

a record) and document (which is a device by which either a record or information may be physically presented).

While existing legislation acknowledges that records can exist in electronic media such as disks or tapes, it falls down in its description of them as physical objects rather than as a gateway to a complex world of "virtual" records.

To address this, the report recommends that the term "record" be redefined as "recorded information, in any form, including data in computer systems, created or received or maintained by an organisation or person in the transaction of business or the conduct of affairs and kept as evidence of such activity".

The Report expresses concern at the present arrangement in which "there are wide variations in the extent to which Commonwealth agencies have adopted electronic record-keeping technologies". Most Commonwealth records are now created electronically, but in many cases this merely means that they are created on a person computer networked within a group or agency.

"The record may be transmitted electronically and become part of an accumulation of electronic records" the Report says. "Yet the 'record-keeping system' to which it belongs is often no more than a server filled with an unstructured mass of records which are difficult to locate and subject to intermittent purges. In such cases reliable and enduring record-keeping still depends on record creators printing all records of more than transient value and ensuring that they are incorporated into a structure paper-based record-keeping system.

Among the range of recommendations contained in the report is that the

National Archives of Australia be reconstituted as a stronger independent authority empowered to set record-keeping standards, monitor the application of those standards, and bringing the entire process under the scrutiny of the Auditor-General.

In addition, the Report also urges a stronger public-access regime along the lines of the Freedom of Information legislation. In particular, it calls for:

- a statutory right of public access to all Commonwealth records which are 30 years old, subject only to applicable exemptions;
- a requirement for the Commonwealth to respond to all access applications within 90 days;
- clearly defined categories of exemption;
- a requirement to provide written reasons in support of any exemption; and
- a right to internal and external review of any decision to exempt records from public access.

#### **Freedom of Information Act 1982 : Annual Report 1996-97**

This is the fifteenth report on the operation of the *Freedom of Information Act 1982* (the FOI Act).

The Attorney-General's Introduction to the Report notes that there was a marked decline in the number of applications made under the Act during the year. He says that this may be due in part to a change in the practice of the Australian Taxation Office which is now making more information available outside the FOI Act.

Activity under the FOI Act during the reporting year included:

- a total of 30,788 requests were received (which was a 21% decrease from 1995/96 when 39,327 requests were received) by 92 agencies, bringing the total number of requests since the Act came into operation to 467,361;
- the Departments of Veterans' Affairs (11,883 requests – 338 less than last year), Social Security (7,439 requests – 663 less than last year) and Immigration and Multicultural Affairs (6,898 requests – 134 more than last year) continue to receive the majority of the requests, mostly in respect of the applicant's own personal information.
- the Australian Taxation Office received 594 requests which was a decrease of 8,302 requests over the previous year. Other significant variations were the Refugee Review Tribunal (706 requests which was an increase of 268 from 1995/96), AIPO-Trade Marks Office (605 requests which was an increase of 246 from 1995/96), Australian Federal Police (162 requests which was an increase of 73 from 1995/96) and the Defence Forces Retirements and Death Benefits Authority (93 requests which was a decrease of 77 from 1995/96);
- 79.19% of access requests were granted in full, 16.36% granted in part and 4.45% of requests were refused. Agencies with the highest refusal rates were Telstra Corporation Limited (63 of 143 requests) the Department of Foreign Affairs and Trade (9 of 46 requests), the Department of Administrative Services (7 of 44 requests) and the Australian Customs Service (10 of 72 requests);
- there was a general deterioration in response times with 78% of requests answered within 1-30 days (compared to 80.13% in 1995/96), 16.81% taking 31-60 days (compared to 16.21% in 1995/96), 3.04% taking 61-90 days (compared to 2.42% in 1995/96) and 2.15% taking over 90 days (compared to 1.24% in 1995/96);
- 349 applications for internal review were made representing 5.9% of adverse agency decisions. Of the 297 decisions made following internal review during the year, 185 (62.3%) affirmed the original decision, 112 (37.7%) resulted in some concession to applicants (mostly access with deletions) and 13 applications were withdrawn;
- the AAT reported 117 applications for review concerning FOI in the reporting year. Agencies had reported the number of applications as 65 – the Report suggests that this discrepancy is probably due to under reporting and incomplete statistics which it considered may be an inevitable consequence of de-centralisation of most agencies. The AAT's figure of 117 applications (which compares to 118 in 1995/96) was preferred. It was noted that the increased application fee (from \$368 to \$500) with effect from 1 September 1996 may have an effect on the number of applications in subsequent years; and
- the Commonwealth Ombudsman received 301 complaints about FOI matters in the reporting year (an increase of 6.4% from 283 complaints in 1995/96).

Chapter 3 of the Report, which is concerned with the impact on agency resources of the FOI Act, is assessed from reports the agencies make on the costs of administration of the legislation. The Report notes that experience has shown that agencies rarely keep exact records on hours spent by officers on FOI matters and other non-labour costs involved.

The total reported cost attributable to the FOI Act during 1996/97 was \$15,972,950 which is an increase of \$1,408,388 (9.67%) on the previous year. For 30,788 requests, this means an average cost per request of \$519.

The average staff days spent per request was 1.7 with large client service departments handling high volumes of requests very quickly because of the routine nature of the requests in contrast to the smaller policy oriented agencies which deal with fewer, but more complex, requests. The cost of requests ranged from \$20 for the Employment Services Regulatory Authority to \$50,787 for AUSTEL. The average cost for 10 agencies was higher than \$10,000 per request.

### **Legislative Instruments Bill – Update**

The Government introduced the Legislative Instruments Bill 1996 into the House of Representatives on 24 June 1996 and it was passed by that House on 11 September 1996. The Bill was introduced into the Senate on 8 October 1996 and finally debated in that Chamber on 24/25 September 1997 when a large number of Government and other amendments were passed.

A number of amendments were successfully moved by the

Opposition/minority parties/independents in the Senate, including

- (a) that a conclusive certificate by the Attorney-General that an instrument is or is not legislative should be disallowable by either House of Parliament;
- (b) to expand the provisions on consultation before the making of legislative instruments from business interests to a requirement to consult where the instrument is likely to have a direct, or substantial indirect, effect on any sector of the community or on the natural, Aboriginal, cultural or built environment or on human rights;
- (c) to provide certain exemptions from consultation similar to those in the 1994 Bill, for example, where legislative instruments are urgently needed or where notice would give an unfair advantage to individuals or where the Attorney-General certifies that the instrument should be exempt in the public interest (which was explained as being included to avoid the need for specific national security and airworthiness exemptions);
- (d) to delete the exemption for instruments that determine terms and conditions of public sector employment;
- (e) to delete the exemption for national schemes of legislation; and
- (f) to remove the automatic sunset provisions and to include a provision for annual reporting by each Minister on legislation within the Minister's portfolio which is no longer necessary and the action