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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CABINET NOTEBOOKS (ACCESS AND PROTECTION) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General, the Honourable Michael Duffy MP)

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CABINET NOTEBOOKS (ACCESS AND PROTECTION) BILL 1992

OUTLINE

This Bill amends -

- the *Archives Act 1983* to make a Cabinet notebook subject to the provisions of that Act;
- the *Evidence Act 1905* to prohibit in all courts -
 - disclosure of the content of Cabinet discussions by persons other than Ministers who were present at those discussions; and
 - production or disclosure of Cabinet notebooks and other notes of Cabinet discussions, other than notes made by Ministers.
- the *Freedom of Information Act 1982* to exclude Cabinet notebooks from the Act.

FINANCIAL IMPACT

2. The amendments made by the Bill to the *Evidence Act 1905* and the *Freedom of Information Act 1982* are expected to have no impact on Commonwealth revenue or expenditure. The impact on Commonwealth expenditure made by the amendments to the *Archives Act 1983* are expected to be negligible.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1: Short Title

3. This clause provides for the short title of the Act.

Clause 2: Commencement

4. The Act is to commence on the day on which it receives the Royal Assent.

Clause 3: Application

5. This clause provides that the Act applies in relation to Cabinet meetings held before or after the commencement of the Act and to documents created before or after that commencement.

PART 2 - AMENDMENTS OF THE ARCHIVES ACT 1983

Clause 4: Principal Act

6. This clause defines 'Principal Act', where it appears in Part 2, to mean the *Archives Act 1983*.

Clause 5: Interpretation

7. This clause amends the definition of 'Commonwealth record' in section 3 of the *Archives Act 1983* to delete the reference to a Cabinet notebook. This means that a Cabinet notebook will no longer be excluded from the provisions of that Act.

Clause 6: Insertion of new section 22A

8. This clause inserts new section 22A in the *Archives Act 1983* to ensure that a Cabinet notebook does not fall into the open access period for the purposes of that Act until the expiration of 50 years from the end of the calendar year in which it came into existence. For other records, the period is 30 years.

PART 3 - AMENDMENTS OF THE EVIDENCE ACT 1905

Clause 7: Principal Act

9. This clause defines 'Principal Act', where it appears in Part 3, to mean the *Evidence Act 1905*.

Clause 8: Insertion of new Part

10. This clause inserts new Part IIIAA in the *Evidence Act 1905*.

11. New section 7AA defines certain words and expressions used in new Part IIIAA. The principal definitions are -

'Cabinet meeting' includes a meeting of a committee of the Cabinet;

'Cabinet notebook' means a notebook or similar record containing notes of Cabinet discussions being notes made during the course of those discussions by or under the authority of the Secretary to the Cabinet;

'informal Cabinet note' means a document containing notes of Cabinet discussions made by a person (other than a Minister) present at the Cabinet meeting to which the notes relate. It does not include a Cabinet notebook, an official record of the Cabinet or a document created for submission to Cabinet, whether or not it was submitted;

'proceeding' means a proceeding in any of the Courts (as already defined in the Principal Act), other than a hearing conducted by a Commission or a Royal Commission under the *Royal Commissions Act 1902*.

12. New section 7AB prohibits the disclosure or the giving in evidence in a proceeding of anything said by a Minister in the course of discussions or deliberations at a Cabinet meeting by a person who was at the meeting, other than a person who was a Minister at the time of the meeting.

13. New section 7AC prohibits production in a proceeding of a Cabinet notebook or an informal Cabinet note (or of copies of such a notebook or note) and disclosure of their contents, and provides that those contents are inadmissible in a proceeding.

14. New section 7AD provides that nothing in new Part IIIAA affects the production, disclosure or admissibility in a proceeding of a document to which the *Archives Act 1983* applies if it is within the open access period for the purposes of a provision of that Act.

15. New section 7AE provides that new Part IIIAA does not apply to the Federal Court of Australia proceeding number VG 464 of 1987 (Northern Land Council v. Commonwealth of Australia and Energy Resources of Australia Ltd) or to any existing or future appeal against any decision in that proceeding. This means that the production of the Cabinet notebooks sought by the Northern Land Council in that case will not be prohibited by reason of these amendments.

PART 4 - AMENDMENTS OF THE FREEDOM OF INFORMATION ACT 1982

Clause 9 - Principal Act

16. This clause defines 'Principal Act', for the purposes of Part 4, to mean the *Freedom of Information Act 1982*.

Clause 10: Interpretation

17. This clause defines 'Cabinet notebook' for the purposes of the *Freedom of Information Act 1982* and removes 'Cabinet notebooks' from the definition of 'document' for the purposes of that Act. This means that the *Freedom of Information Act 1982* will not apply to a Cabinet notebook.

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