



New South Wales

Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Freedom of Information Act 1989*:

- (a) to provide that the following documents are both exempt documents and restricted documents for the purposes of the Act:
 - (i) documents that contain matter the disclosure of which could reasonably be expected to facilitate the commission of terrorist acts or to prejudice counter-terrorism activities,
 - (ii) documents created by the Counter Terrorist Co-ordination Command of NSW Police,
 - (iii) documents created by the State Crime Command of NSW Police in the exercise of its functions concerning the collection, analysis or dissemination of intelligence,

- (iv) documents created by the Corrections Intelligence Group of the Department of Corrective Services in the exercise of its functions concerning the collection, analysis or dissemination of intelligence, and
- (b) to provide that the New South Wales Crime Commission is exempt from the operation of the Act in relation to the exercise of its investigative and reporting functions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Freedom of Information Act 1989* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [2] amends clause 4 of Part 1 of Schedule 1 to the *Freedom of Information Act 1989* to provide that documents created by the Counter Terrorist Co-ordination Command of NSW Police are exempt documents for the purposes of that Act. As the exemption is to be located in Part 1 of Schedule 1, this will result in such documents also being restricted documents for the purposes of the Act. A restricted document cannot be disclosed by an agency under the Act if the Minister administering the Act has certified that it is a restricted document.

Schedule 1 [3] amends clause 4 of Part 1 of Schedule 1 to the Act to provide that documents created by the State Crime Command of NSW Police in the exercise of its functions concerning the collection, analysis or dissemination of intelligence are exempt documents for the purposes of that Act. **Schedule 1 [1]** makes a minor amendment to clause 4 to reflect that the Information and Intelligence Centre of NSW Police has been disbanded. Its intelligence functions have now been moved to the State Crime Command.

The amendment also provides that documents created by the Corrections Intelligence Group of the Department of Corrective Services in the exercise of its functions concerning the collection, analysis or dissemination of intelligence are exempt documents for the purposes of the Act.

As these exemptions are to be located in Part 1 of Schedule 1, such documents will also be restricted documents for the purposes of the Act.

Schedule 1 [4] inserts a new clause 4A in Part 1 of Schedule 1 to the Act. The new clause provides that a document will be an exempt document if it contains matter the disclosure of which could reasonably be expected:

- (a) to facilitate the commission of a terrorist act, or
- (b) to prejudice the prevention of, preparedness against, response to, or recovery from, the commission of a terrorist act.

The expression *terrorist act* is defined to have the same meaning as it does in the *Terrorism (Police Powers) Act 2002*. As this exemption is to be located in Part 1 of Schedule 1, such documents will also be restricted documents for the purposes of the Act.

Schedule 1 [5] amends Schedule 2 to the Act to provide that the New South Wales Crime Commission is exempt from the operation of the Act in relation to the exercise of its investigative and reporting functions.

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No. , 2004

A Bill for

An Act to amend the *Freedom of Information Act 1989* to exempt certain documents relating to counter-terrorism and criminal intelligence from disclosure under the Act and to exempt the New South Wales Crime Commission from the operation of the Act in the exercise of certain of its functions; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Freedom of Information Amendment (Terrorism and Criminal Intelligence) Act 2004</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Freedom of Information Act 1989 No 5	8
The <i>Freedom of Information Act 1989</i> is amended as set out in Schedule 1.	9 10

Schedule 1 Amendments

(Section 3)

[1] Schedule 1 Exempt documents

Insert “former” before “Information and Intelligence Centre” in clause 4 (3) (a).

[2] Schedule 1

Insert “Counter Terrorist Co-ordination Command of NSW Police, the former” before “Protective Security Group” in clause 4 (3) (b).

[3] Schedule 1

Insert after clause 4 (3):

(3A) A document is an exempt document if it is a document that has been created by the State Crime Command of NSW Police in the exercise of its functions concerning the collection, analysis or dissemination of intelligence.

(3B) A document is an exempt document if it is a document that has been created by the Corrections Intelligence Group of the Department of Corrective Services in the exercise of its functions concerning the collection, analysis or dissemination of intelligence.

[4] Schedule 1

Insert after clause 4:

4A Documents affecting counter-terrorism measures

(1) In this clause:

terrorist act has the same meaning as in the *Terrorism (Police Powers) Act 2002*.

(2) A document is an exempt document if it contains matter the disclosure of which could reasonably be expected:

(a) to facilitate the commission of a terrorist act, or

(b) to prejudice the prevention of, preparedness against, response to, or recovery from, the commission of a terrorist act.

[5] Schedule 2 Exempt bodies and offices

1

Insert at the end of the Schedule:

2

The New South Wales Crime Commission—investigative
and reporting functions.

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