

Passed by both Houses



New South Wales

Government Information (Public Access) Amendment Bill 2018

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Government Information (Public Access) Act 2009 No 52	3

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2018



New South Wales

Government Information (Public Access) Amendment Bill 2018

Act No , 2018

An Act to make miscellaneous amendments to the *Government Information (Public Access) Act 2009* following a statutory review of that Act.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Government Information (Public Access) Amendment Act 2018*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Government Information (Public Access) Act 2009 No 52

[1] Section 4 Interpretation

Insert after the definition of *government information* in section 4 (1):

Note. *Record* is defined in clause 10 of Schedule 4.

[2] Section 20 Agencies must have agency information guide

Omit “Director-General of the Department” from section 20 (3).

Insert instead “Chief Executive of the Office”.

[3] Section 20 (3)

Omit “the Director-General”. Insert instead “the Chief Executive”.

[4] Section 27 Register of government contracts valued at \$150,000 or more

Insert “(including GST)” after “\$150,000” in section 27 (1).

[5] Section 38 Exception for industry support contracts

Omit “Department of State and Regional Development”.

Insert instead “Department of Industry”.

[6] Section 41 How to make an access application

Omit section 41 (1) (a). Insert instead:

- (a) it must be in writing sent by post to or lodged at an office of the agency concerned or made in the manner approved by the agency under subsection (2),

[7] Section 41 (1) (d)

Omit “a postal”. Insert instead “the name of the applicant and a postal or email”.

[8] Section 41 (1A)

Insert after section 41 (1):

- (1A) If the applicant has applied at any time to another agency for substantially the same information, an application must also include the name of the other agency. However, failure to comply with this subsection does not affect the validity of an application.

[9] Section 41 (2)

Omit the subsection. Insert instead:

- (2) An agency may approve additional facilities for the making of an access application or the payment of an application fee.

[10] Section 44 Ways in which applications can be transferred

Insert at the end of the section:

- (2) An agency may, for the purposes of transferring only part of an access application, split an application into 2 or more applications. Any resulting application is to be treated as a separate application by the applicant.

[11] Section 51 Initial decision as to validity of application

Insert “as to the validity of an application” after “decision” in the note to section 51 (2).

[12] Section 51 (3) (c)

Omit the paragraph. Insert instead:

- (c) the following statements about the inclusion of information in the agency’s disclosure log (unless the agency considers it unlikely that information about the application will be included in the disclosure log):
 - (i) a statement that information concerning the application is likely to be included in the agency’s disclosure log and that the applicant can object to this,
 - (ii) a statement about the right of review under Part 5 of a decision by the agency to include information in its disclosure log despite the applicant’s objection,

[13] Section 54 Consultation on public interest considerations

Omit “will” from section 54 (2A) (a). Insert instead “is likely to”.

[14] Section 54A

Insert after section 54:

54A Consultation with other agencies

- (1) An agency may, in response to an access application, consult with any other agency for the following purposes:
 - (a) to determine whether there is an overriding public interest against disclosure of the information,
 - (b) to identify a person that may be required to be consulted under section 54.
- (2) An agency may be consulted under this section even if the agency would not reasonably be expected to have concerns about the disclosure of the information.

[15] Section 55 Consideration of personal factors of application

Insert “to take reasonable steps” after “purpose, require the applicant” in section 55 (5).

[16] Section 56 Authorised objector can object to inclusion in disclosure log

Omit “research” from section 56 (2) (c).

Insert instead “research, or the compilation or analysis of statistics,”.

[17] Section 56 (3)

Omit the subsection. Insert instead:

- (3) If an authorised objector has objected to the inclusion of information in the agency’s disclosure log, the agency must decide:
 - (a) whether the authorised objector is entitled to object, and
 - (b) if the agency decides that the authorised objector is entitled to object, whether the objection outweighs the general public interest in including the information in the disclosure log.

[18] Section 59 Decision that information already available to applicant

Insert at the end of section 59 (1) (c):

, or

- (d) available to the applicant as the applicant has already been provided with access to the information and the agency has no reason to believe the information is no longer in the applicant's possession, or
- (e) publicly available on a website, or
- (f) available to the applicant by way of a standing rule or order of the Legislative Council or Legislative Assembly.

[19] Section 59 (2)

Insert "why the agency believes the information is already available to the applicant and, if necessary," after "indicate".

[20] Section 60 Decision to refuse to deal with application

Insert after section 60 (1) (d):

- (e) the agency reasonably believes the applicant, or a person acting in concert with the applicant, is:
 - (i) a party to current proceedings before a court, and
 - (ii) able to apply to that court for the information.

[21] Section 60 (3A) and (3B)

Insert after section 60 (3):

- (3A) In deciding whether dealing with an application would require an unreasonable and substantial diversion of an agency's resources, the agency may, without limitation, take into account the following considerations:
 - (a) the estimated volume of information involved in the request,
 - (b) the agency's size and resources,
 - (c) the decision period under section 57.
- (3B) Any consideration under subsection (3A) must, on balance, outweigh:
 - (a) the general public interest in favour of the disclosure of government information, and
 - (b) the demonstrable importance of the information to the applicant, including whether the information:
 - (i) is personal information that relates to the applicant, or
 - (ii) could assist the applicant in exercising any rights under any Act or law.

[22] Section 63 Deemed refusal if application not decided within time

Insert after section 63 (4):

- (5) Despite this section, the obligation to refund an application fee to the applicant does not apply to any application that was transferred to or from the agency.

[23] Section 64 Processing charge for dealing with access application

Insert after section 64 (4):

- (5) A processing charge must not be discounted under section 65 or 66 by more than 50% even if both sections apply.

[24] Section 79 Provision of information subject to subpoena

Insert after section 79 (1):

Note. An agency may refuse to deal with an access application if the information is or was available to the applicant by way of a subpoena or order of the court—see section 60 (1) (d).

[25] Section 85 Fee for internal review

Insert after section 85 (1):

Note. Section 127 enables an agency to waive, reduce or refund a fee payable or paid under this Act in any case that the agency thinks appropriate, subject to the regulations.

[26] Section 86 Required period for determination of internal review

Insert after section 86 (1):

- (1A) If the agency reasonably believes more than one person is entitled to an internal review of any reviewable decision for the same access application, the review period does not commence until the expiration of the time within which an internal review can be applied for under this Part by any of those persons.

[27] Section 92A

Insert after section 92:

92A Required period for review

- (1) The Information Commissioner must complete the review, and make any recommendations to the agency, within 40 working days (the *review period*) after the Information Commissioner receives all information the Information Commissioner considers necessary to complete the review.
- (2) The review period may be extended by the Information Commissioner on agreement with the applicant for review. The Information Commissioner must notify the agency if the review period is extended.
- (3) If the Information Commissioner has not made any recommendations within the review period, the Information Commissioner is deemed to have made no recommendations to the agency.
- (4) The applicant for review must be notified by the Information Commissioner of the completion of the review and of any recommendations made by the Information Commissioner to the agency.

[28] Section 97 Onus on agency to justify decisions

Insert after section 97 (3):

- (4) If the review is of a decision to include information in a disclosure log despite an objection by the applicant for review, the burden of establishing whether the objection outweighs the general public interest to have the information included lies with the applicant for review.

[29] Section 100 Administrative review of decision by NCAT

Omit the note. Insert instead:

- (2) An aggrieved person who is not the access applicant is not entitled to apply to NCAT for an NCAT administrative review of a decision if the person is still entitled to apply for an internal review of the decision under Division 2.

[30] Section 105 Onus on agency to justify decisions

Insert after section 105 (3):

- (4) If the review is of a decision to include information in a disclosure log despite an objection by the applicant for review, the burden of establishing whether the objection outweighs the general public interest to have the information included lies with the applicant for review.

[31] Section 110 Orders to restrain making of unmeritorious access applications

Omit section 110 (1). Insert instead:

- (1) NCAT may order that a person is not permitted to make an access application without first obtaining the approval of NCAT (a *restraint order*) if NCAT is satisfied that:
 - (a) at least 3 access applications (to one or more agencies) in the previous 2 years have been made that lack merit, and
 - (b) the applications were made by the same person or by any other person acting in concert with the person.

[32] Section 110 (3)

Omit the subsection. Insert instead:

- (3) A restraint order may be made to apply to all access applications made by the person the subject of the order or may be limited by reference to any one or more of the following:
 - (a) a specific time period,
 - (b) a specific number of applications, whether in total or to particular agencies,
 - (c) particular kinds of information,
 - (d) particular agencies.

[33] Section 110 (5A)

Insert after section 110 (5):

- (5A) In deciding whether to approve the making of an access application by a person the subject of a restraint order, NCAT is to consider, without limitation, any of the following:
 - (a) whether the proposed application is lacking in merit,
 - (b) whether the proposed application is frivolous, vexatious, misconceived or lacking in substance,
 - (c) whether the applicant has engaged in conduct designed to harass, to cause delay or detriment, or to achieve another wrongful purpose.

[34] Section 112

Omit the section. Insert instead:

112 Report on improper conduct

If NCAT is of the opinion on the completion of an NCAT administrative review that an officer of an agency has failed to exercise in good faith a function conferred on the officer by or under this Act, NCAT may on its own initiative bring the matter to the attention of:

- (a) the Minister who appears to NCAT to have responsibility for the agency, or
- (b) if the Minister who appears to NCAT to have responsibility for the agency was a party to the proceedings, the Information Commissioner.

[35] Section 125 Reports to Parliament

Insert “after the report has been tabled in each House of Parliament” after “Information Commissioner” wherever occurring in section 125 (1) and (3).

[36] Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure

Omit the matter relating to the *Education Act 1990* from clause 1 (1). Insert instead:

Education Act 1990—provision made by or under section 18A (Publication of school results) or Division 2 (Obtaining information about students) of Part 5A

[37] Schedule 1, clause 1 (1)

Omit “election policy and other costings” from the matter relating to the *Parliamentary Budget Officer Act 2010*.

Insert instead “election policy costings”.

[38] Schedule 1, clause 1 (1)

Omit the matter relating to the *Police Regulation 2008*. Insert instead:

Police Regulation 2015—clause 54 (Secrecy as to complaints about conduct)

[39] Schedule 1, clause 1 (1)

Omit “*Royal Commission (Police Service) Act 1994*”.

[40] Schedule 1, clause 2 (4)

Omit “the information would”.

Insert instead “the information is contained in a document that, either entirely or in part, would”.

[41] Schedule 1, clause 5A

Insert after clause 5:

5A Privilege generally

It is to be conclusively presumed that there is an overriding public interest against disclosure of information contained in a document that, in response to a court order, subpoena or otherwise:

- (a) was a document a person objected to producing in any court proceedings on the grounds that the document was a privileged document, and
- (b) was not compelled by a court to be given or produced on the grounds of privilege.

[42] Schedule 1, clause 7 (d)

Omit “the Department of Corrective Services”.

Insert instead “Corrective Services NSW, Department of Justice,”.

[43] Schedule 1, clause 7 (e)

Omit “Drug Intelligence Unit of the Department of Juvenile Justice”.

Insert instead “Security and Intelligence Unit of Juvenile Justice, Department of Justice.”.

[44] Schedule 1, clause 7 (f)

Insert after clause 7 (e):

- (f) a document concerning law enforcement and public safety created by another entity established under a law of another jurisdiction, including a jurisdiction outside Australia, whose functions substantially correspond with an entity referred to in paragraphs (a)–(e), including any entity declared by the regulations to be a corresponding entity for the purposes of this clause.

[45] Schedule 1, clause 12 (2) and (3)

Omit the subclauses. Insert instead:

- (2) It is to be conclusively presumed that there is an overriding public interest against disclosure of information that has been provided to the Scientific Committee under the *Biodiversity Conservation Act 2016* if the Minister has, under section 4.20 of that Act, authorised the Scientific Committee to restrict access to the information.
- (3) It is to be conclusively presumed that there is an overriding public interest against disclosure of information in a public register required to be kept under the *Biodiversity Conservation Act 2016* if the Environment Agency Head (within the meaning of that Act) has, under section 9.10 of that Act, restricted access to the information.

[46] Schedule 2 Excluded information of particular agencies

Insert “review,” after “Privacy Commissioner—” in clause 2.

[47] Schedule 2, clause 2

Omit “Department of Local Government” and “Director-General”.

Insert instead “Office of Local Government” and “Chief Executive”, respectively.

[48] Schedule 2, clause 2

Omit the matter relating to The DNA Review Panel.

[49] Schedule 2, clause 4

Omit “and Training”.

[50] Schedule 3 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

[51] Schedule 3, clauses 1A and 1B

Insert after clause 1:

1A Continuation of presumption against disclosure of information in Schedule 1

- (1) The conclusive presumption that there is an overriding public interest against disclosure of any information that is described in Schedule 1, or was described in that Schedule immediately before a provision of that Schedule was amended or repealed, continues to have effect despite:
 - (a) the repeal of any Act or prohibition referred to in that Schedule, or
 - (b) the abolition of any agency referred to in that Schedule, or
 - (c) the amendment of that Schedule.
- (2) This clause is subject to any express provision to the contrary.

1B Continuation of excluded information in Schedule 2

- (1) Information that relates to a function specified in Schedule 2, or was specified in that Schedule immediately before a provision of that Schedule was amended or repealed, continues to be excluded information for the purposes of this Act despite:
 - (a) the repeal of any Act referred to in that Schedule, or
 - (b) the abolition of any agency referred to in that Schedule, or
 - (c) the amendment of that Schedule.
- (2) This clause is subject to any express provision to the contrary.

[52] Schedule 4 Interpretative provisions

Omit “*Coroners Act 1980*” from paragraph (b) of the definition of *judicial functions* in clause 1.

Insert instead “*Coroners Act 2009*”.

[53] Schedule 4, clause 1, definition of “working day”

Omit “or public holiday”.

Insert instead “, public holiday or any day during the period declared by the Premier as the Christmas closedown period”.

[54] Schedule 4, clause 4 (3) (b)

Insert “, including the individual’s position title, public functions and the agency in which the individual works” after “contact details”.

[55] Schedule 4, clause 12 (4)

Insert after clause 12 (3):

- (4) Information contained in a record held by the agency that is information that was unsolicited and is not relevant to the agency's business or functions is not government information held by the agency.