

# Freedom of Information Act 1989 No 5

[1989-5]



New South Wales

## Status Information

### Currency of version

Historical version for 26 July 2004 to 16 January 2005 (accessed 17 July 2024 at 21:35)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Workers Compensation Amendment \(Insurance Reform\) Act 2003 No 81](#) (not commenced)
  - [Anti-Discrimination Amendment \(Miscellaneous Provisions\) Act 2004 No 79](#) (not commenced)
  - [Health Legislation Amendment \(Complaints\) Act 2004 No 98](#) (not commenced)
  - [Teaching Services Amendment Act 2004 No 114](#) (not commenced)

### Authorisation

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File last modified 21 December 2004

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# Freedom of Information Act 1989 No 5



New South Wales

An Act to require information concerning documents held by the Government to be made available to the public, to enable a member of the public to obtain access to documents held by the Government and to enable a member of the public to ensure that records held by the Government concerning his or her personal affairs are not incomplete, incorrect, out of date or misleading; and to make consequential amendments to certain other Acts.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Freedom of Information Act 1989*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### 4 Relationship with other Acts

This Act does not affect the operation of any other Act or law:

- (a) that requires information concerning documents held by the Government to be made available to the public, or
- (b) that enables a member of the public to obtain access to documents held by the Government, or
- (c) that enables a member of the public to ensure that records held by the Government concerning his or her personal affairs are not incomplete, incorrect, out of date or misleading.

### 5 Objects

- (1) The objects of this Act are to extend, as far as possible, the rights of the public:

- (a) to obtain access to information held by the Government, and
  - (b) to ensure that records held by the Government concerning the personal affairs of members of the public are not incomplete, incorrect, out of date or misleading.
- (2) The means by which it is intended that these objects are to be achieved are:
- (a) by ensuring that information concerning the operations of the Government (including, in particular, information concerning the rules and practices followed by the Government in its dealings with members of the public) is made available to the public, and
  - (b) by conferring on each member of the public a legally enforceable right to be given access to documents held by the Government, subject only to such restrictions as are reasonably necessary for the proper administration of the Government, and
  - (c) by enabling each member of the public to apply for the amendment of such of the Government's records concerning his or her personal affairs as are incomplete, incorrect, out of date or misleading.
- (3) It is the intention of Parliament:
- (a) that this Act shall be interpreted and applied so as to further the objects of this Act, and
  - (b) that the discretions conferred by this Act shall be exercised, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.
- (4) Nothing in this Act is intended to prevent or discourage the publication of information, the giving of access to documents or the amendment of records as permitted or required by or under any other Act or law.

## 6 Definitions

- (1) In this Act:

**agency** means a Government Department, public authority, local authority or public office, but does not include a body or office that is, by virtue of section 9, exempt from the operation of this Act in relation to all of its functions.

**agency's document** means a document that is held by the agency.

**court** includes a Magistrate and a coroner.

**document** includes:

- (a) any paper or other material on which there is writing or in or on which there are marks, symbols or perforations having a meaning, whether or not that meaning is

ascertainable only by persons qualified to interpret them, and

- (b) any disc, tape or other article from which sounds, images or messages are capable of being reproduced.

**exempt document** means:

- (a) a document referred to in any one or more of the provisions of Schedule 1, or
- (b) a document that contains matter relating to functions in relation to which a body or office is, by virtue of section 9, exempt from the operation of this Act.

**exempt matter** means matter by virtue of which a document is an exempt document.

**Government Department** means a Department within the meaning of the [Public Sector Management Act 1988](#), and includes an Administrative Office within the meaning of that Act.

**judicial functions**, in relation to a court or tribunal, means such of the functions of the court or tribunal as relate to the hearing or determination of proceedings before it, and includes:

- (a) in relation to a Magistrate—such of the functions of the Magistrate as relate to the conduct of committal proceedings, and
- (b) in relation to a coroner—such of the functions of the coroner as relate to the conduct of inquests and inquiries under the [Coroners Act 1980](#).

**legislative instrument** means a Public Act or an instrument made under a Public Act.

**local authority** means a council or county council within the meaning of the [Local Government Act 1993](#).

**Ministerial certificate** means a certificate in force under section 59.

**Minister's document** means a document:

- (a) that is held by a Minister, and
  - (b) that relates to the affairs of an agency,
- but does not include an agency's document.

**policy document**, in relation to an agency, means:

- (a) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents, or



- (b) a document containing particulars of any administrative scheme, or
- (c) a document containing a statement of the manner, or intended manner, of administration of any legislative instrument or administrative scheme, or
- (d) a document describing the procedures to be followed in investigating any contravention or possible contravention of any legislative instrument or administrative scheme, or
- (e) any other document of a similar kind,

that is used by the agency in connection with the exercise of such of its functions as affect or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the public are or may become entitled, eligible, liable or subject, but does not include a legislative instrument.

**principal officer** means:

- (a) in relation to a Government Department—the Department Head of the Department, or
- (b) in relation to a public authority for which the regulations declare an office to be the principal office in respect of the authority—the holder of the office, or
- (c) in relation to a public authority for which the regulations do not so declare:
  - (i) in the case of an incorporated body that has no members—the person who manages the affairs of the body, or
  - (ii) in the case of a body (whether incorporated or unincorporated) that is constituted by one person—the person who constitutes the body, or
  - (iii) in the case of a body (whether incorporated or unincorporated) that is constituted by 2 or more persons—the person who is entitled to preside at any meeting of the body at which the person is present, or
- (d) in relation to a local authority—the general manager of the authority, or
- (e) in relation to a public office—the holder of the office.

**public authority** means a body that is a public authority by virtue of section 7.

**public office** means an office that is a public office by virtue of section 8.

**responsible Minister** means:

- (a) in relation to a Government Department—the Minister responsible for the Department, or
- (b) in relation to a public authority referred to in section 7 (1) (a)—the Minister

- administering the provisions of the legislative instrument by or under which the public authority is established, or
- (c) in relation to a public authority referred to in section 7 (1) (b) or (c)—the Minister declared by the regulations to be the responsible Minister in relation to the public authority, or
  - (d) in relation to the Police Service—the Minister administering the *Police Service Act 1990*, or
  - (e) in relation to a Teaching Service—the Minister administering the *Teaching Services Act 1980*, or
  - (f) in relation to a local authority—the Minister administering the provisions of the Act under which the authority is constituted, or
  - (g) in relation to a public office referred to in section 8 (1) (a)—the Minister administering the provisions of the legislative instrument by or under which the office is established, or
  - (h) in relation to a public office referred to in section 8 (1) (b)—the Minister declared by the regulations to be the responsible Minister in relation to the office, or
  - (i) in relation to a statutory State owned corporation (and its subsidiaries) referred to in section 7 (1) (f)—the portfolio Minister (within the meaning of the *State Owned Corporations Act 1989*) for the authority.

**restricted document** means a document referred to in any one or more of the provisions of Part 1 of Schedule 1.

**State** includes Territory.

**Teaching Service** has the same meaning as it has in the *Teaching Services Act 1980*.

**Tribunal** means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

(2) In this Act:

- (a) a reference to the Government includes, where appropriate, a reference to a public authority, a local authority and a public office, and
- (b) a reference to an agency includes a reference to any body that forms part of the agency or that exists mainly for the purpose of enabling the agency to exercise its functions, and
- (c) a reference to an officer of an agency includes a reference to a member of the agency, the principal officer of the agency and any other person employed within

the agency, and

- (d) a reference to a document includes a reference to a copy of the document, and
- (e) a reference to a document held by an agency includes a reference to a document to which the agency has an immediate right of access and a document that is in the possession, or under the control, of a person in his or her capacity as an officer of the agency, and
- (f) a reference to a document held by a Minister includes a reference to a document to which that Minister has an immediate right of access and a document that is in the possession, or under the control, of a person in his or her capacity as a member of that Minister's staff.

(3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **7 Public authorities**

(1) In this Act, a reference to a public authority is a reference to:

- (a) a body (whether incorporated or unincorporated) established or continued for a public purpose by or under the provisions of a legislative instrument, other than:
  - (i) an incorporated company or association, or
  - (ii) a body that, under subsection (2) or (3), is not to be taken to be a public authority, or
  - (iii) the Legislative Council or the Legislative Assembly or a committee of either or both of those bodies, or
  - (iv) a Royal Commission or a Special Commission of Inquiry, or
  - (v) a local authority, or
- (b) a body (whether incorporated or unincorporated) established for a public purpose otherwise than by or under the provisions of a legislative instrument and declared by the regulations to be a public authority, or
- (c) any other body (whether incorporated or unincorporated) declared by the regulations to be a public authority, being:
  - (i) a body established by the Governor or by a Minister, or
  - (ii) an incorporated company or association over which a Minister is in a position

to exercise direction or control, or

(d) the Police Service, or

(e) a Teaching Service, or

(f) a statutory State owned corporation (and its subsidiaries) as defined in the [State Owned Corporations Act 1989](#).

(2) An unincorporated body (being a board, council, committee, subcommittee or other body established or continued by or under the provisions of a legislative instrument for the purpose of assisting, or exercising functions connected with, an agency) shall not be taken to be a separate public authority but shall be taken to be included in the agency.

(3) The regulations may declare that a specified body is not to be taken to be a separate public authority but is to be taken to be included in a specified agency.

## **8 Public offices**

(1) In this Act, a reference to a public office is a reference to:

(a) an office established or continued for a public purpose by or under the provisions of a legislative instrument, other than an office that, under subsection (2), is not to be taken to be a public office, or

(b) an office declared by the regulations to be a public office, being an office to which an appointment is made by the Governor or by a Minister otherwise than by or under the provisions of a legislative instrument.

(2) The regulations may declare that a specified office is not to be taken to be a separate public office but is to be taken to be included in a specified agency.

(3) A person shall not be taken to be the holder of a public office:

(a) by virtue of the person's holding office as:

(i) Governor, Lieutenant-Governor or Administrator of the State, or

(ii) a member of the Legislative Council or the Legislative Assembly or of a committee of either or both of those bodies, or

(iii) President of the Legislative Council or Speaker of the Legislative Assembly or chairman of a committee of either or both of those bodies, or

(iv) a Minister of the Crown, or

(v) a Parliamentary Secretary, or

(vi) a member of the Executive Council, or

(b) by virtue of the person's holding:

- (i) an office the duties of which the person performs as an officer of an agency, or
- (ii) an office of member of an agency, or
- (iii) an office established or continued by or under the provisions of a legislative instrument for the purposes of an agency, or
- (iv) an office established or continued by or under the provisions of a legislative instrument for the purposes of a body referred to in section 7 (1) (a) (i)-(v).

## **9 Certain bodies etc exempt from operation of Act**

Any body or office specified or described in Schedule 2 is, in relation to such of the functions of the body or office as are so specified or described, exempt from the operation of this Act.

## **10 Act not to apply to judicial functions of courts and tribunals**

(1) For the purposes of this Act:

- (a) neither a court nor a person who is the holder of an office pertaining to a court shall, in relation to the court's judicial functions, be taken to be, or to be included in, an agency, and
- (b) neither a registry or other office of a court nor the members of staff of such a registry or other office shall, in relation to those matters that relate to the court's judicial functions, be taken to be, or to be included in, an agency.

(2) For the purposes of this Act:

- (a) neither a tribunal nor a person who is the holder of an office pertaining to a tribunal shall, in relation to the tribunal's judicial functions, be taken to be, or to be included in, an agency, and
- (b) neither a registry or other office of a tribunal nor the members of staff of such a registry or other office shall, in relation to those matters that relate to the tribunal's judicial functions, be taken to be, or to be included in, an agency.

## **11 Documents in certain agencies**

(1) A document that is held by:

- (a) the State Records Authority, or
- (b) the Australian Museum, or
- (c) the Museum of Applied Arts and Sciences, or

(d) the State Library, or

(e) any other prescribed agency,

but that has been created by an agency other than the agency that holds the document, shall be taken to be held by the other agency.

- (2) A document that is held by an agency referred to in subsection (1) (a)–(e) and that relates to the affairs of a Royal Commission or a Special Commission of Inquiry shall be taken to be held by the Minister administering the *Royal Commissions Act 1923* or the Minister administering the *Special Commissions of Inquiry Act 1983*, as the case requires.

## **12 Defunct agencies**

- (1) A document that is to be taken to be held by an agency that has ceased to exist shall be taken to be held:
- (a) if the former agency's functions have devolved on another agency—by the other agency, or
  - (b) if the former agency's functions have devolved on 2 or more other agencies—by the agency on which have devolved the functions to which the document most closely relates, or
  - (c) if the former agency's functions have not devolved on another agency—by such other agency as the Minister may, after consultation with the responsible Minister for that agency, nominate.
- (2) An application under this Act that has been made to an agency that has ceased to exist shall be taken to have been made:
- (a) if the former agency's functions have devolved on another agency—to the other agency, or
  - (b) if the former agency's functions have devolved on 2 or more other agencies—to the agency on which have devolved the functions to which the document or record the subject of the application most closely relates, or
  - (c) if the former agency's functions have not devolved on another agency—to such other agency as the Minister may, after consultation with the responsible Minister for that agency, nominate.
- (3) A determination under this Act that has been made by an agency that has ceased to exist shall be taken to have been made:
- (a) if the former agency's functions have devolved on another agency—by the other agency, or

- (b) if the former agency's functions have devolved on 2 or more other agencies—by the agency on which have devolved the functions to which the document or record the subject of the determination most closely relates, or
  - (c) if the former agency's functions have not devolved on another agency—by such other agency as the Minister may, after consultation with the responsible Minister for that agency, nominate.
- (4) For the purpose of enabling an application or determination to be dealt with under this Act:
- (a) an agency to which an application is to be taken to have been made, or
  - (b) an agency by which a determination is to be taken to have been made,
- shall, if the agency did not exist at the time the application or determination was in fact made, be taken to have been in existence at that time.

## **Part 2 Publication of certain information**

### **13 (Repealed)**

### **14 Publication of information concerning affairs of agencies**

- (1) The responsible Minister for an agency (other than a local authority):
- (a) shall (within 12 months after the commencement of this section and at intervals of not more than 12 months thereafter) cause to be published, in such manner as the Minister administering this Act may approve, an up-to-date statement of the affairs of the agency, and
  - (b) shall (within 12 months after the commencement of this section and at intervals of not more than 6 months thereafter) cause to be published in the Gazette an up-to-date summary of those affairs.
- (1A) The general manager of a local authority has, in relation to the local authority, the same functions under subsection (1) as the responsible Minister has in relation to an agency.
- (2) A statement of the affairs of an agency shall contain:
- (a) a description of the structure and functions of the agency, and
  - (b) a description of the ways in which the functions (including, in particular, the decision-making functions) of the agency affect members of the public, and
  - (c) a description of any arrangements that exist to enable members of the public to participate in the formulation of the agency's policy and the exercise of the agency's functions, and

- (d) a description of the various kinds of documents that are usually held by the agency, including:
  - (i) a description of the various kinds of documents that are available for inspection at the agency (whether as part of a public register or otherwise) in accordance with the provisions of a legislative instrument other than this Act, whether or not inspection of any such document is subject to a fee or charge, and
  - (ii) a description of the various kinds of documents that are available for purchase from the agency, and
  - (iii) a description of the various kinds of documents that are available from the agency free of charge, and
- (e) a description of the arrangements that exist to enable a member of the public to obtain access to the agency's documents and to seek amendment of the agency's records concerning his or her personal affairs, and
- (f) a description of the procedures of the agency in relation to the giving of access to the agency's documents and to the amendment of the agency's records concerning the personal affairs of a member of the public, including:
  - (i) the designation of the officer or officers to whom inquiries should be made, and
  - (ii) the address or addresses at which applications under this Act should be lodged.
- (3) A summary of the affairs of an agency:
  - (a) shall identify each of the agency's policy documents, and
  - (b) shall identify the most recent statement of affairs published under this section, and
  - (c) shall specify the designation of the officer or officers to whom inquiries concerning the procedures for inspecting and purchasing the agency's policy documents and statements of affairs should be made, and
  - (d) shall specify the address or addresses at which, and the times during which, the agency's policy documents and statements of affairs may be inspected and purchased.
- (4) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document would cause the document to be an exempt document.



## **15 Availability of certain documents**

- (1) An agency shall cause copies of:
  - (a) its most recent statement of affairs, and
  - (b) its most recent summary of affairs, and
  - (c) each of its policy documents,to be made available for inspection and purchase by members of the public.
- (2) Nothing in this section prevents an agency from deleting from the copies of any policy document any information that is of such a nature that its inclusion in the document would cause the document to be an exempt document otherwise than by virtue of clause 9 or 10 of Schedule 1.
- (3) A person is not to be subjected to any prejudice because of the application of the provisions of an agency's policy document (other than such of those provisions as the agency is permitted to delete from the copies of the document that are available for inspection and purchase by members of the public) to any act or omission of the person if, at the time of the act or omission:
  - (a) the policy document was not available for inspection and purchase, and
  - (b) the person was not aware of those provisions, and
  - (c) the person could lawfully have avoided the prejudice had the person been aware of those provisions.
- (4) During the period of 12 months following the commencement of this section:
  - (a) an agency is required to comply with subsection (1) only to such extent as is reasonably practicable, and
  - (b) subsection (3) does not have effect.

## **Part 3 Access to documents**

### **Division 1 General**

#### **16 Right of access to agencies' documents**

- (1) A person has a legally enforceable right to be given access to an agency's documents in accordance with this Act.
- (2) (Repealed)

### **17 Applications for access to agencies' documents**

An application for access to an agency's document:

- (a) shall be in writing, and
- (b) shall specify that it is made under this Act, and
- (c) shall be accompanied by such application fee as the agency may determine, and
- (d) shall contain such information as is reasonably necessary to enable the document to be identified, and
- (e) shall specify an address in Australia to which notices under this Act should be sent, and
- (f) shall be lodged at an office of the agency,

and may request that access to the document be given in a particular form referred to in section 27.

### **18 Persons by whom applications to be dealt with etc**

- (1) An application shall be dealt with on behalf of an agency:
  - (a) by the principal officer of the agency, or
  - (b) by such other officer of the agency as the principal officer of the agency may direct for that purpose, either generally or in a particular case.
- (2) Notwithstanding subsection (1), an application for access to a local authority's document shall be dealt with on behalf of the authority:
  - (a) by the principal officer of the authority, or
  - (b) by such other officer of the authority as the authority may, by resolution, direct for that purpose, either generally or in a particular case.
- (3) An application shall be dealt with as soon as practicable (and, in any case, within 21 days) after it is received.

### **19 Incomplete and wrongly directed applications**

- (1) An agency shall not refuse to accept an application merely because it does not contain sufficient information to enable the document to which it relates to be identified without first taking such steps as are reasonably practicable to assist the applicant to provide such information.
- (2) If an agency is unable to deal with an application because the document to which it relates:

(a) is not held by the agency but is, to the knowledge of the agency, held by another agency, or

(b) is held by the agency but is more closely related to the functions of another agency,

the agency shall take such steps as are reasonably practicable to assist the applicant to direct the application to the other agency.

## **20 Transfer of applications**

(1) An agency to which an application has been made may transfer the application to another agency:

(a) if the document to which it relates:

(i) is not held by the firstmentioned agency but is, to the knowledge of the firstmentioned agency, held by the other agency, or

(ii) is held by the firstmentioned agency but is more closely related to the functions of the other agency, and

(b) if consent to the application being transferred is given by or on behalf of the other agency.

(2) An agency that transfers an application to another agency shall, if it holds the document to which the application relates, forward a copy of the document to the other agency together with the application.

(3) An agency that transfers an application to another agency shall forthwith cause notice of that fact to be given to the applicant.

(4) Such a notice shall specify the day on which, and the agency to which, the application was transferred.

(5) An agency is not required to include in a notice any matter that is of such a nature that its inclusion in the notice would cause the notice to be an exempt document.

(6) An application that is transferred from one agency to another shall be taken to have been received by the other agency:

(a) on the day on which it is transferred, or

(b) 10 days after the day on which it was received by the agency to which it was originally made,

whichever is the earlier.

## **21 Agencies may require advance deposits**

- (1) If, in the opinion of an agency, the costs to the agency of dealing with an application are likely to exceed the amount of the application fee, the agency may request the applicant to pay to it such amount, by way of advance deposit, as the agency may determine.
- (2) If, in the opinion of an agency, the costs to the agency of dealing with an application are likely to exceed the sum of the application fee and of any advance deposits paid in respect of the application, the agency may request the applicant to pay to it such amount, by way of further advance deposit, as the agency may determine.
- (3) The amount of an advance deposit requested by an agency in respect of an application shall not be such that the sum of the application fee, the advance deposit and any further advance deposits paid in respect of the application exceeds such amount as, in the opinion of the agency, will be necessary to cover the costs of dealing with the application.
- (4) A request for an advance deposit shall be accompanied by a notice that sets out the basis on which the amount of the deposit has been calculated.
- (5) The amount of an advance deposit requested by an agency in respect of an application shall be paid to the agency within such period of time as the agency may specify in the request.
- (6) The period of time between the making of a request under this section and the payment of an advance deposit in accordance with the request shall not be taken into account in calculating the period of 21 days within which the relevant application is required to be dealt with.

## **22 Agencies may refuse to continue to deal with applications if advance deposit not paid**

- (1), (2) (Repealed)
- (3) An agency may refuse to continue dealing with an application if:
  - (a) it has requested payment of an advance deposit in relation to the application, and
  - (b) payment of the deposit has not been made within the period of time specified in the request.
- (4) If an agency refuses to continue dealing with an application under subsection (3):
  - (a) it shall refund to the applicant such part of the advance deposits paid in respect of the application as exceeds the costs incurred by the agency in dealing with the application, and
  - (b) it may retain the remainder of those deposits.

- (5) An agency that refuses to continue to deal with an application under this section must forthwith cause written notice of that fact to be given to the applicant.
- (6) A refusal to continue to deal with an application under this section is taken to be a determination that is subject to internal review under Part 3 and external review under Part 5, and the provisions of those Parts apply accordingly.
- (7), (8) (Repealed)

### **23 Information stored in computer systems etc**

If:

- (a) it appears to an agency that an application relates to information of a kind that is not contained in a written document held by the agency, and
- (b) the agency could create a written document containing information of that kind by the use of equipment that is usually available to it for retrieving or collating stored information,

the agency shall deal with the application as if it were an application for a written document so created and shall be taken to hold such a document.

### **24 Determination of applications**

- (1) After considering an application for access to a document, an agency shall determine:
  - (a) whether access to the document is to be given (whether immediately or subject to deferral) or refused, and
  - (b) if access to the document is to be given—any charge payable in respect of the giving of access, and
  - (c) any charge payable for dealing with the application.
- (2) An agency that fails to determine an application within 21 days after the application is received by the agency shall, for the purposes of section 34 and other provisions of this Act, be taken to have determined the application by refusing access to the document to which it relates.
- (2A) Nothing in subsection (2) prevents an agency from determining that access should be given to the document even though more than 21 days have elapsed after the application was received by the agency. Sections 64 and 65 apply to access given pursuant to such a determination in the same way as they apply to access given pursuant to any other determination under this Act.
- (3) This section does not require an agency to determine an application that the agency has transferred to another agency under section 20 or has refused to continue to deal with under section 22.

## **25 Refusal of access**

- (1) An agency may refuse access to a document:
  - (a) if it is an exempt document, or
    - (a1) if the work involved in dealing with the application for access to the document would, if carried out, substantially and unreasonably divert the agency's resources away from their use by the agency in the exercise of its functions, or
    - (b) if it is a document that is available for inspection at that or some other agency (whether as part of a public register or otherwise) in accordance with Part 2, or in accordance with a legislative instrument other than this Act, whether or not inspection of the document is subject to a fee or charge, or
  - (b1) if it is a document that is available from, or available for inspection at, that agency, free of charge, in accordance with that agency's policies and practices, or
  - (c) if it is a document that is usually available for purchase, or
  - (d) if it is a document that genuinely forms part of the library material held by the agency.
  - (e) (Repealed)
- (2) (Repealed)
- (3) An agency shall refuse access to a restricted document that is the subject of a Ministerial certificate.
- (4) An agency shall not refuse access to an exempt document (including a restricted document that is the subject of a Ministerial certificate):
  - (a) if it is practicable to give access to a copy of the document from which the exempt matter has been deleted, and
  - (b) if it appears to the agency (whether from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to such a copy.
- (5) Subsection (1) (a1) does not permit an agency to refuse access to a document without first endeavouring to assist the applicant to amend the application so that the work involved in dealing with it would, if carried out, no longer substantially and unreasonably divert the agency's resources away from their use by the agency in the exercise of its functions.

## **26 Deferral of access**

An agency may defer access to a document:

- (a) if it is a document that, by or under this Act or by or under some other legislative instrument, is required to be published but is yet to be published, or
- (b) if it is a document that has been prepared for presentation to Parliament, or that has been designated by the responsible Minister for the agency as appropriate for presentation to Parliament, but is yet to be presented, or
- (c) if it is a document that has been prepared for submission to a particular person or body, or that has been designated by the responsible Minister for the agency as appropriate for submission to a particular person or body, but is yet to be submitted.

## **27 Forms of access**

- (1) Access to a document may be given to a person:
  - (a) by giving the person a reasonable opportunity to inspect the document, or
  - (b) by giving the person a copy of the document, or
  - (c) in the case of a document from which sounds or visual images are capable of being reproduced, whether or not with the aid of some other device—by making arrangements for the person to hear or view those sounds or visual images, or
  - (d) in the case of a document in which words are recorded in a manner in which they are capable of being reproduced in the form of sound—by giving the person a written transcript of the words recorded in the document, or
  - (e) in the case of a document in which words are contained in the form of shorthand writing or in encoded form—by giving the person a written transcript of the words contained in the document, or
  - (f) in the case of a document in which words are recorded in a manner in which they are capable of being reproduced in the form of a written document—by giving the person a written document so reproduced.
- (2) If an applicant has requested that access to a document be given in a particular form, access to the document shall be given in that form.
- (3) Notwithstanding subsection (2), if the giving of access in the form requested:
  - (a) would unreasonably divert the agency's resources away from their use by the agency in the exercise of its functions, or
  - (b) would be detrimental to the preservation of the document or (having regard to the physical nature of the document) would otherwise not be appropriate, or
  - (c) would involve an infringement of copyright subsisting in matter contained in the document,

access in that form may be refused but, if so refused, shall be given in another form.

- (4) If an applicant has requested that access to a document be given in a particular form and access in that form is refused but given in another form, the applicant shall not be required to pay a charge in respect of the giving of access that is greater than the charge that the applicant would have been required to pay had access been given in the form requested.
- (5) This section does not prevent an agency from giving access to a document in any other form agreed on between the agency and the person to whom access is to be given.
- (6) An agency may refuse to give access to a document unless any charge payable in respect of dealing with the application, or giving access to the document, has been paid.

## **28 Notices of determination**

- (1) An agency shall cause written notice to be given to the applicant:
  - (a) of its determination of his or her application, or
  - (b) if the application relates to a document that is not held by the agency—of the fact that the agency does not hold such a document.
- (2) Such a notice shall specify:
  - (a) the day on which the determination was made, and
  - (b) if the determination is to the effect that access to a document is to be given (whether immediately or subject to deferral)—the amount of any charge payable in respect of the giving of access, and
  - (c) if the determination is to the effect that the document is an exempt document and that access is to be given to a copy of the document from which exempt matter has been deleted—the fact that the document is such a copy and the provision of Schedule 1 by virtue of which the document is an exempt document, and
  - (d) if the determination is to the effect that access to a document is to be given subject to deferral:
    - (i) the reason for the deferral, and
    - (ii) in the case of a deferral under section 26—the day on which the agency expects the document to be published, presented or submitted as referred to in that section, and
  - (e) if the determination is to the effect that access to a document is refused:



- (i) the reasons for the refusal, and
  - (ii) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based, and
- (f) the amount of any charge for dealing with the application, together with:
- (i) a statement of any amount payable by the applicant, or
  - (ii) a statement of any amount refundable to the applicant,
- in relation to the charge, having regard to the sum of any advance deposits paid in respect of the application, and
- (g) in the case of a determination of an amount referred to in paragraph (b) or (f) or a determination referred to in paragraph (c), (d) or (e):
- (i) the name and designation of the officer by whom the determination was made, and
  - (ii) the rights of review and appeal, and the rights of complaint to the Ombudsman, conferred by this Act and the *Ombudsman Act 1974* in relation to the determination, and
  - (iii) the procedures to be followed for the purpose of exercising those rights,
- and shall be accompanied by the amount of any refund referred to in paragraph (f) (ii).
- (3) An agency is not required to include in a notice any matter that is of such a nature that its inclusion in the notice would cause the notice to be an exempt document.

## **29 Division to be read subject to Division 2**

This Division has effect subject to the provisions of Division 2.

## **Division 2 Consultation**

### **30 Documents affecting inter-governmental relations**

- (1) This section applies to a document that contains matter concerning the affairs of the Government of the Commonwealth or of another State.
- (2) An agency shall not give access to a document to which this section applies unless the agency has taken such steps as are reasonably practicable to obtain the views of the Government concerned as to whether or not the document is an exempt document by virtue of clause 5 of Schedule 1.
- (3) If:

- (a) an agency determines, after having sought the views of the Government concerned, that access to a document to which this section applies is to be given, and
  - (b) the views of the Government concerned are that the document is an exempt document by virtue of clause 5 of Schedule 1,
- the agency shall:
- (c) forthwith cause written notice to be given to the Government concerned:
    - (i) that the agency has determined that access to the document is to be given, and
    - (ii) of the rights of review and appeal, and the rights of complaint to the Ombudsman, conferred by this Act and the *Ombudsman Act 1974* in relation to the determination, and
    - (iii) of the procedures to be followed for the purpose of exercising those rights, and
  - (d) defer giving access to the document until after the expiration of the period within which an application for a review or appeal under this Act may be made or, if such an application is made, until after the application has been finally disposed of.

### **31 Documents affecting personal affairs**

- (1) This section applies to a document that contains information concerning the personal affairs of any person (whether living or deceased).
- (2) An agency shall not give access to a document to which this section applies (otherwise than to the person concerned) unless the agency has taken such steps as are reasonably practicable to obtain the views of the person concerned as to whether or not the document is an exempt document by virtue of clause 6 of Schedule 1.
- (3) If:
  - (a) an agency determines, after having sought the views of the person concerned, that access to a document to which this section applies is to be given, and
  - (b) the views of the person concerned are that the document is an exempt document by virtue of clause 6 of Schedule 1,the agency shall:
  - (c) forthwith cause written notice to be given to the person concerned:
    - (i) that the agency has determined that access to the document is to be given, and

- (ii) of the rights of review and appeal, and the rights of complaint to the Ombudsman, conferred by this Act and the *Ombudsman Act 1974* in relation to the determination, and
  - (iii) of the procedures to be followed for the purpose of exercising those rights, and
  - (d) defer giving access to the document until after the expiration of the period within which an application for a review or appeal under this Act may be made or, if such an application is made, until after the application has been finally disposed of.
- (4) If:
- (a) an application is made to an agency for access to a document to which this section applies, and
  - (b) the document contains information of a medical or psychiatric nature concerning the applicant, and
  - (c) the agency is of the opinion that disclosure of the information to the applicant may have an adverse effect on the physical or mental health of the applicant, and
  - (d) the agency decides that access to the document is to be given,
- it is sufficient compliance with this Act if access to the document is given to a registered medical practitioner nominated by the applicant.
- (5) A reference in this section to the person concerned is, in the case of a deceased person, a reference to that person's closest relative who is of or above the age of 18 years.

### **32 Documents affecting business affairs**

- (1) This section applies to a document that contains:
- (a) information concerning the trade secrets of any person, or
  - (b) information (other than trade secrets) that has a commercial value to any person, or
  - (c) information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any person.
- (2) An agency shall not give access to a document to which this section applies (otherwise than to the person concerned) unless the agency has taken such steps as are reasonably practicable to obtain the views of the person concerned as to whether or not the document is an exempt document by virtue of clause 7 of Schedule 1.

(3) If:

- (a) an agency determines, after having sought the views of the person concerned, that access to a document to which this section applies is to be given, and
- (b) the views of the person concerned are that the document is an exempt document by virtue of clause 7 of Schedule 1,

the agency shall:

- (c) forthwith cause written notice to be given to the person concerned:
  - (i) that the agency has determined that access to the document is to be given, and
  - (ii) of the rights of review and appeal, and the rights of complaint to the Ombudsman, conferred by this Act and the *Ombudsman Act 1974* in relation to the determination, and
  - (iii) of the procedures to be followed for the purpose of exercising those rights, and
- (d) defer giving access to the document until after the expiration of the period within which an application for a review or appeal under this Act may be made or, if such an application is made, until after the application has been finally disposed of.

### **33 Documents affecting the conduct of research**

(1) This section applies to a document that contains information concerning research that is being, or is intended to be, carried out by or on behalf of any person.

(2) An agency shall not give access to a document to which this section applies (otherwise than to the person concerned) unless the agency has taken such steps as are reasonably practicable to obtain the views of the person concerned as to whether or not the document is an exempt document by virtue of clause 8 of Schedule 1.

(3) If:

- (a) an agency determines, after having sought the views of the person concerned, that access to a document to which this section applies is to be given, and
- (b) the views of the person concerned are that the document is an exempt document by virtue of clause 8 of Schedule 1,

the agency shall:

- (c) forthwith cause written notice to be given to the person concerned:
  - (i) that the agency has determined that access to the document is to be given, and

- (ii) of the rights of review and appeal, and the rights of complaint to the Ombudsman, conferred by this Act and the *Ombudsman Act 1974* in relation to the determination, and
- (iii) of the procedures to be followed for the purpose of exercising those rights, and
- (d) defer giving access to the document until after the expiration of the period within which an application for a review or appeal under this Act may be made or, if such an application is made, until after the application has been finally disposed of.

### **Division 3 Internal review**

#### **34 Internal review**

- (1) A person who is aggrieved by a determination made by an agency is entitled to a review of the determination.
- (2) An application for review of a determination:
  - (a) shall be in writing, and
  - (b) shall be accompanied by such application fee as the agency may determine, and
  - (c) shall be addressed to the principal officer of the agency, and
  - (d) shall specify an address in Australia to which notices under this Act should be sent, and
  - (e) shall be lodged at an office of the agency:
    - (i) if notice of the determination was given to the applicant—within 28 days after that notice was given, or
    - (ii) if no notice of the determination was given to the applicant—within 49 days after the application was received by the agency, or
    - (iii) in any case, within such further time as the principal officer of the agency may allow.
- (3) A person is not entitled to a review of:
  - (a) a determination of an application made under this section, or
  - (b) a determination that has been made by the principal officer of an agency.
- (4) An application under this section shall be dealt with in accordance with this Part as if it were an application under section 17.
- (5) An application under this section shall not be dealt with by the person who dealt with

the original application under section 17 or by a person who is subordinate to that person.

- (6) An agency that fails to determine an application made under this section within 14 days after it is received by the agency shall, for the purposes of this Act, be taken to have made a determination under section 24 refusing access to the document to which the application relates.
- (7) For the purposes of this section, a person is aggrieved by a determination:
- (a) if the determination relates to an application made by the person under section 17 and is to the effect that:
    - (i) an agency refuses to give the applicant access to a document, or
    - (ii) access to a document is to be given to the applicant subject to deferral, or
    - (iii) access to a copy of a document from which exempt matter has been deleted is to be given to the applicant, or
    - (iv) access to a document is to be given to the applicant subject to a charge for dealing with the application, or for giving access to a document, that the applicant considers to be unreasonable, or
    - (v) a charge for dealing with the application is payable by the applicant, being a charge that the applicant considers to have been unreasonably incurred, or
  - (b) if the determination relates to an application made by some other person under section 17 in respect of a document to which one or more of the provisions of Division 2 applies and:
    - (i) an agency should have, but has not, taken such steps as are reasonably practicable to obtain the views of the person as to whether or not the document is an exempt document by virtue of any one or more of the provisions of Part 2 of Schedule 1, or
    - (ii) an agency should have, and has, taken such steps, but the determination is not in accordance with the views of the person, or
  - (c) if the determination relates to an application made by the person under section 17 and is a determination that was taken to have been made by virtue of section 24 (2) (which provides that an agency that fails to determine an application within 21 days after the application was received by the agency is taken to have determined the application by refusing access to the document to which it relates).
- (8) Subsections (3) (b) and (5) do not apply to the internal review of a determination that was taken to have been made by virtue of section 24 (2).

## **Division 4 Ministers' documents**

### **35 Right of access to Ministers' documents**

A person has a legally enforceable right to be given access to a Minister's documents in accordance with this Act.

### **36 Applications for access to Ministers' documents**

An application for access to a Minister's document:

- (a) shall be in writing, and
- (b) shall specify that it is made under this Act, and
- (c) shall be accompanied by such application fee as that Minister may determine, and
- (d) shall contain such information as is reasonably necessary to enable the document to be identified, and
- (e) shall specify an address in Australia to which notices under this Act should be sent, and
- (f) shall be lodged at the office of that Minister,

and may request that access to the document be given in a particular form referred to in section 27.

### **37 Persons by whom applications to be dealt with etc**

(1) An application shall be dealt with:

- (a) by the Minister concerned, or
- (b) by such member of that Minister's staff as that Minister may direct for that purpose, either generally or in a particular case.

(2) An application shall be dealt with as soon as practicable (and, in any case, within 21 days) after it is received.

### **38 Divisions 1 and 2 to apply**

The provisions of Divisions 1 and 2 (sections 16–18 excepted):

- (a) apply to an application for access to a Minister's document in the same way as they apply to an application for access to an agency's document, and
- (b) apply to a Minister to whom an application is made for access to a Minister's document in the same way as they apply to an agency to which an application is made for access to an agency's document.

## **Part 4 Amendment of records**

### **Division 1 General**

#### **39 Right to apply for amendment of agencies' records**

A person to whom access to an agency's document has been given may apply for the amendment of the agency's records:

- (a) if the document contains information concerning the person's personal affairs, and
- (b) if the information is available for use by the agency in connection with its administrative functions, and
- (c) if the information is, in the person's opinion, incomplete, incorrect, out of date or misleading.

#### **40 Applications for amendment of agencies' records**

An application for the amendment of an agency's records:

- (a) shall be in writing, and
- (b) shall specify that it is made under this Act, and
- (c) shall contain such information as is reasonably necessary to enable the agency's document to which the applicant has been given access to be identified, and
- (d) shall specify the respects in which the applicant claims the information contained in the document to be incomplete, incorrect, out of date or misleading, and
- (e) if the application specifies that the applicant claims the information contained in the document to be incomplete or out of date—shall be accompanied by such information as the applicant claims is necessary to complete the agency's records or to bring them up to date, and
- (f) shall specify an address in Australia to which notices under this Act should be sent, and
- (g) shall be lodged at an office of the agency.

#### **41 Persons by whom applications to be dealt with etc**

- (1) An application shall be dealt with on behalf of an agency:
  - (a) by the principal officer of the agency, or
  - (b) by such other officer of the agency as the principal officer of the agency may direct for that purpose, either generally or in a particular case.



- (2) Notwithstanding subsection (1), an application for the amendment of a local authority's records shall be dealt with on behalf of the authority:
  - (a) by the principal officer of the authority, or
  - (b) by such other officer of the authority as the authority may, by resolution, direct for that purpose, either generally or in a particular case.
- (3) An application shall be dealt with as soon as practicable (and, in any case, within 21 days) after it is received.

#### **42 Incomplete applications**

An agency shall not refuse to accept an application merely because the application does not contain sufficient information to enable the agency's document to which the applicant has been given access to be identified without first taking such steps as are reasonably practicable to assist the applicant to provide such information.

#### **43 Determination of applications**

- (1) An agency shall determine an application:
  - (a) by amending its records in accordance with the application, or
  - (b) by refusing to amend its records.
- (2) An agency that fails to determine an application within 21 days after the application is received by the agency shall, for the purposes of section 47 and other provisions of this Act, be taken to have determined the application by refusing to amend its records in accordance with the application.

#### **44 Refusal to amend records**

An agency may refuse to amend its records in accordance with an application:

- (a) if it is satisfied that its records are not incomplete, incorrect, out of date or misleading in a material respect, or
- (b) if it is satisfied that the application contains matter that is incorrect or misleading in a material respect, or
- (c) if the procedures for amending its records are prescribed by or under the provisions of a legislative instrument other than this Act, whether or not amendment of those records is subject to a fee or charge.

#### **45 Notices of determination**

- (1) An agency shall cause written notice to be given to the applicant:
  - (a) of its determination of his or her application, or

(b) if the application relates to records that are not held by the agency—of the fact that the agency does not hold such records.

(2) Such a notice shall specify:

(a) the day on which the determination was made, and

(b) if the determination is to the effect that amendment of the agency's records is refused:

(i) the name and designation of the officer by whom the determination was made, and

(ii) the reasons for the refusal, and

(iii) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based, and

(iv) the rights of review and appeal, and the rights of complaint to the Ombudsman, conferred by this Act and the *Ombudsman Act 1974* in relation to the determination, and

(v) the procedures to be followed for the purpose of exercising those rights.

(3) An agency is not required to include in a notice any matter that is of such a nature that its inclusion in the notice would cause the notice to be an exempt document.

#### **46 Notations to be added to records**

(1) If an agency has refused to amend its records, the applicant may, by notice in writing lodged at an office of the agency, require the agency to add to those records a notation:

(a) specifying the respects in which the applicant claims the records to be incomplete, incorrect, out of date or misleading, and

(b) if the applicant claims the records to be incomplete or out of date—setting out such information as the applicant claims is necessary to complete the records or to bring them up to date.

(2) An agency shall comply with the requirements of a notice lodged under this section and shall cause written notice of the nature of the notation to be given to the applicant.

(3) If an agency discloses to any person (including any other agency and any Minister) any information contained in the part of its records to which a notice under this section relates, the agency:

- (a) shall ensure that there is given to that person, when the information is disclosed, a statement:
    - (i) stating that the person to whom the information relates claims that the information is incomplete, incorrect, out of date or misleading, and
    - (ii) setting out particulars of the notation added to its records under this section, and
  - (b) may include in the statement the reason for the agency's refusal to amend its records in accordance with the notation.
- (4) Nothing in this section is intended to prevent or discourage agencies from giving particulars of a notation added to its records under this section to a person (including any other agency and any Minister) to whom information contained in those records was given before the commencement of this section.

## **Division 2 Internal review**

### **47 Internal review**

- (1) A person who is aggrieved by a determination made by an agency is entitled to a review of the determination.
- (2) An application for review of a determination:
  - (a) shall be in writing, and
  - (b) shall be addressed to the principal officer of the agency, and
  - (c) shall specify an address in Australia to which notices under this Act should be sent, and
  - (d) shall be lodged at an office of the agency:
    - (i) if notice of the determination was given to the applicant—within 28 days after that notice was given, or
    - (ii) if no notice of the determination was given to the applicant—within 49 days after the application was received by the agency, or
    - (iii) in any case, within such further time as the principal officer of the agency may allow.
- (3) A person is not entitled to a review of:
  - (a) a determination of an application made under this section, or
  - (b) a determination that has been made by the principal officer of an agency.

- (4) An application under this section shall be dealt with in accordance with this Part as if it were an application under section 40.
- (5) An application under this section shall not be dealt with by the person who dealt with the original application under section 40 or by a person who is subordinate to that person.
- (6) An agency that fails to determine an application made under this section within 14 days after it is received by the agency shall, for the purposes of this Act, be taken to have made a determination under section 43 refusing to amend its records in accordance with the application.
- (7) For the purposes of this section, a person is aggrieved by a determination if the determination relates to an application made by the person under section 40, and:
  - (a) is to the effect that an agency refuses to amend its records in accordance with the application, or
  - (b) is a determination that was taken to have been made by virtue of section 43 (2) (which provides that an agency that fails to determine an application within 21 days after the application was received by the agency is taken to have determined the application by refusing to amend the records in accordance with the application).
- (8) Subsections (3) (b) and (5) do not apply to the internal review of a determination that was taken to have been made by virtue of section 43 (2).

### **Division 3 Ministers' records**

#### **48 Right to apply for amendment of Ministers' records**

A person to whom access to a Minister's document has been given may apply for the amendment of that Minister's records:

- (a) if the document contains information concerning the person's personal affairs, and
- (b) if the information is available for use by that Minister in connection with that Minister's administrative functions, and
- (c) if the information is, in the person's opinion, incomplete, incorrect, out of date or misleading.

#### **49 Applications for amendment of Ministers' records**

An application for the amendment of a Minister's records:

- (a) shall be in writing, and
- (b) shall specify that it is made under this Act, and

- (c) shall contain such information as is reasonably necessary to enable that Minister's document to which the applicant has been given access to be identified, and
- (d) shall specify the respects in which the applicant claims the information contained in the document to be incomplete, incorrect, out of date or misleading, and
- (e) if the application specifies that the applicant claims the information contained in the document to be incomplete or out of date—shall be accompanied by such information as the applicant claims is necessary to complete that Minister's records or to bring them up to date, and
- (f) shall specify an address in Australia to which notices under this Act should be sent, and
- (g) shall be lodged at an office of the Minister.

#### **50 Persons by whom applications to be dealt with etc**

- (1) An application shall be dealt with:
  - (a) by the Minister concerned, or
  - (b) by such member of that Minister's staff as that Minister may direct for that purpose, either generally or in a particular case.
- (2) An application shall be dealt with as soon as practicable (and, in any case, within 21 days) after it is received.

#### **51 Division 1 to apply**

The provisions of Division 1 (sections 39–41 excepted):

- (a) apply to an application for the amendment of a Minister's records in the same way as they apply to an application for the amendment of an agency's records, and
- (b) apply to a Minister to whom an application is made for the amendment of that Minister's records in the same way as they apply to an agency to which an application is made for the amendment of the agency's records.

## **Part 5 External review**

### **Division 1 Review by the Ombudsman**

#### **52 Review by the Ombudsman**

- (1) The conduct of any person or body in relation to a determination made by an agency under this Act may be the subject of a complaint, and may (subject to this section) be investigated by the Ombudsman, under the [Ombudsman Act 1974](#).

- (2) The Ombudsman shall not investigate the conduct of any person or body in relation to a determination made by an agency under this Act:
  - (a) while the determination is subject to a right of review under section 34 or 47, or
  - (b) if the determination has been subject to a right of review under section 34 or 47 but no application for review of the determination was made while it was subject to that right, or
  - (c) while any relevant proceedings are before the Tribunal under Division 2.
- (3) The Ombudsman shall not exercise his or her powers under section 18, 19 or 20 of the *Ombudsman Act 1974* in respect of a document the subject of a Ministerial certificate.
- (4) The Ombudsman shall not disclose any exempt matter in the exercise of his or her functions under the *Ombudsman Act 1974* in relation to any investigation of a determination made by an agency under this Act.
- (5) The powers of the Ombudsman under the *Ombudsman Act 1974* do not extend to investigating the conduct of any person or body:
  - (a) in relation to the issue of a Ministerial certificate, or
  - (b) in relation to a determination of an application for access to a Minister's document or for the amendment of a Minister's records, or
  - (c) in relation to a determination of an application for access to an agency's document:
    - (i) if the complainant in respect of the determination has previously been a complainant under the *Ombudsman Act 1974* in relation to that agency, and
    - (ii) if the Ombudsman has had possession of the document, pursuant to the exercise of his or her powers under section 18, 19 or 20 of the *Ombudsman Act 1974*, in connection with the investigation of the previous complaint, or
  - (d) in relation to a determination made by the Ombudsman under this Act.
- (6) In a report under section 26 of the *Ombudsman Act 1974* of an investigation of a determination made by an agency under this Act, the Ombudsman may recommend:
  - (a) that the public release of the document concerned would, on balance, be in the public interest even though access has been duly refused because it is an exempt document, or
  - (b) that any general procedure of the agency in relation to dealing with applications made under this Act be changed to conform more closely to the objects and requirements of this Act.

- (7) Any part of a report under section 26 of the *Ombudsman Act 1974* of an investigation of a determination made by an agency under this Act (except any part of such a report on a question of law or containing a recommendation referred to in subsection (6)) is admissible in evidence in any proceedings before the Tribunal under this Act if that part of the report is relevant to the proceedings.

#### **52A Redetermination of applications following action by Ombudsman**

- (1) An agency may, under this section, review a determination:
- (a) in accordance with a written suggestion made by the Ombudsman in the course of a formal investigation made under section 13 of the *Ombudsman Act 1974*, or in the course of a preliminary inquiry referred to in section 13AA of that Act, being an investigation or inquiry that is undertaken as the result of a complaint, or
  - (b) as a result of a written undertaking given in a conciliation under section 13A of that Act, or
  - (c) in accordance with a recommendation given by the Ombudsman in accordance with that Act.
- (2) The review is to be conducted under section 34 or 47, as the case requires, as if the suggestion, undertaking or recommendation were an application referred to in that section. However, section 34 (3) and (5) and section 47 (3) and (5) do not apply to the review.
- (3) Despite any other provision of this Act, there is no right to complain to the Ombudsman in respect of any determination arising out of a review under this section.

### **Division 2 Reviews by the Tribunal**

#### **52B Definitions**

In this Division:

**access applicant** means a person who has made an access application.

**access application** means an application for:

- (a) access to a document of an agency or Minister, or
- (b) an amendment to an agency's or Minister's records.

**review applicant** means a person who has applied to the Tribunal under section 53 for a review of a determination.

**review application** means an application made to the Tribunal under section 53.

### **53 Right to make a review application**

- (1) A person who is aggrieved by a determination made by an agency or Minister under section 24 or 43 may apply to the Tribunal for a review of the determination.
- (2) A review application may not be made:
  - (a) while the determination is subject to a right of review under section 34 or 47, or
  - (b) if the determination has been subject to a right of review under section 34 or 47 but no application for such a review of the determination was made while it was subject to that right, or
  - (c) while any relevant complaint is being investigated by the Ombudsman.
- (3) For the purposes of this section, a person is aggrieved by a determination:
  - (a) in the case of a determination that relates to an access application made by the person under section 17, 34 or 36—if the determination is to the effect that:
    - (i) an agency or Minister refuses to give the person access to a document, or
    - (ii) access to a document is to be given to the person subject to deferral, or
    - (iii) access to a copy of a document from which exempt matter has been deleted is to be given to the person, or
    - (iv) access to a document is to be given to the person subject to a charge for dealing with the access application, or for giving access to a document, that the person considers to be unreasonable, or
    - (v) a charge for dealing with the access application is payable by the person being a charge that the person considers to have been unreasonably incurred, or
  - (b) in the case of a determination that relates to an application made by some other person under section 17, 34 or 36, in respect of a document to which one or more of the provisions of Division 2 of Part 3 applies—if:
    - (i) an agency or Minister should have, but has not, taken such steps as are reasonably practicable to obtain the views of the person as to whether or not the document is an exempt document by virtue of any one or more of the provisions of Part 2 of Schedule 1, or
    - (ii) an agency or Minister should have, and has, taken such steps but the determination is not in accordance with the views of the person, or
  - (c) in the case of a determination that relates to an access application made by the person under section 40, 47 or 49—the determination is to the effect that an



agency or Minister refuses to amend the agency's records or that Minister's records, as the case may be, in accordance with the application,

and the determination has been made as a consequence of a review under section 34 or 47 or has not been subject to a right of review under either of those sections.

- (4) In relation to decisions under this Act that are reviewable decisions under the *Administrative Decisions Tribunal Act 1997*:
- (a) the procedures for internal reviews provided by this Act apply to the exclusion of section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997*, and
  - (b) any reference in the *Administrative Decisions Tribunal Act 1997* to an internal review of a reviewable decision under that Act is taken, in its application to a decision made under this Act, to be a reference to an internal review under this Act.
- (5) The provisions of this Division apply to a review application to the exclusion of section 55 (1) (d), section 58 and Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

#### **54 Time within which review applications to be made**

A review application is to be made:

- (a) except as provided by paragraph (b)—within 60 days after notice of the determination to which it relates is given to the access applicant, or
- (b) if a complaint is made to the Ombudsman in relation to the determination—within that period of 60 days and:
  - (i) the Ombudsman refuses to investigate the conduct complained of or discontinues an investigation of that conduct within 60 days after the complainant is informed of that fact, or
  - (ii) the Ombudsman completes an investigation of the conduct complained of within 60 days after the results of the investigation are reported to the complainant.

#### **55 Procedure for dealing with exempt matter**

In determining a review application, the Tribunal:

- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any exempt matter, and
- (b) is to, where in the opinion of the Tribunal it is necessary to do so in order to prevent the disclosure of any exempt matter, receive evidence and hear argument in the absence of the public, the review applicant and the applicant's representative.

## **56 Delayed determinations**

- (1) This section applies to a determination that, by virtue of section 24 (2), 34 (6), 43 (2) or 47 (6), is to be taken to have been made by an agency or Minister.
- (2) If a review application is made in relation to a determination to which this section applies, the Tribunal may, on the application of the agency or Minister concerned, make an order allowing further time to the agency or Minister to deal with the access application to which the determination relates.
- (3) Such an order may be made subject to such conditions as the Tribunal thinks fit, including a condition that:
  - (a) if a determination to give access to the document concerned is made during the further time allowed by the order:
    - (i) any charge that would otherwise be payable in relation to the giving of access to the document is to be reduced or waived, and
    - (ii) the review applicant may apply to the Tribunal for an order that the applicant's costs in the proceedings for review are to be paid by the agency or Minister concerned, or
  - (b) if a determination to amend the records concerned is made during the further time allowed by the order the review applicant may apply to the Tribunal for an order that the applicant's costs in the proceedings for review are to be paid by the agency or Minister concerned.
- (4) If:
  - (a) a review application is made to the Tribunal in relation to a determination to which this section applies (being a determination referred to in section 24 (2) or 34 (6)), and
  - (b) the agency or Minister makes a decision, before the Tribunal has disposed of the review application, that:
    - (i) access to the document concerned is to be given to the review applicant, but subject to deferral, or
    - (ii) the document concerned is an exempt document and access to a copy of the document from which exempt matter has been deleted is to be given to the review applicant, or
    - (iii) access to the document concerned is to be given, but subject to a charge for dealing with the application, or for giving access to the document, that the review applicant considers to be unreasonable, or

- (iv) a charge for dealing with the application is payable by the review applicant, being a charge that the applicant considers to have been unreasonably incurred,

the Tribunal may, on the application of the review applicant, deal with the review application as if the decision were a determination under section 24 (1) and as if the review application were a review application against such a determination.

### **57 Consideration of restricted documents**

- (1) The Tribunal may, on the application of the review applicant, consider the grounds on which it is claimed that a document is a restricted document, but only if the document is not subject to a Ministerial certificate.
- (2) In any proceedings under this section, the Tribunal is, on the application of the Minister administering this Act, or the agency or Minister concerned, to receive evidence and hear argument in the absence of:
  - (a) the public, and
  - (b) the review applicant, and
  - (c) if in the opinion of the Tribunal it is necessary to do so to prevent the disclosure of any exempt matter the review applicant's representative.
- (3) If the Tribunal is not satisfied, by evidence on affidavit or otherwise, that there are reasonable grounds for the claim, it may require the document to be produced in evidence before it.
- (4) If, after considering any document produced before it, the Tribunal is still not satisfied that there are reasonable grounds for the claim, the Tribunal is to reject the claim when determining the review application.
- (5) The Tribunal is not to reject the claim unless it has given the Minister administering this Act a reasonable opportunity to appear and be heard in relation to the matter.
- (6) For the purposes of any proceedings under this section, the Minister administering this Act is a party to the proceedings.

### **58 Tribunal may report improper conduct**

If, as a result of a review application, the Tribunal is of the opinion that an officer of an agency has failed to exercise in good faith a function conferred or imposed on the officer by or under this Act, the Tribunal may take such measures as it considers appropriate to bring the matter to the attention of the responsible Minister for the agency.

## **Division 3 Review by the Supreme Court**

### **58A Review by the Supreme Court**

- (1) The Supreme Court may, on the application of the review applicant in proceedings before the Tribunal under Division 2, consider the grounds on which it is claimed that a document that is the subject of a Ministerial certificate is a restricted document.
- (2) In any proceedings under this section, the Supreme Court is, on the application of the Minister administering this Act, or the agency or Minister concerned, to receive evidence and hear argument in the absence of:
  - (a) the public,
  - (b) the review applicant, and
  - (c) if in the opinion of the Supreme Court it is necessary to do so to prevent the disclosure of any exempt matter—the review applicant’s representative.
- (3) For the purposes of any proceedings under this section, the Minister administering this Act is a party to the proceedings.

### **58B Consideration of documents the subject of a Ministerial certificate**

- (1) If, in proceedings under section 58A, the Supreme Court is not satisfied, by evidence on affidavit or otherwise, that there are reasonable grounds for the claim that the document is a restricted document, it may require the document to be produced in evidence before it.
- (2) If, after considering any document produced before it, the Supreme Court is still not satisfied that there are reasonable grounds for the claim, the Supreme Court is to make an order to that effect and remit the matter to the Tribunal.
- (3) The Supreme Court is not to make such an order unless it has given the Minister administering this Act a reasonable opportunity to appear and be heard in relation to the matter.
- (4) A Ministerial certificate which is the subject of an order under this section:
  - (a) subject to paragraph (b)—ceases to have effect when the order takes effect, or
  - (b) in the case of a certificate that states that the document is a restricted document by virtue of clause 1 (Cabinet documents) or clause 2 (Executive Council documents) of Part 1 of Schedule 1—ceases to have effect at the end of the period of 28 days after the order is made, unless the certificate is confirmed in accordance with section 58C.
- (5) If the Minister administering this Act withdraws the Ministerial certificate before the end of the period of 28 days after the order is made, the Minister must, as soon as practicable, cause notice to be served on the review applicant, and on the agency or

Minister concerned, that the certificate is no longer in force.

### **58C Confirmation of a Ministerial certificate for Cabinet and Executive Council documents**

- (1) A Ministerial certificate that is the subject of an order under section 58B may be confirmed by the Minister administering this Act, but only if it is a certificate to which this section applies.
- (2) This section applies to a Ministerial certificate that states that the specified document is a restricted document by virtue of clause 1 (Cabinet documents) or clause 2 (Executive Council documents) of Part 1 of Schedule 1.
- (3) The Minister administering this Act must cause notice of the confirmation to be given to the agency or Minister concerned.
- (4) The notice must be given before the end of 28 days after an order is made by the Supreme Court in relation to the Ministerial certificate.
- (5) The notice must specify:
  - (a) the reasons for the Minister's decision to confirm the certificate, and
  - (b) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based.
- (6) The Minister must cause a copy of the notice to be given to the review applicant and a further copy to be tabled in each House of Parliament within 5 sitting days after the giving of the notice.
- (7) Nothing in this section requires any matter to be included in a notice if it is of such a nature that its inclusion in the notice would cause the notice to be an exempt document.

## **Part 6 Miscellaneous**

### **59 Ministerial certificates**

- (1) A certificate that is signed by the Minister and that states that a specified document is a restricted document by virtue of a specified provision of Part 1 of Schedule 1 shall, except for the purposes of Division 3 of Part 5, be taken to be conclusive evidence that the document is a restricted document by virtue of that provision.
- (1A) A certificate under this section must specify:
  - (a) the reasons for the Minister's decision that the document is a restricted document, and
  - (b) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based.

- (1B) A copy of a certificate under this section is to be given to an applicant seeking access to the document concerned. Such a copy is, for the purposes of section 28 (2) (e), sufficient notice to the applicant of the reasons for the refusal of access and the relevant findings underlying those reasons.
- (2) A certificate under this section ceases to have effect at the end of 2 years after it is signed by the Minister unless it is sooner withdrawn by the Minister.
- (3) Nothing in subsection (2) prevents the Minister from issuing a further certificate in respect of the same document.
- (4) Nothing in this section requires any matter to be included in a certificate if it is of such a nature that its inclusion in the certificate would cause the certificate to be an exempt document.

#### **59A Public interest**

For the purpose of determining under this Act whether the disclosure of a document would be contrary to the public interest it is irrelevant that the disclosure may:

- (a) cause embarrassment to the Government or a loss of confidence in the Government, or
- (b) cause the applicant to misinterpret or misunderstand the information contained in the document because of an omission from the document or for any other reason.

#### **59B Extension of 21 day period for dealing with applications**

- (1) This section applies to a period of 21 days referred to in section 18 (3), 21 (6), 24 (2), 37 (2), 41 (3), 43 (2) or 50 (2).
- (2) If the person dealing with an application under this Act determines in writing that the special circumstances of the case make it necessary to extend any such period of 21 days:
  - (a) the period is taken to be extended by a further period of 14 days, and
  - (b) the person must, as soon as practicable, inform the applicant that the period has been so extended.
- (3) The only special circumstances that may be relied on to extend any such period of 21 days are as follows:
  - (a) the necessity to consult any other person or body under Division 2 of Part 3,
  - (b) the necessity to locate and retrieve the relevant document from archived documents,
  - (c) any other special circumstances prescribed by the regulations.

## **60 Service of notices**

A notice that an agency or Minister is required by this Act to cause to be given to a person:

- (a) may be served personally or by means of a letter posted to the person at the person's address last known to the agency or Minister, and
- (b) shall, if it is served by means of a letter, be taken to have been given to the person at the end of the fifth day after the letter was posted to the person.

## **61 Burden of proof**

In any proceedings concerning a determination made under this Act by an agency or Minister, the burden of establishing that the determination is justified lies on the agency or Minister.

## **62 Agency taken to have made determinations**

For the purposes of any proceedings, a determination under this Act that has been made by an officer of an agency or a member of a Minister's staff shall be taken to have been made by the agency or Minister concerned.

## **63 Proceedings may be taken etc in the name of the principal officer of an agency**

- (1) All proceedings by or on behalf of an agency (being proceedings arising under this Act) may be commenced and maintained in the name of the principal officer of the agency, as nominal plaintiff for the agency, and may be continued until their final determination regardless of any change in the office of the principal officer during the course of the proceedings.
- (2) All proceedings against an agency (being proceedings arising under this Act) may be commenced and maintained against the principal officer of the agency, as nominal defendant for the agency, and may be continued until their final determination regardless of any change in the office of the principal officer during the course of the proceedings.
- (3) All expenses incurred by the principal officer of an agency in relation to proceedings under this Act in which the principal officer is the nominal plaintiff or nominal defendant for the agency shall be paid for by the agency, and the principal officer shall not be personally liable for payment of those expenses or any part of them.

## **64 Protection in respect of actions for defamation or breach of confidence**

- (1) If access to a document is given pursuant to a determination under this Act, and if the person by whom the determination is made believes in good faith, when making the determination, that this Act permits or requires the determination to be made:

- (a) no action for defamation or breach of confidence lies against the Crown, an

agency, an officer of an agency, a Minister or a member of a Minister's staff by reason of the making of the determination or the giving of access, and

(b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of access lies against the author of the document or any other person by reason of the author or other person having supplied the document to an agency or Minister.

(2) Neither the giving of access to a document pursuant to a determination under this Act nor the making of such a determination shall be taken to constitute, for the purposes of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the document or its contents by the person to whom access is given.

### **65 Protection in respect of certain criminal actions**

If access to a document is given pursuant to a determination under this Act, and if the person by whom the determination is made believes in good faith, when making the determination, that this Act permits or requires the determination to be made, neither the person by whom the determination is made nor any other person concerned in giving access to the document is guilty of an offence merely because of the making of the determination or the giving of access.

### **66 Personal liability**

No matter or thing done:

- (a) by an agency, the principal officer of an agency or a Minister, or
- (b) by any person acting under the direction of an agency, the principal officer of an agency or a Minister,

shall, if the matter or thing was done in good faith for the purposes of executing this Act, subject the principal officer or Minister, or any person so acting, personally to any action, liability, claim or demand.

### **67 Fees and charges**

- (1) The Minister may, by order published in the Gazette, establish guidelines in relation to the imposition, collection, remittal and waiver of fees and charges under this Act.
- (2) In establishing guidelines under this section, the Minister shall have regard to:
  - (a) the need to ensure that disadvantaged persons are not precluded from exercising their rights under this Act merely because of financial hardship, and
  - (b) the need to ensure that fees and charges should reflect the costs incurred by agencies and Ministers in exercising their functions under this Act.



- (3) An agency or Minister, in determining the amount of any fee or charge under this Act, shall not contravene any guidelines in force under this section.
- (3A) The guidelines in force under this section are to be taken into account:
  - (a) by the Tribunal when reviewing a determination described in section 53 (3) (a) (iv) or (v), and
  - (b) by the Ombudsman when reviewing the conduct of a person or body in relation to such a determination.
- (3B) A charge under this Act for dealing with an application or for giving access to a document is not to include any amount for additional time spent in searching for a document that was lost or misplaced.
- (4) Any fee or charge that is due to an agency or Minister under this Act may be recovered as a debt or liquidated demand in a court of competent jurisdiction.
- (5) Fees or charges received by agencies or Ministers under this Act do not form part of the Consolidated Fund and may be used by the agencies or Ministers to defray the costs incurred by the agencies or Ministers in exercising their functions under this Act.

## **68 Reports to Parliament**

- (1) Each agency must, within 4 months after the end of each reporting year, prepare an annual report on the agency's obligations under this Act for submission to the Minister responsible for the agency.
- (2) Each Minister must, on or before 31 August each year, furnish the Minister administering this Act with such information concerning the Minister's obligations under this Act as the Minister administering this Act may require.
- (3) The Minister administering this Act must, on or before 31 December each year, prepare an annual report on each Minister's obligations under this Act.
- (4) An annual report under this section must be tabled in each House of Parliament by the relevant Minister as soon as practicable after it is prepared unless it is included in an annual report prepared for the purposes of the *Annual Reports (Departments) Act 1985* or the *Annual Reports (Statutory Bodies) Act 1984*.
- (5) The annual report referred to in subsection (3) may be included in the annual report for the Premier's Department prepared for the purposes of the *Annual Reports (Departments) Act 1985*.
- (6) The regulations may make provision for:
  - (a) the information to be included in annual reports, and
  - (b) the form in which annual reports are to be prepared.

- (7) In this section, a reference to the reporting year of an agency is a reference to:
- (a) the financial year of the agency for the purposes of the *Annual Reports (Departments) Act 1985* or the *Annual Reports (Statutory Bodies) Act 1984*, or
  - (b) if the agency does not have a financial year for the purposes of either of those Acts, the year ending 30 June.

## **69 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **70, 71 (Repealed)**

## **Schedule 1 Exempt documents**

(Section 6 (1))

### **Part 1 Restricted documents**

#### **1 Cabinet documents**

- (1) A document is an exempt document:
- (a) if it is a document that has been prepared for submission to Cabinet (whether or not it has been so submitted), or
  - (b) if it is a preliminary draft of a document referred to in paragraph (a), or
  - (c) if it is a document that is a copy of or of part of, or contains an extract from, a document referred to in paragraph (a) or (b), or
  - (d) if it is an official record of Cabinet, or
  - (e) if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet.
- (2) A document is not an exempt document by virtue of this clause:
- (a) if it merely consists of factual or statistical material that does not disclose information concerning any deliberation or decision of Cabinet, or
  - (b) if 10 years have passed since the end of the calendar year in which the document came into existence.
- (3) Subclause (2) (b) does not apply to a document that came into existence before the commencement of this clause.
- (4) In this clause, a reference to Cabinet includes a reference to a committee of Cabinet

and to a subcommittee of a committee of Cabinet.

## **2 Executive Council documents**

(1) A document is an exempt document:

- (a) if it is a document that has been prepared for submission to the Executive Council (whether or not it has been so submitted), or
- (b) if it is a preliminary draft of a document referred to in paragraph (a), or
- (c) if it is a document that is a copy of or of part of, or contains an extract from, a document referred to in paragraph (a) or (b), or
- (d) if it is an official record of the Executive Council, or
- (e) if it contains matter the disclosure of which would disclose information concerning any deliberation or advice of the Executive Council.

(2) A document is not an exempt document by virtue of this clause:

- (a) if it merely consists of:
  - (i) matter that appears in an instrument that has been made or approved by the Governor and that has been officially published (whether in the Gazette or elsewhere), or
  - (ii) factual or statistical material that does not disclose information concerning any deliberation or advice of the Executive Council, or
- (b) if 10 years have passed since the end of the calendar year in which the document came into existence.

(3) Subclause (2) (b) does not apply to a document that came into existence before the commencement of this clause.

## **3 (Repealed)**

## **4 Documents affecting law enforcement and public safety**

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

- (a) to prejudice the investigation of any contravention or possible contravention of the law (including any revenue law) whether generally or in a particular case, or
- (b) to enable the existence or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be ascertained, or
- (c) to endanger the life or physical safety of any person, or

- (d) to prejudice the fair trial of any person or the impartial adjudication of any case, or
  - (e) to prejudice the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law (including any revenue law), or
  - (f) to prejudice the maintenance or enforcement of any lawful method or procedure for protecting public safety, or
  - (g) to endanger the security of any building, structure or vehicle, or
  - (h) to prejudice any system or procedure for the protection of persons or property, or
  - (i) to facilitate the escape from lawful custody of any person.
- (2) A document is not an exempt document by virtue of subclause (1):
- (a) if it merely consists of:
    - (i) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law, or
    - (ii) a document containing a general outline of the structure of a programme adopted by an agency for dealing with any contravention or possible contravention of the law, or
    - (iii) a report on the degree of success achieved in any programme adopted by an agency for dealing with any contravention or possible contravention of the law, or
    - (iv) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law), or
    - (v) a report on a law enforcement investigation that has already been disclosed to the person or body the subject of the investigation, and
  - (b) if disclosure of the document would, on balance, be in the public interest.
- (3) A document is an exempt document if it is a document that has been created by:
- (a) the former Information and Intelligence Centre of the Police Service or the former State Intelligence Group, or
  - (b) the Counter Terrorist Co-ordination Command of NSW Police, the former Protective Security Group of the Police Service, the former Special Branch of the Police Service or the former Bureau of Criminal Intelligence.

(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) In this clause, a reference to the law includes a reference to the law of the Commonwealth, the law of another State and the law of another country.

#### **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.

(3) A document is not an exempt document by virtue of subclause (2):

(a) if it merely consists of:

(i) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law, or

(ii) a report on a law enforcement investigation that has already been disclosed to the person or body the subject of the investigation, and

(b) if disclosure of the document would, on balance, be in the public interest.

(4) In this clause, a reference to the law includes a reference to the law of the Commonwealth, the law of another State and the law of another country.

## **Part 2 Documents requiring consultation**

### **5 Documents affecting inter-governmental relations**

A document is an exempt document if it contains matter:

(a) the disclosure of which:

(i) could reasonably be expected to cause damage to relations between the

Government of New South Wales and the Government of the Commonwealth or of another State, or

- (ii) would divulge information communicated in confidence by or on behalf of the Government of the Commonwealth or of another State to the Government of New South Wales or to an agency or other person or body receiving the communication on behalf of the Government of New South Wales, and

(b) the disclosure of which would, on balance, be contrary to the public interest.

## **6 Documents affecting personal affairs**

- (1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (whether living or deceased).
- (2) A document is not an exempt document by virtue of this clause merely because it contains information concerning the person by or on whose behalf an application for access to the document is being made.

## **7 Documents affecting business affairs**

- (1) A document is an exempt document:
  - (a) if it contains matter the disclosure of which would disclose trade secrets of any agency or any other person, or
  - (b) if it contains matter the disclosure of which:
    - (i) would disclose information (other than trade secrets) that has a commercial value to any agency or any other person, and
    - (ii) could reasonably be expected to destroy or diminish the commercial value of the information, or
  - (c) if it contains matter the disclosure of which:
    - (i) would disclose information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person, and
    - (ii) could reasonably be expected to have an unreasonable adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency.
- (2) A document is not an exempt document by virtue of this clause merely because it contains matter concerning the business, professional, commercial or financial affairs of the agency or other person by or on whose behalf an application for access to the document is being made.

## **8 Documents affecting the conduct of research**

- (1) A document is an exempt document if it contains matter the disclosure of which:
  - (a) would disclose the purpose or results of research (including research that is yet to be commenced or yet to be completed), and
  - (b) could reasonably be expected to have an unreasonable adverse effect on the agency or other person by or on whose behalf the research is being, or is intended to be, carried out.
- (2) A document is not an exempt document by virtue of this clause merely because it contains matter concerning research that is being, or is intended to be, carried out by the agency or other person by or on whose behalf an application for access to the document is being made.

## **Part 3 Other documents**

### **9 Internal working documents**

- (1) A document is an exempt document if it contains matter the disclosure of which:
  - (a) would disclose:
    - (i) any opinion, advice or recommendation that has been obtained, prepared or recorded, or
    - (ii) any consultation or deliberation that has taken place,in the course of, or for the purpose of, the decision-making functions of the Government, a Minister or an agency, and
  - (b) would, on balance, be contrary to the public interest.
- (2) A document is not an exempt document by virtue of this clause if it merely consists of:
  - (a) matter that appears in an agency's policy document, or
  - (b) factual or statistical material.

### **10 Documents subject to legal professional privilege**

- (1) A document is an exempt document if it contains matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (2) A document is not an exempt document by virtue of this clause merely because it contains matter that appears in an agency's policy document.

### **11 Documents relating to judicial functions etc**

A document is an exempt document if it contains matter the disclosure of which would

disclose:

- (a) matter relating to the judicial functions of a court or tribunal, or
- (b) matter prepared for the purposes of proceedings (including any transcript of the proceedings) that are being heard or are to be heard before a court or tribunal, or
- (c) matter prepared by or on behalf of a court or tribunal (including any order or judgment made or given by the court or tribunal) in relation to proceedings that are being heard or have been heard before the court or tribunal.

## **12 Documents the subject of secrecy provisions**

- (1) A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act, whether or not the provision that creates the offence is subject to specified qualifications or exceptions.
- (2) A document is not an exempt document by virtue of this clause unless disclosure of the matter contained in the document, to the person by or on whose behalf an application for access to the document is being made, would constitute such an offence.

## **13 Documents containing confidential material**

A document is an exempt document:

- (a) if it contains matter the disclosure of which would found an action for breach of confidence, or
- (b) if it contains matter the disclosure of which:
  - (i) would otherwise disclose information obtained in confidence, and
  - (ii) could reasonably be expected to prejudice the future supply of such information to the Government or to an agency, and
  - (iii) would, on balance, be contrary to the public interest.

## **14 Documents affecting the economy of the State**

A document is an exempt document if it contains matter the disclosure of which:

- (a) could reasonably be expected:
  - (i) to have a substantial adverse effect on the ability of the Government or an agency to manage the economy of the State, or
  - (ii) to expose any person or class of persons to an unfair advantage or disadvantage as a result of the premature disclosure of information concerning any proposed action or inaction of the Parliament, the Government or an agency in the course



of, or for the purpose of, managing the economy of the State, and

(b) would, on balance, be contrary to the public interest.

### **15 Documents affecting financial or property interests**

A document is an exempt document if it contains matter the disclosure of which:

(a) could reasonably be expected to have a substantial adverse effect on the financial or property interests of the State or an agency, and

(b) would, on balance, be contrary to the public interest.

### **16 Documents concerning operations of agencies**

A document is an exempt document if it contains matter the disclosure of which:

(a) could reasonably be expected:

(i) to prejudice the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency, or

(ii) to prejudice the attainment of the objects of any test, examination or audit conducted by an agency, or

(iii) to have a substantial adverse effect on the management or assessment by an agency of the agency's personnel, or

(iv) to have a substantial adverse effect on the effective performance by an agency of the agency's functions, or

(v) to have a substantial adverse effect on the conduct of industrial relations by an agency, and

(b) would, on balance, be contrary to the public interest.

### **17 Documents subject to contempt etc**

A document is an exempt document if it contains matter the public disclosure of which would, but for any immunity of the Crown:

(a) constitute contempt of court, or

(b) contravene any order or direction of a person or body having power to receive evidence on oath, or

(c) infringe the privilege of Parliament.

### **18 Documents arising out of companies and securities legislation**

(1) A document is an exempt document if it contains matter that appears in:

- (a) a document for the purposes of the Ministerial Council for Companies and Securities that has been prepared by, or received by an agency or Minister from, the Commonwealth or another State, or
  - (b) a document the disclosure of which would disclose the deliberations or decisions of the Ministerial Council for Companies and Securities, other than a document by which a decision of the Council has been officially published, or
  - (c) a document that has been furnished to the National Companies and Securities Commission by the Commonwealth, or by this or any other State, and that relates solely to the functions of the Commission in relation to the law of the Commonwealth or the law of this or any other State, or
  - (d) a document (other than a document referred to in paragraph (c)) that is held by the National Companies and Securities Commission and that relates solely to the exercise of the functions of the Commission under the law of the Commonwealth or the law of this or any other State.
- (2) A document is an exempt document if it contains matter that appears in:
- (a) a document for the purposes of the Ministerial Council for Corporations that has been prepared by, or received by an agency or Minister from, the Commonwealth or another State, or
  - (b) a document the disclosure of which would disclose the deliberations or decisions of the Ministerial Council for Corporations, other than a document by which a decision of the Council has been officially published, or
  - (c) a document that has been furnished to the Australian Securities and Investments Commission by the Commonwealth, or by this or any other State, and that relates solely to the functions of the Commission in relation to the law of the Commonwealth or the law of this or any other State, or
  - (d) a document (other than a document referred to in paragraph (c)) that is held by the Australian Securities and Investments Commission and that relates solely to the exercise of the functions of the Commission under the law of the Commonwealth or the law of this or any other State.

(3) In this clause:

**Australian Securities and Investments Commission** means the body established by section 7 of the [Australian Securities and Investments Commission Act 1989](#) of the Commonwealth and continued in existence by section 261 of the [Australian Securities and Investments Commission Act 2001](#) of the Commonwealth.

**Ministerial Council for Corporations:**

- (a) means the Ministerial Council for Corporations originally established by the

Corporations Agreement dated 23 September 1997 between the Governments of the Commonwealth, the States and the Northern Territory, and

- (b) includes any body that is a continuation of, or a successor to, the Council under any subsequent agreement between those Governments.

## **19 Private documents in public library collections**

(1) A document is an exempt document:

- (a) if it has been created otherwise than by an agency, or otherwise than by a Minister, in relation to the functions of an agency, and
- (b) if it is held in a public library subject to a condition imposed by the person or body (not being an agency or Minister) by whom it has been placed in the possession of the library:
  - (i) prohibiting its disclosure to members of the public generally or to certain members of the public, or
  - (ii) restricting its disclosure to certain members of the public.

(2) In this clause, a reference to a public library includes a reference to:

- (a) an agency referred to in section 11 (1) (a)–(e), and
- (b) a library that forms part of a university, college of advanced education or college of technical and further education.

## **20 Miscellaneous documents**

(1) A document is an exempt document if it contains matter the disclosure of which would disclose:

- (a) matter relating to adoption procedures under the [Adoption Act 2000](#), or
- (b) information contained in the Register of Interests kept by the Premier pursuant to the Code of Conduct for Ministers of the Crown adopted by Cabinet, or
- (c) matter relating to the receipt of an amended or original birth certificate or of prescribed information under the [Adoption Act 2000](#), or
- (d) matter relating to a protected disclosure within the meaning of the [Protected Disclosures Act 1994](#), or
- (e) a write-off policy referred to in section 101 of the [Fines Act 1996](#), or
- (f) matter relating to an inquiry into a railway accident or incident under section 66 or 67 of the [Rail Safety Act 2002](#), or

- (g) matter relating to an inquiry into a transport accident or incident under section 46B of the *Passenger Transport Act 1990*.
- (2) Despite subclause (1) (f), a document containing matter referred to in that paragraph ceases to be an exempt document:
  - (a) in the case of a document containing matter relating to an inquiry under section 66 into an accident or incident that is not also the subject of an inquiry under section 67, if the inquiry under section 66 is included in a list forwarded to the Minister under that section, or
  - (b) in the case of a document containing matter relating to an inquiry under section 67, when the report into the inquiry is tabled before both Houses of Parliament.
- (3) Despite subclause (1) (g), a document containing matter referred to in that paragraph ceases to be an exempt document when the report into the inquiry is tabled before both Houses of Parliament.

## **21 Exempt documents under interstate Freedom of Information legislation**

- (1) A document is an exempt document:
  - (a) if it contains matter the disclosure of which would disclose information communicated to the Government of New South Wales by the Government of the Commonwealth or of another State, and
  - (b) if notice has been received from the Government of the Commonwealth or of the other State that the information is exempt matter within the meaning of a corresponding law of the Commonwealth or that other State.
- (2) In this clause, a reference to a corresponding law is a reference to:
  - (a) the *Freedom of Information Act 1982* of the Commonwealth, or
  - (b) the *Freedom of Information Act 1982* of Victoria.

## **22 Documents containing information confidential to Olympic Committees**

A document is an exempt document if it has been prepared by or received by the Sydney Organising Committee for the Olympic Games, the Olympic Co-ordination Authority or the Olympic Roads and Transport Authority and contains matter that is confidential to the International Olympic Committee or the Australian Olympic Committee.

## **23 Documents containing information relating to threatened species, Aboriginal objects and Aboriginal places**

A document is an exempt document if it is the subject of a declaration referred to in section 161 of the *National Parks and Wildlife Act 1974*.

## **24 Documents relating to threatened species conservation**

- (1) A document is an exempt document if it contains matter that the Director-General under the *Threatened Species Conservation Act 1995* has determined should not be disclosed to the public under section 146 of that Act.
- (2) A document is an exempt document if it contains matter that the Scientific Committee under the *Threatened Species Conservation Act 1995* has recommended to the Minister should not be disclosed to the public under section 146A of that Act and the Minister has accepted that recommendation.

## **25 Plans of management containing information relating to places or items of Aboriginal significance**

A plan of management, and a draft plan of management, for an area of community land under Division 2 of Part 2 of Chapter 6 of the *Local Government Act 1993* is an exempt document if it is the subject of a resolution of confidentiality referred to in section 36DA (2) of that Act.

## **Schedule 2 Exempt bodies and offices**

(Section 9)

The office of Auditor-General—investigative, audit and report functions.

The office of Director of Public Prosecutions—prosecuting functions.

The Independent Commission Against Corruption—corruption prevention, complaint handling, investigative and report functions.

The office of Public Trustee—functions exercised in the Public Trustee's capacity as executor, administrator or trustee.

The Treasury Corporation—borrowing, investment and liability and asset management functions.

The office of Ombudsman—the complaint handling, investigative and reporting functions of that office.

The office of Legal Services Commissioner—the complaint handling, investigative, review and reporting functions of that office.

The Health Care Complaints Commission—complaint handling, investigative and reporting functions in relation to a complaint that is in the course of being dealt with by the Commission.

The Health Conciliation Registry—conciliation functions.

The Child Death Review Team—all functions.

The Police Integrity Commission—corruption prevention, complaint handling, investigative and report functions.

The office of Inspector of the Police Integrity Commission—operational auditing, complaint handling,

investigative and report functions.

The FSS Trustee Corporation—investment functions.

The SAS Trustee Corporation—investment functions.

The Axiom Funds Management Corporation—investment functions exercised on behalf of trustees of superannuation funds.

The Department of Training and Education Co-ordination—functions relating to the storing of, reporting on or analysis of information with respect to the ranking or assessment of students who have completed the Higher School Certificate for entrance into tertiary institutions.

Universities—functions relating to dealing with information with respect to the ranking or assessment of students who have completed the Higher School Certificate for entrance into tertiary institutions.

Any body or office that exercises functions under the *National Electricity (NSW) Law* (including functions under the *National Electricity Code* referred to in that Law) on behalf of NECA (the company established under the *Corporations Law* under the corporate name of National Electricity Code Administrator Limited (ACN 073 942 775)) or NEMMCO (the company established under the *Corporations Law* under the corporate name National Electricity Market Management Company Limited (ACN 072 010 327))—those functions.

The office of Privacy Commissioner—the complaint handling, investigative and reporting functions of that office.

The Corporation constituted under the *Superannuation Administration Authority Corporatisation Act 1999*—functions exercised in the provision of superannuation scheme administration services, and related services, in respect of any superannuation scheme that is not a State public sector superannuation scheme.

The Independent Pricing and Regulatory Tribunal—complaint handling, investigative and reporting functions of the Tribunal in relation to competitive neutrality complaints.

The State Contracts Control Board—complaint handling, investigative and reporting functions of the Board in relation to competitive neutrality complaints.

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