

PROVISIONAL
ACDP

ACDP SUBMISSIONS ON THE PROTECTION OF INFORMATION BILL

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PROVISIONAL

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The ACDP would like to make the following initial submissions on the Protection of Information Bill. We may need to add to our submission where necessary.

A. Definitions

1. Deletion of definition of commercial information and the chapter dealing with that issue.
2. Narrowing of definition of "information" - why in (c) is conversations, etc "not contained in a material or physical form or format" included.
3. Remove reference to "national interest" in definition of "intelligence", consider replacing with "national security".
4. Deletion of definition of "national interest."
5. Definition of "national security" should be narrowly defined: "national security means the protection of the people of the Republic and the territorial integrity of the Republic against:
 - (a) the use of threat of force;
 - (b) the capacity of the republic to respond to the use of threat of force;
 - (c) the following acts:
 - (i) hostile acts of foreign intervention;
 - (ii) terrorism;
 - (iii) espionage;
 - (iv) sabotage; and
 - (v) violence;whether directed from, or committed within, the Republic or not, and includes the carrying out of the Republic's responsibilities to any foreign country in relation to any of the matters referred to in this definition."
6. Reconsider whether there is a need for definition of "security" and "state security matter"; if not delete.
7. Definition of "valuable information": delete subparagraph 4 and delete subparagraph 5 - references to minimum sentencing, and compelling circumstances to justify the imposition of a lesser sentence. Should the committee decide to retain minimum sentences, then this sub-clause must be reinserted.

B. Chapter 5

1. Delete chapter 5 – Information that requires protection against disclosure – Part A – Sensitive information in the national interest of the republic and Part B – Commercial information

C. Chapter 6 – part A

2. Clause 14 – delete 14 (2) – too encompassing to classify files, file series etc – all individual items must be considered.
3. Clause 15 reconsider threshold test by requiring that unlawful disclosure “could reasonably be expected to cause demonstrable harm to national security”; and delete sub-clause 3 (i) and (ii); and add “could reasonably be expected” in sub-clause 3 (c).
4. Clause 16 amend references to “national interest” to “national security”.

D. Chapter 7

1. Clause 21 – amend national interest to national security and add in sub 2 “could reasonably be expected” in place of “may”.
2. Clause 25 - Remove reference to Minister and insert “an independent oversight body” and amend accordingly, as well as clause 30 (c) (i) reference to Minister.

E. Chapter 11 Offences and penalties

1. Clause 32 - espionage offences –shouldn’t this be 25 years and not 15 to 25 years and consider inserting “with the intention of” to make intent a clear element of the crime, where appropriate.
2. Clause 38 – consider inserting the option of a fine for less serious offence.
3. Clause 43 –prohibition of disclosure of state security matter – delete clause 43 and insert a public interest defence in its place:
 - (1) “No person shall be guilty of an offence under sections 32, 35, 37, 38, 39 if that person acts in the public interest.
 - (2) A person acts in the public interest if the person has reason to believe that the classified information shows or tends to show one or more of the following;
 - (a) a criminal offence has been or is about to be committed
 - (b) that a [person has failed to perform a legal obligation to which that person is subject
 - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur
 - (d) that the health or safety of an individual is being endangered
 - (e) the environment is being or is likely to be damaged
 - (f) that a public safety risk exists... (relook at this)

(g) that gross incompetence, mismanagement or impropriety on the part of any person has occurred

(h) that an unlawful act, inefficiency or administrative error is being promoted

(i) that an undue advantage is being given to anyone in a competitive bidding process

(j) that the public is being misled by an action or statement of another person (common law defence to defamation).”

4. New sub-clause to deal with information in public domain: “no person is guilty of an offence under sections 32, 35, 37, 38, 39 if the information or substantially the same information was in the public domain at the time of disclosure”

F. Chapter 12 - Protection of information before the courts

Clause 46 - Reconsider the classification of state information before the courts

G. General Provisions

Clause 48 (1) (f) – remove reference to “commercial information”.

Further Consequential amendments may be required should the recommendations be accepted.