delivers on the government's election commitment to remove the powers to issue conclusive certificates under the Freedom of Information Act 1982—the FOI Act—and the Archives Act 1983.

Currently, if a conclusive certificate is issued the Administrative Appeals Tribunal cannot undertake a full reconsideration of a decision to claim an exemption. The passage of this bill will ensure that all exemption decisions under the FOI Act and the Archives Act will be subject to full external merits review. The removal of the certificates power will therefore enhance public confidence in decisions about access to government information.

The removal of the power to issue conclusive certificates does not mean information that should be protected against disclosure will be released. Where an exemption claim properly applies to a document, the document will not need to be disclosed. A number of measures in the bill will introduce procedural requirements to be observed by the AAT in the conduct of the review proceedings for particularly sensitive documents—namely, documents whose release could damage national security, defence or international relations or would disclose confidential foreign government information or cabinet information. These measures do not affect substantive rights of access to documents or to records; rather, they are safeguards for the protection of particularly sensitive information in the conduct of AAT proceedings.

Under existing provisions in the FOI Act, intelligence agencies and the Inspector-General of Intelligence and Security are wholly excluded from the operation of the act, and documents in the hands of the agencies are excluded if they originated with or were received from an intelligence agency or the Inspector-General of Intelligence and Security. The bill will in the same way exempt these classes of documents from the operation of the FOI Act when held by ministers. It would be anomalous to treat intelligence agency documents differently when they were held by a minister.

Since this bill was introduced into the parliament, the government has released, as the member for Isaacs stated, draft legislation for public comment to fulfil the rest of its election commitments on FOI reform. The draft legislation together with this bill comprises the most significant overhaul of the FOI Act since its commencement in 1982. The government intends to introduce this legislation into the parliament shortly.

While the repeal of the power to issue conclusive certificates is just one initiative amongst many in the government's broader FOI reform package, it is an important step in making government more open, more accountable and more transparent.

Question agreed to.

Bill read a second time.