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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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

EXPLANATORY MEMORANDUM

(Circulated by authority of the Cabinet Secretary,
Senator the Hon John Faulkner)

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

General Outline

The primary purpose of the Bill is to repeal the power to issue conclusive certificates in the *Freedom of Information Act 1982* (the FOI Act) and the *Archives Act 1983* (the Archives Act) for all exemption provisions where certificates may be issued.

The proposal to repeal the power to issue conclusive certificates forms part of the Government's 2007 election commitments made in its policy statement, *Government information: restoring trust and integrity*.

The effect of the repeal of the certificate power will be that the AAT may undertake full merits review of all exemption claims.

This Bill does not seek to alter the exemption provisions in Part IV of the FOI Act or in Division 3 Part V of the Archives Act, except to the extent that it repeals the power to issue conclusive certificates. Where a document or record properly falls within an exemption category in those Acts (for example, documents affecting personal privacy or documents whose release could damage national security, defence or international relations), access may be refused.

Existing conclusive certificates will be revoked if and when a new request for access to a document or record covered by a certificate is received.

The Bill will introduce a number of procedural measures which are directed to protecting particularly sensitive information in the conduct of proceedings before the AAT, including against unnecessary disclosure. These measures do not affect substantive rights of access to documents or records.

- The AAT will be required, in the first instance, to consider evidence on affidavit or otherwise when determining whether a document is exempt under a national security, defence or international relations exemption, or a confidential foreign government communication exemption (subsection 33(1) of the FOI Act) or the cabinet exemption (section 34 of the FOI Act). Where the AAT is not satisfied that such a document is exempt on that evidence, the AAT has the discretion to inspect the document. A similar measure exists now in the Archives Act (subsection 53(1)).
- Upon exercising its discretion to make confidentiality orders under subsection 35(2) of the *Administrative Appeals Tribunal Act 1975*, the AAT will be directed to give particular weight to a submission by an agency, Minister or the National Archives that it should make such orders where the proceedings relate to a document or record that is claimed to be exempt under a national security, defence or international relations exemption, or confidential foreign government communication exemption (subsection 33(1) of the FOI Act and paragraphs 33(1)(a) and (b) of the Archives Act).
- The Inspector-General of Intelligence and Security will be asked by the AAT to give evidence as to any damage that could result from disclosure of documents or records claimed to fall within a national security, defence, or international relations exemption, or a confidential foreign government communication exemption

(subsection 33(1) of the FOI Act and paragraphs 33(1)(a) and (b) of the Archives Act) before determining that such a document is not exempt.

- Presidential members of the AAT will hear applications for review of a decision to refuse access to a document or record under a national security, defence, or international relations exemption or a confidential foreign government communication exemption (subsection 33(1) of the FOI Act and paragraphs 33(1)(a) and (b) of the Archives Act) and the cabinet exemption (section 34 of the FOI Act).

Other measures in the Bill are as follows.

- In certain cases where notification may not be appropriate, an agency or Minister will be able to apply to the AAT for an order that it be excused from informing certain third parties of an application by an FOI applicant for AAT review. The measure would apply to sections 59 and 59A of the FOI Act.
- Where an appeal is instituted in the Federal Court against an AAT decision to give access to a document or record, the AAT decision will be automatically stayed until the Court decision on the appeal takes effect or such other time determined by the Court, whichever is the earlier.
- Access to a record, by staff of the National Archives, will be limited where those staff do not have appropriate security clearance. This measure will apply to subsections 29(6) and (7) of the Archives Act. This will replace the existing restriction that operates in respect of those documents which are the subject of conclusive certificates.
- The exclusion that applies to publication in the Australian National Guide to Archival Material of particulars of records to which a conclusive certificate is in force will be repealed. This measure will apply to subsection 66(2) of the Archives Act. The existing exclusion that applies to publication of exempt information in the Guide will not be changed.
- A document in the possession of a Minister that has originated with, or has been received from, an intelligence agency will be exempt from the operation of the FOI Act. An equivalent exemption currently applies to documents in the possession of an agency.

Financial Impact Statement

The amendments in this Bill have no financial impact on Government revenue.

Regulation Impact Statement

No Regulation Impact Statement is required for the measures contained in this Bill.

Notes on Clauses

List of abbreviations used

AAT	Administrative Appeals Tribunal
AAT Act	<i>Administrative Appeals Tribunal Act 1975</i>
Archives Act	<i>Archives Act 1983</i>
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1982</i>
IGIS	Inspector-General of Intelligence and Security
National Archives	National Archives of Australia

Clause 1: Short title

Clause 1 is a formal clause which provides the citation of the Bill.

Clause 2: Commencement

Clause 2 provides for the provisions of the Bill to commence on the day after the Bill receives Royal Assent.

Clause 3: Schedules

This clause provides for each Act specified in a Schedule to the Bill to be amended in accordance with the items set out in the relevant Schedule.

Schedule 1 – amendments to the FOI Act

Item 1- subsection 4(1) (paragraph (b) of the definition of exempt document)

This item amends the definition of *exempt document* in the FOI Act so that it consistently identifies all of the entities addressed in section 7 of the Act. Currently, the definition only mentions an agency as being exempt under section 7. It should also mention persons or bodies, as these are also the subject of exemptions under that section. This item is not related to the removal of conclusive certificates and addresses a cross-reference omission.

Item 2 – after subsection 7(2A)

The purpose of this item is to provide for consistency in the application of the FOI Act to a document of an intelligence agency or the IGIS, which are agencies that are excluded from the operation of the Act. This item makes a document in the possession of a Minister exempt from the FOI Act where it has originated with, or been received from, the listed intelligence agencies and the IGIS. This amendment rectifies an anomaly in the FOI Act, insofar as such documents are currently exempt when in the possession of an agency but are not exempt when in the possession of a Minister.

Item 3 – subsection 12(3)

Item 3 is a minor editorial amendment.

Item 4 – subsection 33(1)

Item 4 is a re-numbering provision which arises as a consequence of the repeals addressed by item 5.

Item 5 – subsections 33(2) to (7)

This item repeals subsections 33(2) to (7) which are provisions related to the power to issue a conclusive certificate.

Item 6 – subsections 33A(2) to (4A)

Item 6 repeals subsections 33A(2) to (4A) which are provisions related to the power to issue a conclusive certificate.

Item 7 – subsections 33A(6) to (8)

Item 7 repeals subsections 33A(6) to (8) which are provisions related to the power to issue a conclusive certificate.

Item 8 – subsections 34(2) to (5)

Item 8 repeals subsections 34(2) to (5) which are provisions related to the power to issue a conclusive.

Item 9 – subsections 35(2) to (5)

Item 9 repeals subsections 35(2) to (5) which are provisions related to the power to issue a conclusive certificate.

Item 10 – subsections 36(3), (4), (8), (9) and (10)

Item 10 repeals subsections 36(3), (4), (8), (9) and (10) which are provisions related to the power to issue a conclusive certificate.

Item 11 – section 36A

This item repeals section 36A which is a provision related to the power to issue a conclusive certificate.

Item 12 – section 53

Item 12 repeals only that part of section 53 which is an interpretative provision related to the power to issue conclusive certificates.

Item 13 – subsections 58(3) to (5A)

This item repeals subsections 58(3) to (5A) which are provisions related to the power to issue a conclusive certificate. The effect of the repeal of these subsections will be that the AAT will be able to undertake full merits review of all exemption claims in accordance with subsection 58(1).

Item 14 – section 58A

Item 14 repeals section 58A, which is a conclusive certificate related provision.

Item 15 – subsection 58B(1)

Item 15 repeals subsection 58B(1) which is a conclusive certificate related provision, and substitutes a new special constitution requirement for the AAT. The requirement will apply to an application to the AAT for review of a decision to refuse access to a document on grounds of a Cabinet exemption (section 34), or a national security, defence or international relations exemption or a confidential foreign government communication exemption (subsection 33(1)). The effect of this proposed amendment will be that presidential members of the AAT will hear a review application relating to those exemption decisions. A presidential member means the

President, Deputy President or member who is a Judge. In light of the special sensitivity of Cabinet and national security-related information, it is intended that the most senior members of the AAT preside at these hearings.

Item 16 – section 58C

Item 16 repeals section 58C which is a conclusive certificate related provision.

Item 17 – section 58E

Item 17 repeals section 58E which is a conclusive certificate related provision, and substitutes a new provision dealing with the AAT's power to require the production of a document the subject of a national security, defence or international relations exemption or a confidential foreign government communication exemption (subsection 33(1)) or the Cabinet exemption (section 34). It is intended that the AAT exercise its discretion to call for the production of these types of exempt documents if it is not satisfied on affidavit evidence or otherwise that the document is exempt. The purpose of the amendment is to protect against the unnecessary disclosure of sensitive information.

Item 18 – at the end of subsection 59(3)

Item 18 inserts a qualification to the notification requirement imposed upon an agency or Minister in subsection 59(3). That provision is part of a broader regime in the FOI Act to give certain rights to third parties where a request is made for access to a document containing information about the third party's business affairs. The proposed amendment will give the AAT discretion to order that an agency or Minister does not need to give notice to the third party of an AAT review application if it would not be appropriate to do so in the circumstances. An example of when it may not be appropriate to give notice would be where a document includes information about a person under criminal investigation. An agency or Minister will need to apply to the AAT for an order to be excused from the requirement to give notice. Item 19 sets out the matters that the AAT must take into account for the purposes of determining whether to make such an order.

Item 19 – at the end of section 59

Item 19 is related to the amendment proposed at item 18. It sets out the matters that the AAT must have regard to for the purposes of determining whether it would not be appropriate to inform a third party of an application made to the AAT for review of a decision to refuse access to documents containing information about the third party's business, professional or financial affairs.

Item 20 – at the end of subsection 59A(3)

This item inserts a qualification to the notification requirement imposed upon an agency or Minister in subsection 59A(3). That provision is part of a broader regime in the FOI Act to give certain rights to third parties where a request is made for access to a document containing personal information about the third party. The proposed amendment will give the AAT discretion to order that an agency or Minister does not need to give notice to the third party of an AAT review application if it would not be appropriate to do so in the circumstances. An example of when it may not be appropriate to give notice would be where a document includes information about a person under criminal investigation. An agency will need to apply to the AAT for an

order. Item 21 sets out the matters that the AAT must take into account for the purposes of determining whether to make an order not to give notice to a third party.

Item 21 – at the end of section 59A

Item 21 is related to the amendment proposed at item 20. It sets out the matters that the AAT must have regard to for the purposes of determining whether it would not be appropriate to inform a third party of an application made to the AAT for review of a decision to refuse access to documents containing personal information about them.

Items 22 - 24

Item 24 repeals paragraph 60(c) which is a conclusive certificate related provision. Items 22 and 23 are minor editorial changes that arise as a consequence of the repeal of paragraph 60(c).

Item 25 – after section 60

This item inserts a new procedural requirement in the conduct of proceedings in the AAT involving review of a national security, defence or international relations exemption or a confidential foreign government communication exemption (subsection 33(1)). Before making a determination that a document is not exempt, the AAT will be required to request the IGIS to give evidence as to the damage that could result from its disclosure. If the AAT is satisfied that the exemption claim should be upheld on other evidence, it is intended that the AAT will not seek evidence from the IGIS.

The purpose of this proposed amendment is to assist the AAT through the provision of expert advice, which would be independent to an agency's submissions in support of its decision to claim an exemption. However, proposed subsection 60A(8) makes it clear that the AAT is not bound by any opinion expressed by the IGIS upon giving evidence. This measure is not intended to affect the ability of agencies to give evidence before the AAT on the harm that could result from the disclosure of the documents. Subsection 60A(4), makes it clear that the IGIS could only be called to give evidence after the relevant agency or Minister has given evidence or made submissions.

Proposed subsection 60A(5) requires the IGIS to give evidence if requested, unless in the IGIS's view he or she is not qualified to give expert evidence. That could arise for example where the claim is that disclosure of the document could cause damage to the international relations of the Commonwealth in a matter that is not related to the IGIS's intelligence and security oversight functions.

Proposed subsection 60A(6) enables the IGIS to have access to documents so that the IGIS may properly inform himself or herself with a view to giving evidence. The IGIS could give evidence by telephone or other means of communication if permitted by the AAT consistent with section 35A of the AAT Act.

Item 26 – subsection 63(1)

This item repeals subsection 63(1) and substitutes a similar provision with a new direction relating to documents the subject of an exemption claim under section 33. Like existing subsection 63(1), the intention of this provision is to direct the AAT to the necessity of avoiding disclosure of exempt material to the applicant. Under

subsection 35(2) of the AAT Act, the AAT has discretionary power to make confidentiality orders including to direct that a hearing be held in private, or to restrict the disclosure of evidence to a party to the proceeding. Proposed paragraph 63(1)(b) inserts a new direction where the proceedings relate to a document that is claimed to be exempt under section 33. The intention of this provision is to give direction to the AAT that it should be particularly open to considering submissions that it should exercise its discretion to make confidentiality orders for documents of this kind.

Item 27 – paragraphs 63(2)(a) and (b)

Item 27 is a renumbering provision which arises as a consequence of the proposed amendment at item 26.

Item 28 – subsection 64(1)

This item repeals subsection 64(1) and substitutes a similar subsection that is extended to take into account the proposed new role for the IGIS addressed at item 25.

Item 29 – subsection 64(2)

Item 29 amends subsection 64(2) to take into account the proposed new role for the IGIS addressed at item 25.

Item 30 – subsections 64(3) and (4)

This item repeals subsections 64(3) and 64(4) which are certificate related provisions.

Item 31 – subsection 64(4A)

This item is a re-numbering provision which arises as a consequence of the proposed repeal of subsection 64(4) addressed by item 30.

Item 32 – section 65

Item 32 repeals section 65 which is a conclusive certificate related provision.

Item 33 – at the end of Part VI

Item 33 inserts section 67, which provides for the automatic stay of an AAT decision to give access to a document where an agency or Minister institutes an appeal in the Federal Court against that decision. Subsection 44A(1) of the AAT Act provides that the institution of an appeal does not affect the operation of the AAT decision or prevent action to implement the decision. The purpose of item 33 is to make clear that an applicant cannot seek to compel disclosure of a document where an appeal to the Federal Court has been instituted. Giving access to the document would render any appeal redundant. However, it is intended that an agency or Minister could still give access to the document if electing to do so. The stay would cease to have effect until the earlier of either the time when the Federal Court makes a decision on the appeal application or such other time determined by the Court. Equivalent provision is made where an appeal is transferred from the Federal Court to the Federal Magistrates Court.

Item 34 – application provision - items 4 to 32

Subitem 34(2) deals with the treatment of conclusive certificates that remain in force at the commencement of this Bill. The manner in which existing certificates are proposed to be dealt with is consistent with the notion that access to a document under the FOI Act is tied to an application. Existing certificates will be revoked on and

from the time the first request for access to a document covered by the certificate is made. If a certificate covers more than one document, and access is not sought to all documents, it is intended that the certificate will continue to have effect in relation to those documents not subject to the access request.

Subitem 34(3)(b) confirms that a person can make a new request for a document covered by a certificate after the commencement of Schedule 1 notwithstanding that a prior request was refused in reliance on a certificate.

Item 35 – application provision – item 33

Item 33, which introduces an automatic stay on certain AAT decisions if an appeal to the Federal Court has been instituted, applies to an AAT decision made on or after the commencement of Schedule 1.

Schedule 2 – amendments to the Archives Act

Item 1 – subsections 29(6) and (7)

Under the Archives Act, the National Archives is currently permitted access to all records in the open access period (that is to records that are 30 or more years old) except where a determination is made that the National Archives is not entitled to access to a record or class of records and there is also in force a conclusive certificate. A certificate can only be issued in support of national security related exemption claims under the Archives Act. The provision serves to prevent access by National Archives staff to records for which they do not have the appropriate security clearance to view and which remain sensitive.

This item preserves the existing access restriction that applies to the National Archives for highly classified records in the open access period, except that in place of a conclusive certificate, access to a record will be limited where National Archives staff do not have the appropriate security clearance.

Item 2 – section 34

Item 2 repeals section 34 which is a conclusive certificate related provision.

Item 3 – section 41

This item repeals section 41 which is a conclusive certificate related provision.

Item 4 – subsections 44(4), (5) and (6)

Item 4 repeals subsections 44(4), (5) and (6), which are provisions related to the power to issue a conclusive certificate. The effect of the repeal of these subsections is that the AAT will be able to undertake full merits review of all exemption claims by the Archives in accordance with subsection 44(1).

Item 5 – section 45

This item repeals section 45 which is a conclusive certificate related provision.

Item 6 – subsection 46(1)

Item 6 repeals subsection 46(1) which is a conclusive certificate related provision, and substitutes a new special constitution requirement for the AAT. The requirement will apply to an application to the AAT for review of a decision to refuse access to a record on grounds of an exemption under paragraph 33(1)(a) (national security, defence or international relations) or paragraph 33(1)(b) (confidential communications by a foreign government or international organisation). The effect of this proposed amendment is that only presidential members of the AAT can hear a review application relating to those exemption decisions. A presidential member means the President, Deputy President or member who is a Judge. In light of the special sensitivity of information related to exemptions under paragraphs 33(1)(a) and (b), it is intended that only these members of the AAT should preside at these hearings.

Item 7 – section 47

This item repeals section 47 which is a provision related to the power to issue a conclusive certificate.

Item 8 – section 49

This item repeals section 49 which is a conclusive certificate related provision.

Item 9 – section 50

Item 9 substitutes a revised provision that has been amended to remove a conclusive certificate related provision.

Item 10 – after section 50

This item inserts a new procedural requirement in the conduct of proceedings in the AAT involving review of a national security, defence or international relations exemption or a confidential foreign government communication exemption (paragraph 33(1)(a) or (b)). Before making a determination that a record is not exempt, the AAT will be required to request the IGIS to give evidence as to the damage that could result from its disclosure. If the AAT is satisfied that the exemption claim should be upheld on other evidence, it is intended that the AAT will not seek evidence from the IGIS.

The purpose of this proposed amendment is to assist the AAT through the provision of expert advice, which would be independent to the National Archives' evidence in support of its decision to claim an exemption. However, proposed subsection 50A(8) makes it clear that the AAT is not bound by any opinion expressed by the IGIS upon giving evidence. This measure is not intended to affect the ability of the National Archives to give evidence before the AAT on the harm that could result from the disclosure of the records. Subsection 50A(4) makes it clear that the IGIS could only be called to give evidence after the National Archives or the Commonwealth institution has given evidence or made submissions.

Proposed subsection 50A(5) requires the IGIS to give evidence if requested, unless in the IGIS's view he or she is not qualified to give such expert evidence. That could arise for example where the claim is that disclosure could cause damage to international relations of the Commonwealth in a matter that is not related to the IGIS's intelligence and security oversight functions.

Proposed subsection 50A(6) is concerned with enabling the IGIS to have access to records so that the IGIS may properly inform himself or herself with a view to giving evidence. The IGIS could give evidence by telephone or other means of communication if allowed by the AAT consistent with section 35A of the AAT Act.

Item 11 – subsection 52(1)

This item repeals subsection 52(1) and substitutes a similar provision with a new direction relating to records the subject of an exemption claim under paragraphs 33(1)(a) or (b). Like existing subsection 52(1), the intention of this provision is to direct the AAT to the necessity of avoiding disclosure of exempt material to the applicant. Under subsection 35(2) of the AAT Act, the AAT has discretionary power to make confidentiality orders including to direct that a hearing or part of a hearing be held in private, or to restrict the disclosure of evidence to a party to the proceeding. Proposed paragraph 52(1)(b) inserts a new direction where the proceedings relate to a record that is claimed to be exempt under paragraphs 33(1)(a) or (b). The intention of this provision is to give direction to the AAT that it should be particularly open to

considering submissions that it should exercise its discretion to make confidentiality orders for records of this kind.

Item 12 – paragraphs 52(2)(a) and (b)

Item 12 is a renumbering provision which arises as a consequence of the proposed amendment at item 11.

Item 13 – subsection 53(1)

This item repeals subsection 53(1) and substitutes similar provision that is extended to take account of the proposed new role for the IGIS addressed at item 10.

Item 14 – subsection 53(2)

This item amends subsection 53(2) to take into account the proposed new role for the IGIS addressed at item 10.

Item 15 – subsections 53(3) and (4)

This item repeals subsections 53(3) and (4) which are conclusive certificate related provisions.

Item 16 – section 54

This item repeals section 54 which is a conclusive certificate related provision.

Item 17 – at the end of Division 4 of Part V

Item 17 inserts section 55A, which provides for the automatic stay of an AAT decision to give access to a record where the National Archives institutes an appeal in the Federal Court against that decision. Subsection 44A(1) of the AAT Act provides that the institution of an appeal does not affect the operation of the AAT decision or prevent action to implement the decision. The purpose of item 17 is to make clear that an applicant cannot seek to compel disclosure of a record where an appeal to the Federal Court has been instituted. Giving access to the record would render any appeal redundant. However, it is intended that the National Archives could still give access to the record if electing to do so. The stay would cease to have effect until the earlier of either the time when the Federal Court makes a decision on the appeal application or such other time determined by the Court. Equivalent provision is made where an appeal is transferred from the Federal Court to the Federal Magistrates Court.

Item 18 – subsection 66(2)

Section 66 requires the National Archives to maintain the Australian National Guide to Archival Material, which contains particulars of records in the open access period that have been examined in accordance with subsection 35(1). This item removes the exclusion that applies to publication in the Guide of particulars of records to which a conclusive certificate is in force. The existing exclusion that applies to publication of exempt information in the Guide is not changed by this Bill.

Item 19 – application provision – item 1

The effect of this application provision is that the limitation on access by the National Archives to a record in the open access period which is effected through subsections 29(6) and (7) is preserved where an existing conclusive certificate remains in force and has not been revoked by force of subitem 20(2).

Item 20 – application provision – items 2 to 16

Subitem 20(2) deals with the treatment of conclusive certificates that remain in force at the commencement of this Bill. Existing certificates will be revoked on and from the time the first request for access to a record covered by the certificate is made. If a certificate covers more than one record, and access is not sought to all records, it is intended that the certificate continues to have effect in relation to those records not subject to the access request.

Subitem 20(3)(b) confirms that a person can make a new request for a record covered by a conclusive certificate after the commencement of Schedule 2 notwithstanding that a prior request was refused in reliance on a certificate.

Item 21 – application provision – item 17

The proposed amendment at item 17 to introduce an automatic stay on certain AAT decisions if an appeal to the Federal Court has been instituted, applies to an AAT decision made on or after the commencement of Schedule 2.

Item 22 – application provision – item 18

The effect of this application provision is that the limitation on publication in the Australian National Guide to Archival Material of particulars of records to which a conclusive certificate applies is preserved where an existing conclusive certificate remains in force and has not been revoked by force of subitem 20(2).

Schedule 3 – amendments to the AAT Act

Item 1 – subsection 21AA(1)

Item 1 is a minor amendment that is consequential to the amendment proposed at item 2.

Item 2 – after section 21AA

Applications to the AAT for review of decisions made under the Archives Act are in general heard in the General Administrative Division of the AAT. An exception applies to an application for review of a decision by the National Archives in respect of access to a record of the Australian Security Intelligence Organisation (ASIO). Those applications must be heard in the Security Appeals Division.

The purpose of this item is to apply the same special constitution arrangements for the AAT that are addressed in item 6 Schedule 2 to National Archives decisions to claim a national security, defence or international relations exemption or a confidential foreign government communication exemption (paragraphs 33(1)(a) or (b)) in respect of an ASIO record. The restriction on participation by a presidential member who has certain associations with ASIO set out in proposed subsection 21AB(3), replicates an existing restriction that applies to review applications of this kind in the AAT (refer subsection 21AA(3)).

Schedule 4 – Inspector-General of Intelligence and Security Act 1986

Items 1 – 7

The proposed amendments addressed in these items are a consequence of the proposed amendment at item 25 Schedule 1 (FOI Act) and item 10 Schedule 2 (Archives Act) to require the AAT to request the IGIS to give evidence in certain proceedings. The purpose of item 2 is to extend the secrecy provision in section 34 of the *Inspector-General of Intelligence and Security Act 1986* to cover information that the IGIS (current and former), or a staff member (current and former), has acquired in the performance of functions or duties under those proposed amendments to the FOI Act and the Archives Act.

Item 8 – subsection 34(5)

The purpose of item 8 is to extend the existing restriction that applies to the production of documents to a court by the IGIS (current and former) or a staff member (current and former) in respect of documents that are in their custody by virtue of performing the functions or duties under the proposed amendments to the FOI Act and the Archives Act addressed at item 10 Schedule 2.

Item 9 – subsection 34(7)

This item repeals subsection 34(7) which is a consequential amendment arising as a result of the amendment at item 2. Subsection 34(7) is not necessary for the interpretation of section 34.