

Freedom of Information and Other Legislation Amendment Bill 2005

Explanatory Notes for Amendments during Consideration in detail to be moved by the Honourable Rod Welford MP

Short Title

Freedom of Information and Other Legislation Amendment Bill 2005

Objectives of the Amendments

Chapter 2, part 1- Freedom of Information Amendments

Amendment of *Freedom of Information Act 1982*

It is proposed to make amendments to the Bill during consideration in detail to ensure that applicants who submit a concession card at the same time as making an application for access are entitled to the same rights of review if their claim for waiver is rejected as applicants who do not make a claim for waiver until after a preliminary assessment of charges has been issued and the applicant has lodged an objection notice.

Chapter 3, part 1 – Other Amendments

Amendment of *Legal Profession Act 2004*

Section 610 of the *Legal Profession Act 2004* provides for the rules of the Queensland Law Society made under the *Queensland Law Society Act 1952* to continue in force as subordinate legislation for one year. It was intended that the old rules would be redrafted and replaced by new administration, society and solicitors rules before their expiry on 1 July 2005.

While the Society's new administration and society rules are now in place and many of the old rules have been repealed, the Society has only recently made recommendations for the solicitors rule which will set the professional conduct standards for solicitors. The Act provides for the

solicitors rule to be made as subordinate legislation after a public consultation process.

To ensure that there is not a gap in relation to conduct matters now covered by the *Queensland Law Society Rule 1987*, it is proposed to defer the expiry of that rule for a further period of 12 months, unless it is sooner repealed.

Achievement of the Objectives

Chapter 2, part 1- Freedom of Information Amendments

Amendment of *Freedom of Information Act 1982*

Clause 61 which inserts the new Schedule 4 contains amendments to clarify and simplify some procedures for the charging regime for non-personal affairs documents. These include amendments to streamline procedures when an applicant submits a concession card at the same time as making an application for access and seeks waiver of charges on the basis of financial hardship (Schedule 4, sections 8 and 9). Under the Act, charges must be waived if an applicant can establish he or she is in financial hardship. An applicant who is an individual will be taken to be in financial hardship if the person is the holder of a concession card (as defined in the Act). The proposed changes contained in Schedule 4, sections 8 and 9 will allow agencies and Ministers to determine the claim for waiver without first issuing a preliminary assessment of charges as would normally occur.

Section 9 provides for the possibility that the agency or Minister may not be satisfied the applicant is the holder of a concession card and therefore not entitled to a waiver. In these cases, the agency or Minister is required to issue a preliminary assessment of the charges as usual. The section, as currently drafted, modifies the standard “preliminary assessment” procedures by excluding the applicant’s right to lodge an objection notice claiming financial hardship. Inadvertently, this modification has had the effect of also denying the applicant the right to have the rejection of their claim of financial hardship internally and externally reviewed.

An amendment is therefore necessary to correct this oversight to ensure that applicants who seek to take advantage of the streamlined procedures are not disadvantaged and have the same review rights as applicants who do not make a claim for waiver on the basis of financial hardship until they have received a preliminary assessment notice.

Chapter 3, part 1 – Other Amendments

Amendment of *Legal Profession Act 2004*

The objective is achieved by amending section 610 so that it provides for:

- any remaining rules made previously under the *Queensland Law Society Act 1952* to continue for 2 years (rather than 1 year) from the commencement of that section; and
- regulations amending or repealing the rules to be made under section 595 of the *Legal Profession Act 2004*, the general regulation-making provision.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives.

Estimated Cost for Government Implementation

There will be no cost to government associated with the implementation of the amendments.

Consistency with Fundamental Legislative Principles

The amendments are consistent with the fundamental legislative principles in the *Legislative Standards Act 1992*.

Consultation

The Queensland Law Society has been consulted and has no objection to amendment to the *Legal Profession Act 2004* for the purpose of extending the expiry of rules, not already repealed, made previously under the *Queensland Law Society Act 1952*.

Notes on Provisions

Amendment 1 amends Clause 61 which inserts new schedule 4, section 9 (Concession card given but not accepted). The amendment omits subsection 9(2) and inserts a new subsection 9(2) which provides that section 1 (which sets out the requirements of a preliminary assessment

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notice if an applicant does not submit a concession card with an application) will apply to the preliminary assessment notice issued under section 9. The effect of the amendment is to confer on an applicant under the streamlined procedure the same rights to lodge an objection notice on the basis of financial hardship and seek review if a claim for waiver is rejected as an applicant who does not make a claim until after the preliminary assessment notice has been issued.

Amendment 2 inserts new clause 86A which amends section 610 of the *Legal Profession Act 2004*. The effect of the amendment is that rules made under the *Queensland Law Society Act 1952* (that have not already be repealed) will continue for 2 years (rather than 1 year) from the commencement of that section. Currently, section 610 provides for regulations amending or repealing the rules to be made under section 643 of the *Legal Profession Act 2004*, a transitional regulation-making provision. As section 643 will expire on 31 May 2005, section 610 is also amended to provide that regulations amending or repealing the rules are to be made under section 595 of the *Legal Profession Act 2004*, the general regulation-making provision.