

FREEDOM OF INFORMATION ACT 1982

ACT NO. 3 OF 1982 AS AMENDED

*AN ACT TO GIVE TO MEMBERS OF THE PUBLIC RIGHTS OF ACCESS TO OFFICIAL DOCUMENTS OF
THE GOVERNMENT OF THE COMMONWEALTH AND OF ITS AGENCIES*

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PART I—PRELIMINARY

1 Short title

This Act may be cited as the Freedom of Information Act 1982.

2 Commencement

The several Parts of this Act shall come into operation on such respective dates as are fixed by Proclamation.

3 Object - General

(1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth, by:

- (a) requiring agencies to publish the information; and
- (b) providing for a right of access to documents.

(2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:

- (a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;
- (b) increasing scrutiny, discussion, comment and review of the Government's activities.

(3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.

(4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

3A Objects—information or documents otherwise accessible

Scope

(1) This section applies if a Minister, or an officer of an agency, has the power to publish, or give access to, information or a document (including an exempt document) apart from under this Act.

Publication and access powers not limited

(2) The Parliament does not intend, by this Act, to limit that power, or to prevent or discourage the exercise of that power:

- (a) in the case of the power to publish the information or document—despite any restriction on the publication of the information or document under this Act; and
- (b) in the case of the power to give access to the information or document—whether or not access to the information or document has been requested under section 15.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

access grant decision has the meaning given by section 53B.

access refusal decision has the meaning given by section 53A.

ACT enactment means an enactment as defined by section 3 of the Australian Capital Territory (Self-Government) Act 1988.

action, if the action is taken by a person or agency, has the same meaning as in the Ombudsman Act 1976.

affected third party has the meaning given by section 53C.

agency means a Department, or a prescribed authority.

applicant means a person who has made a request.

authorised person has the meaning given by section 77.

Cabinet includes a committee of the Cabinet.

Cabinet notebook means a notebook or other like record that contains notes of discussions or deliberations taking place in a meeting of the Cabinet, if the notes were made in the course of those discussions or deliberations by, or under the authority of, the Secretary to the Cabinet.

complainant has the meaning given by subsection 70(1).

Commonwealth contract means a contract, to which the Commonwealth or an agency is or was a party, under which services are to be, or were to be, provided to an agency.

Conditionally exempt: a document is conditionally exempt if Division 3 of Part IV (public interest conditional exemptions) applies to the document.

contracted service provider, for a Commonwealth contract, means an entity that is or was:

- (a) a party to the Commonwealth contract; and
- (b) responsible for the provision of services to an agency under the Commonwealth contract.

Defence Imagery and Geospatial Organisation means that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation.

Defence Intelligence Organisation means that part of the Department of Defence known as the Defence Intelligence Organisation.

Defence Signals Directorate means that part of the Department of Defence known as the Defence Signals Directorate.

Department means a Department of the Australian Public Service that corresponds to a Department of State of the Commonwealth

document includes:

- (a) any of, or any part of any of, the following things:
 - (i) any paper or other material on which there is writing;
 - (ii) a map, plan, drawing or photograph;
 - (iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;
 - (v) any article on which information has been stored or recorded, either mechanically or electronically;
 - (vi) any other record of information; or
- (b) any copy, reproduction or duplicate of such a thing; or
- (c) any part of such a copy, reproduction or duplicate;

but does not include:

- (d) material maintained for reference purposes that is otherwise publicly available; or
- (e) Cabinet notebooks.

document of an agency: a document is a document of an agency if:

- (a) the document is in the possession of the agency, whether created in the agency or received in the agency; or
- (b) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document.

edited copy has the meaning given by section 22 (access to edited copies with exempt matter deleted)..

electronic communication has the same meaning as in the Electronic Transactions Act 1999.

enactment means, subject to section 4A:

- (a) an Act;
- (b) an Ordinance of the Australian Capital Territory; or
- (c) an instrument (including rules, regulations or by-laws) made under an Act or under such an Ordinance and includes an enactment as amended by another enactment.

engage in conduct means:

- (a) do an act; or
- (b) omit to do an act.

exempt document means:

- (a) a document that is exempt for the purposes of Part IV (exempt documents) (see section 31B); or
- (b) a document in respect of which, by virtue of section 7, an agency, person or body is exempt from the operation of this Act; or
- (c) an official document of a Minister that contains some matter that does not relate to the affairs of an agency or of a Department of State.

exempt Internet-content document means:

- (a) a document containing information (within the meaning of Schedule 5 to the *Broadcasting Services Act 1992*) that:
 - (i) has been copied from the Internet; and
 - (ii) was offensive Internet content when it was accessible on the Internet; or
- (b) a document that sets out how to access, or that is likely to facilitate access to, offensive Internet content (for example: by setting out the name of an Internet site, an IP address, a URL, a password, or the name of a newsgroup).

exempt matter means matter the inclusion of which in a document Definitions Inserted ED Sch4nt causes the document to be an exempt document.

IC review has the meaning given by section 54G.

IC reviewable decision has the meaning given by section 54K.

IC review applicant has the meaning given by section 54J.

IC review application has the meaning given by section 54H.

implementation notice has the meaning given by section 89.

Information Commissioner has the meaning given by the Information Commissioner Act 2009.

intelligence agency document has the meaning given by paragraph 7(2A)(a).

internal review has the meaning given by sections 54 and 54A

internal review applicant has the meaning given by section 54B

investigation recommendations has the meaning given by section 88.

investigation results has the meaning given by section 87.)...

offensive Internet content means Internet content (within the meaning of Schedule 5 to the *Broadcasting Services Act 1992*) that is:

- (a) prohibited content (within the meaning of that Schedule); or
- (b) potential prohibited content (within the meaning of that Schedule).

officer, in relation to an agency, includes a member of the agency or a member of the staff of the agency.

official document of a Minister or ***official document of the Minister*** means a document that is in the possession of a Minister, or that is in the possession of the Minister concerned, as the case requires, in his or her capacity as a Minister, being a document that relates to the affairs of an agency or of a Department of State and, for the purposes of this definition, a Minister shall be deemed to be in possession of a document that has passed from his or her possession if he or she is entitled to access to the document and the document is not a document of an agency.

Ombudsman means the Commonwealth Ombudsman.

Operational information has the meaning given by section 8A.

Ordinance, in relation to the Australian Capital Territory, includes a law of a State that applies, or the provisions of a law of a State that apply, in the Territory by virtue of an enactment (other than a law that is, or provisions that are an ACT enactment).

personal information means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

prescribed authority means:

- (a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment or an Order-in-Council, other than:
 - (i) an incorporated company or association;
 - (ii) a body that, under subsection (2), is not to be taken to be a prescribed authority for the purposes of this Act;
 - (iii) the Australian Capital Territory House of Assembly;
 - (iv) the Legislative Assembly of the Northern Territory or the Executive Council of the Northern Territory;
 - (v) the Legislative Assembly of the Territory of Norfolk Island; or
 - (vi) a Royal Commission;
- (b) any other body, whether incorporated or unincorporated, declared by the regulations to be a prescribed authority for the purposes of this Act, being:
 - (i) a body established by the Governor-General or by a Minister; or
 - (ii) an incorporated company or association over which the Commonwealth is in a position to exercise control;
- (c) subject to subsection (3), the person holding, or performing the duties of, an office established by an enactment or an Order-in-Council; or
- (d) the person holding, or performing the duties of, an appointment declared by the regulations to be an appointment the holder of which is a prescribed authority for the purposes of this Act, being an appointment made by the Governor-General, or by a Minister, otherwise than under an enactment or an Order-in-Council.

practical refusal reason has the meaning given by section 24AA.

principal officer means:

- (a) in relation to a Department—the person holding, or performing the duties of, the office of Secretary of the Department; or
- (b) in relation to a prescribed authority—whichever of the following applies:
 - (i) if the authority is constituted by one person—that person;
 - (ii) if the authority is constituted by 2 or more persons—the person who is entitled to preside at any meeting of the authority at which he or she is present;
 - (iii) if the authority is an Agency (within the meaning of the Public Service Act 1999) other than a Department—the Agency Head (within the meaning of the Public Service Act 1999) of the authority;
 - (iv) if the regulations declare an office to be the principal office of the authority—the person holding, or performing the duties of, that office;
 - (v) in any other case—the person responsible for the day-to-day management of the authority

provided: services **provided** to an agency includes services that consist of the provision of services to other persons in connection with the performance of the functions, or the exercise of the powers, of the agency.

request means an application made under subsection 15(1).

respondent agency has the meaning given by subsections 69(2) and 70(2)

request consultation process has the meaning given in section 24AB.

responsible Minister means:

- (a) in relation to a Department—the Minister administering the relevant Department of State; or
- (b) in relation to a prescribed authority referred to in paragraph (a) of the definition of **prescribed authority**—the Minister administering the part of the enactment by which, or in accordance with the provisions of which, the prescribed authority is established; or
- (c) in relation to a prescribed authority referred to in paragraph (c) of that definition—the Minister administering the part of the enactment by which the office is established; or
- (d) in relation to any other prescribed authority—the Minister declared by the regulations to be the responsible Minister in respect of that authority;

review parties has the meaning given by section 55A.

run out: all of a person's opportunities for review under this Act in relation to an access grant decision have run out when:

- (a) the latest time for applying for an internal review or an IC review in relation to the decision has ended, if the person has not applied for either review; or
- (b) if the person has applied for an internal review in relation to the decision:
 - (i) the internal review is concluded; and
 - (ii) the time for applying for an IC review of the decision on internal review has ended, if the person has not applied for the IC review; or
- (c) if the person has applied for an IC review in relation to the decision:
 - (i) proceedings in relation to the IC review (including any proceedings in a court) are concluded; and
 - (ii) the time for applying to the Tribunal for a review in relation to the decision has ended, if the person has not applied for such a review; or
- (d) if the person has applied to the Tribunal for a review in relation to the decision—proceedings in relation to their view (including any proceedings in a court) are concluded.

State includes the Australian Capital Territory and the Northern Territory.

subcontractor, for a Commonwealth contract, means an entity:

- (a) that is or was a party to a contract (the **subcontract**):
 - (i) with a contracted service provider for the Commonwealth contract; or
 - (ii) with another subcontractor for the Commonwealth contract (under a previous application of this definition); and
- (b) that is, or was, responsible under the subcontract for the provision of services for the purposes (whether direct or indirect) of the Commonwealth contract to either of the following:
 - (i) an agency;
 - (ii) a contracted service provider for the Commonwealth contract.

Tribunal means the Administrative Appeals Tribunal.

vexatious applicant declaration has the meaning given by section 89K.

(2) An unincorporated body, being a board, council, committee, sub-committee or other body established by, or in accordance with the provisions of, an enactment for the purpose of assisting, or performing functions connected with, a prescribed authority shall not be taken to be a prescribed authority for the purposes of this Act, but shall be deemed to be comprised within that prescribed authority.

(3) A person shall not be taken to be a prescribed authority:

- (a) by virtue of his or her holding:
 - (i) an office of member of the Legislative Assembly for the Australian Capital Territory;
 - (ii) an office of member of the Legislative Assembly of the Northern Territory or of Administrator or of Minister of the Northern Territory; or

- (iii) an office of member of the Legislative Assembly of the Territory of Norfolk Island or of Administrator or Deputy Administrator of that Territory or an executive office created pursuant to section 12 of the *Norfolk Island Act 1979*; or
- (b) by virtue of his or her holding, or performing the duties of:
- (i) a prescribed office;
- (ii) an office the duties of which he or she performs as duties of his or her employment as an officer of a Department or as an officer of or under a prescribed authority;
- (iii) an office of member of a body; or
- (iv) an office established by an enactment for the purposes of a prescribed authority.
- (4) For the purposes of this Act, the Department of Defence shall be deemed to include:
- (a) the Defence Force;
- (b) the Australian Army Cadets;
- (c) the Australian Navy Cadets; and
- (d) the Australian Air Force Cadets.
- (5) Without limiting the generality of the expression *security of the Commonwealth*, that expression shall be taken to extend to:
- (a) matters relating to the detection, prevention or suppression of activities, whether within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth or of any country allied or associated with the Commonwealth; and
- (b) the security of any communications system or cryptographic system of the Commonwealth or of another country used for:
- (i) the defence of the Commonwealth or of any country allied or associated with the Commonwealth; or
- (ii) the conduct of the international relations of the Commonwealth.
- (6) Where an agency is abolished, then, for the purposes of this Act:
- (a) if the functions of the agency are acquired by another agency—any request made to the first-mentioned agency shall be deemed to have been made to, and any decision made by the first-mentioned agency in respect of a request made to it shall be deemed to have been made by, the other agency;
- (b) if the functions of the agency are acquired by more than one other agency—any request made to the first-mentioned agency shall be deemed to have been made to, and any decision made by the first-mentioned agency in respect of a request made to it shall be deemed to have been made by, whichever of those other agencies has acquired the functions of the first-mentioned agency to which the document the subject of the request most closely relates; and
- (c) if the documents of the agency are deposited with the Australian Archives—any request made to the agency shall be deemed to have been made to, and any decision made by the agency in respect of a request made by it shall be deemed to have been made by, the agency to the functions of which the document the subject of the request most closely relates.
- (7) If the agency to which a request is so deemed to have been made, or by which a decision upon a request is so deemed to have been made, was not itself in existence at the time when the request or decision was deemed so to have been made, then, for the purposes only of dealing with that request or decision under this Act, that agency shall be deemed to have been in existence at that time.
- (9) For the purposes of the application of the definition of *responsible Minister* in subsection (1) the reference in that definition to the Minister administering a Department is a reference to the Minister to whom the Department is responsible in respect of the matter in respect of which this Act is being applied.
- (10) To avoid doubt, information or matter communicated in the way mentioned in paragraph 33(b) includes information or matter so communicated pursuant to any treaty or formal instrument on the

reciprocal protection of classified information between the Government of the Commonwealth, or an authority of the Commonwealth, and:

- (a) a foreign government or an authority of a foreign government; or
- (b) an international organisation.

4A Certain legislation relating to Australian Capital Territory not to be enactment

- (1) ACT enactments are not enactments.
- (2) The Australian Capital Territory (Self-Government) Act 1988 and the Canberra Water Supply (Googong Dam) Act 1974 are not enactments.
- (3) Part IV, sections 29 and 30, subsection 63(2), section 66 and Division 5 of Part X of the *Australian Capital Territory Planning and Land Management Act 1988* are not enactments.
- (4) Where the whole of an Act or Ordinance is not an enactment, an instrument made under it is not an enactment.
- (5) Where part of an Act or Ordinance is not an enactment, an instrument made under the Act or Ordinance, as the case may be, is not an enactment unless made for the purposes of the other part of the Act or Ordinance, as the case may be.

5 Act to apply to courts in respect of administrative matters

For the purposes of this Act:

- (a) a court shall be deemed to be a prescribed authority;
 - (b) the holder of a judicial office or other office pertaining to a court in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
 - (c) a registry or other office of a court, and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;
- but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

6 Act to apply to certain tribunals in respect of administrative matters

For the purposes of this Act:

- (a) each tribunal, authority or body specified in Schedule 1 is deemed to be a prescribed authority;
 - (b) the holder of an office pertaining to a tribunal, authority or body specified in Schedule 1, being an office established by the legislation establishing the tribunal, authority or body so specified in his or her capacity as the holder of that office, is not to be taken to be a prescribed authority or to be included in a Department; and
 - (c) a registry or other office of or under the charge of a tribunal, authority or body specified in Schedule 1, and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the tribunal, authority or body so specified as a prescribed authority;
- but this Act does not apply to any request for access to a document of a tribunal, authority or body so specified unless the document relates to matters of an administrative nature.

6A Official Secretary to the Governor-General

- (1) This Act does not apply to any request for access to a document of the Official Secretary to the Governor-General unless the document relates to matters of an administrative nature.
- (2) For the purposes of this Act, a document in the possession of a person employed under section 13 of the *Governor-General Act 1974* that is in his or her possession by reason of his or her

employment under that section shall be taken to be in the possession of the Official Secretary to the Governor-General.

6C Requirement for Commonwealth contracts

- (1) This section applies to a Commonwealth contract for the provision of services to an agency.
- (2) The agency must take contractual measures to ensure that the agency receives a document if:
 - (a) the document is created by, or is in the possession of:
 - (i) a contracted service provider for the Commonwealth contract; or
 - (ii) a subcontractor for the Commonwealth contract; and
 - (b) the document is covered by subsection (3).
- (3) This subsection covers the following documents:
 - (a) a document that an agency is required to publish under Part II (information publication scheme);
 - (b) a document that relates to the entry by the agency and the contracted service provider into the Commonwealth contract;
 - (c) a document that the agency would have in its possession if the agency were to perform the services in its own right.

7 Exemption of certain persons and bodies

- (1) The bodies specified in Division 1 of Part I of Schedule 2, and a person holding and performing the duties of an office specified in that Division, are to be deemed not to be prescribed authorities for the purposes of this Act.
 - (1A) For the purposes of the definition of *agency*, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2:
 - (a) is taken not to be included in the Department of Defence (or in any other Department) for the purposes of this Act; and
 - (b) to avoid doubt, is not an agency in its own right for the purposes of this Act.
 - (2) The persons, bodies and Departments specified in Part II of Schedule 2 are exempt from the operation of this Act in relation to the documents referred to in that Schedule in relation to them.
 - (2AA) A body corporate established by or under an Act specified in Part III of Schedule 2 is exempt from the operation of this Act in relation to documents in respect of the commercial activities of the body corporate.
 - (2A) An agency is exempt from the operation of this Act in relation to the following documents:
 - (a) a document (an *intelligence agency document*) that has originated with, or has been received from, any of the following:
 - (i) the Australian Secret Intelligence Service;
 - (ii) the Australian Security Intelligence Organisation;
 - (iii) the Inspector-General of Intelligence and Security;
 - (iv) the Office of National Assessments;
 - (v) the Defence Imagery and Geospatial Organisation;
 - (vi) the Defence Intelligence Organisation;
 - (vii) the Defence Signals Directorate;
 - (b) a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information.
 - (2B) A Minister is exempt from the operation of this Act in relation to the following documents:
 - (a) an intelligence agency document;

(b) a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information.

(3) In subsection (2AA) and Part II of Schedule 2, commercial activities means:

(a) activities carried on by an agency on a commercial basis in competition with persons other than governments or authorities of governments; or

(b) activities, carried on by an agency, that may reasonably be expected in the foreseeable future to be carried on by the agency on a commercial basis in competition with persons other than governments or authorities of governments.

(4) In subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.

PART II—INFORMATION PUBLICATION SCHEME

DIVISION 1—GUIDE TO THIS PART

7A Information publication scheme—guide

This Part establishes an information publication scheme for agencies.

Each agency must publish a plan showing how it proposes to implement this Part.

An agency must publish a range of information including information about what the agency does and the way it does it, as well as information dealt with or used in the course of its operations, some of which is called operational information.

In addition, an agency may publish other information held by the agency.

Information published by an agency must be kept accurate, up-to-date and complete.

An agency is not required to publish exempt matter. An agency is also not required to publish information if prohibited by another enactment.

The information (or details of how to access the information) must be published on a website. If there is a charge for accessing the information, the agency must publish details of the charge.

An agency must, in conjunction with the Information Commissioner, review the operation of the scheme in the agency every 5 years (if not earlier).

An agency must have regard to the objects of this Act, and guidelines issued by the Information Commissioner, in doing anything for the purposes of this Part.

If operational information is not published in accordance with this Part, a person must not be subjected to any prejudice as a result of not having access to the information.

DIVISION 2—INFORMATION TO BE PUBLISHED

8 Information to be published—what information?

Agency plans

(1) An agency must prepare a plan showing the following:

- (a) what information the agency proposes to publish for the purposes of this Part;
- (b) how, and to whom, the agency proposes to publish information for the purposes of this Part;
- (c) how the agency otherwise proposes to comply with this Part. Information that must be published

(2) The agency must publish the following information:

- (a) the plan prepared under subsection (1);
- (b) details of the structure of the agency's organisation (for example, in the form of an organisation chart);
- (c) details of the functions of the agency, including its decision-making powers and other powers affecting members of the public (or any particular person or entity, or class of persons or entities);
- (d) details of appointments of officers of the agency that are made under Acts (other than APS employees within the meaning of the Public Service Act 1999);
- (e) the information in annual reports prepared by the agency that are laid before the Parliament;
- (f) details of arrangements for members of the public to comment on specific policy proposals for which the agency is responsible, including how (and to whom) those comments may be made;
- (g) the information in documents to which the agency routinely gives access in response to requests under Part III (access to documents);

- (h) the information held by the agency that is routinely provided to the Parliament in response to requests and orders from the Parliament;
- (i) contact details for an officer (or officers) who can be contacted about access to the agency's information or documents under this Act;
- (j) the agency's operational information (see section 8A).

Other information

- (3) The agency may publish other information held by the agency.

Functions and powers

- (4) This section applies to a function or power of an agency whether or not the agency has the function or power under an enactment.

8A Information to be published—what is operational information?

- (1) An agency's operational information is information held by the agency to assist the agency to perform or exercise the agency's functions or powers in making decisions or recommendations affecting members of the public (or any particular person or entity, or class of persons or entities). Example: The agency's rules, guidelines, practices and precedents relating to those decisions and recommendations.
- (2) An agency's operational information does not include information that is available to members of the public otherwise than by being published by (or on behalf of) the agency.

8B Information to be published—accuracy etc.

An agency must ensure that information published by the agency as required or permitted by this Part is accurate, up-to-date and complete.

8C Information to be published—restrictions

Exempt documents

- (1) An agency is not required under this Part to publish exempt matter.

Publication prohibited or restricted by other legislation

- (2) If an enactment restricts or prohibits the publication of particular information, an agency is not required under this Part to publish the information otherwise than as permitted or required by the enactment.

Operation of restrictions

- (3) This section applies despite section 8.

8D Information to be published—how (and to whom) information is to be published

Scope

- (1) An agency must publish information that is required or permitted to be published under this Part in accordance with this section.

How (and to whom) information is to be published

- (2) The agency must publish the information:
 - (a) to members of the public generally; and
 - (b) if the agency considers that it is appropriate to do so—to particular classes of persons or entities.
- (3) The agency must publish the information on a website by:
 - (a) making the information available for downloading from the website; or

- (b) publishing on the website a link to another website, from which the information can be downloaded; or
- (c) publishing on the website other details of how the information may be obtained.
- (4) If there is a charge for accessing the information, the agency must publish details of the charge in the same way as the information is published under this section.

8E Information to be published—Information Commissioner to assist agencies

The Information Commissioner may provide appropriate assistance to an agency in:

- (a) identifying and preparing information which is required or permitted to be published under this Part; and
- (b) determining how (and to whom) the information is required or permitted to be published under section 8D.

Division 3—Review of information publication scheme

8F Review of scheme—Information Commissioner functions

The Information Commissioner has the following functions (as conferred by this Act and the Information Commissioner Act 2009, but without limiting any provision of either Act):

- (a) reviewing the operation in each agency of the information publication scheme established by this Part, in conjunction with the agency;
- (b) investigating an agency's compliance with this Part under Division 2 of Part VIIB (Information Commissioner investigations);
- (c) otherwise monitoring, investigating and reporting on the operation of the scheme.

9 Review of scheme—by agencies

(1) An agency must, in conjunction with the Information Commissioner, complete a review of the operation, in the agency, of the information publication scheme established by this Part:

- (a) as appropriate from time to time; and
 - (b) in any case—within 5 years after the last time a review under this section was completed.
- (2) The first review under subsection (1) must be completed within 5 years after the day this section commences.

Division 4—Guidelines

9A Guidelines—functions and powers under this Part

In performing a function, or exercising a power, under this Part, an agency must have regard to:

- (a) the objects of this Act (including all the matters set out in sections 3 and 3A); and
- (b) guidelines issued by the Information Commissioner for the purposes of this paragraph under section 93A.

Division 5—Miscellaneous

10 Miscellaneous—unpublished operational information

Scope

- (1) This section applies if:
- (a) part (or all) of an agency's operational information (the unpublished information), in relation to a function or power of the agency, is not published by the agency in accordance with this Part; and
 - (b) a person engages in conduct relevant to the performance of the function or the exercise of the power; and
 - (c) at the time of engaging in that conduct:
 - (i) the person was not aware of the unpublished information; and
 - (ii) the agency had been in existence for more than 12 months.

No prejudice from lack of awareness of unpublished information

- (2) The person must not be subjected to any prejudice only because of the application to that conduct of any rule, guideline or practice in the unpublished information, if the person could lawfully have avoided that prejudice had he or she been aware of the unpublished information.

10A Miscellaneous—who performs functions etc. given to agencies

- (1) A function or power given to an agency under this Part may be performed or exercised, on behalf of the agency, by:
- (a) the principal officer of the agency; or
 - (b) an officer of the agency acting within the scope of his or her authority in accordance with arrangements approved by the principal officer of the agency.
- (2) The performance or exercise of a function or power under paragraph (1)(b) is subject to the regulations.

PART III—ACCESS TO DOCUMENTS

11 Right of access

(1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:

- (a) a document of an agency, other than an exempt document; or
- (b) an official document of a Minister, other than an exempt document.

(2) Subject to this Act, a person's right of access is not affected by:

- (a) any reasons the person gives for seeking access; or
- (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

(1) This section applies if:

(a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:

- (i) a document of the agency; or
 - (ii) an official document of the Minister; and
- (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

(2) This section applies subject to this Act.

Mandatory access—general rule

(3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

(4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

(5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

(6) To avoid doubt, a conditionally exempt document is an exempt document unless subsection (5) applies to the document (see section 31B).

(7) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:

- (a) a conditionally exempt document; and
- (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

11B Public interest exemptions—factors

Scope

(1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).

(2) This section does not limit subsection 11A(5).

Factors favouring access

(3) Factors favouring access to the document in the public interest include whether giving access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

Irrelevant factors

(4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) access to the document could result in the applicant misinterpreting or misunderstanding the document;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- (d) access to the document could result in confusion or unnecessary debate.

Guidelines

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

11C Publication of information in accessed documents

Scope

(1) This section applies to information if an agency or Minister gives a person access to a document under section 11A containing the information, except in the case of any of the following:

- (a) personal information related to that person;
- (b) personal information related to a member of that person's family (within the meaning of subsection 6(10) of the Privacy Act 1988, as it affects the provisions mentioned in that subsection);
- (c) information about the business, commercial, financial or professional affairs of the person.

Publication

(2) The agency, or the Minister, must publish the information to members of the public generally on a website by:

- (a) making the information available for downloading from the website; or
- (b) publishing on the website a link to another website, from which the information can be downloaded; or
- (c) publishing on the website other details of how the information may be obtained.

(3) If there is a charge for accessing the information, the agency or Minister must publish details of the charge in the same way as the information is published under this section.

Time limit for publication

(4) The agency or Minister must comply with this section within 10 working days after the day the person is given access to the document.

(5) In this section:

working day means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or

(c) a public holiday in the place where the function of publishing the information under this section is to be performed.

12 Part not to apply to certain documents

A person is not entitled to obtain access under this Part to:

- (a) a document, or a copy of a document, which is, under the *Archives Act 1983*, within the open access period within the meaning of that Act unless the document contains personal information (including personal information about a deceased person); or
- (b) a document that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge; or
- (ba) a document that is open to public access, as part of a land title register, in accordance with a law of a State or Territory where that access is subject to a fee or other charge; or
- (c) a document that is available for purchase by the public in accordance with arrangements made by an agency.

13 Documents in certain institutions

(1) A document shall not be deemed to be a document of an agency for the purposes of this Act by reason of its being:

- (a) in the memorial collection within the meaning of the *Australian War Memorial Act 1980*;
- (b) in the collection of library material maintained by the National Library of Australia;
- (c) material included in the historical material in the possession of the Museum of Australia; or
- (d) in the custody of the Australian Archives (otherwise than as a document relating to the administration of the Australian Archives);

if the document was placed in that collection, or in that custody, by or on behalf of a person (including a Minister or former Minister) other than an agency.

(2) For the purposes of this Act, a document that has been placed in the custody of the Australian Archives, or in a collection referred to in subsection (1), by an agency shall be deemed to be in the possession of that agency or, if that agency no longer exists, the agency to the functions of which the document is most closely related.

(3) Notwithstanding subsections (1) and (2), records of a Royal Commission that are in the custody of the Australian Archives shall, for the purposes of this Act, be deemed to be documents of an agency and to be in the possession of the Department administered by the Minister administering the *Royal Commissions Act 1902*.

(4) Nothing in this Act affects the provision of access to documents by the Australian Archives in accordance with the *Archives Act 1983*.

15 Requests for access

(1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

(2) The request must:

- (a) be in writing; and
- (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
- (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).

(2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:

- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the agency or Minister.
- (3) Where a person:
- (a) wishes to make a request to an agency; or
 - (b) has made to an agency a request that does not comply with this section;
- it is the duty of the agency to take reasonable steps to assist the person to make the request in a manner that complies with this section.
- (4) Where a person has directed to an agency a request that should have been directed to another agency or to a Minister, it is the duty of the first-mentioned agency to take reasonable steps to assist the person to direct the request to the appropriate agency or Minister.
- (5) On receiving a request, the agency or Minister must:
- (a) as soon as practicable but in any case not later than 14 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified that the request has been received; and
 - (5A) In making a decision on a request, the agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of section 93A.
 - (b) as soon as practicable but in any case not later than the end of the period of 30 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified of a decision on the request (including a decision under section 21 to defer the provision of access to a document).
- (6) Where, in relation to a request, the agency or Minister determines in writing that the requirements of section 26A, 27 or 27A make it appropriate to extend the period referred to in paragraph (5)(b):
- (a) the period is extended by a further period of 30 days; and
 - (b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been so extended.
- Extension of processing period to consult foreign entity
- (7) Subsection (8) applies if, in relation to a request, the agency or Minister determines in writing that it is appropriate to extend the period referred to in paragraph (5)(b) so that the agency or Minister can:
- (a) consult one of the following:
 - (i) a foreign government;
 - (ii) an authority of a foreign government;
 - (iii) an international organisation; and
 - (b) determine whether the document that is the subject of the request is an exempt document under subparagraph 33(1)(a)(iii) or paragraph 33(1)(b).
- (8) If this subsection applies:
- (a) the period referred to in paragraph (5)(b) is extended by period of 30 days; and
 - (b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been extended.

15AA Extension of time for complex or voluminous requests

- (1) An agency or Minister may apply to the Information Commissioner for an extension of the period referred to in paragraph 15(5)(b) for dealing with a request if the agency or Minister

considers that the period is insufficient to deal adequately with a request because the request is complex or voluminous.

(2) If the Information Commissioner is satisfied that the application is justified, the Information Commissioner may, by written instrument, extend the period by a further period of 30 days or such other period as the Information Commissioner considers appropriate.

(3) The Information Commissioner must, as soon as practicable, inform the following persons of the period for which the extension has been given:

- (a) the applicant;
- (b) the agency or Minister.

15A Request for access to personnel records

(1) In this section:

personnel records, in relation to an employee or former employee of an agency, means those documents containing personal information about him or her that are, or have been, kept by the agency for personnel management purposes.

(2) Where:

(a) there are established procedures in an agency (apart from those provided for by this Act) in accordance with which a request may be made by an employee of the agency for access to his or her personnel records; and

(b) a person who is or was an employee of the agency wishes to obtain access to his or her personnel records;

the person must not apply under section 15 for access to such records unless the person:

(c) has made a request for access to the records in accordance with the procedures referred to in paragraph (a); and

(d) either:

(i) is not satisfied with the outcome of the request; or

(ii) has not been notified of the outcome within 30 days after the request was made.

15AB Decision not made on request—deemed refusal

Scope

(1) This section applies if:

(a) a request has been made to an agency or Minister; and

(b) the period (the initial decision period) covered by subsection (2) has ended since the day the request was received by, or on behalf of, the agency or Minister; and

(c) notice of a decision on the request has not been received by the applicant.

(2) The initial decision period covered by this subsection is the period of 30 days mentioned in paragraph 15(5)(b), or that period as extended under subsection 15(6) or (8) (consultation), section 15AA (complex or voluminous requests) or section 31 (decision to impose charge).

Deemed refusal

(3) Subject to this section:

(a) the principal officer of the agency or the Minister is taken to have made a decision personally refusing to give access to the document on the last day of the initial decision period;

and

(b) notice of the decision is taken to have been given under section 26 to the applicant on the same day.

Agency or Minister may apply for further time

- (4) However, the agency or Minister concerned may apply, in writing, to the Information Commissioner for further time to deal with the request.
- (5) The Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency or Minister to deal with the request.
- (6) If the Information Commissioner allows further time, the Information Commissioner may impose any condition that he or she considers appropriate.
- (7) Subsection (3) (deemed refusal) does not apply, and is taken never to have applied, if the agency or Minister:
- (a) makes a decision on the request within the further time allowed; and
 - (b) complies with any condition imposed under subsection (6).
- (8) However, subsection (3) (deemed refusal) applies as if the initial decision period were extended by the time allowed by the Information Commissioner under subsection (5) if the agency or Minister:
- (a) does not make a decision on the request within the further time allowed; or
 - (b) does not comply with any condition imposed under subsection (6).
- No further time allowed
- (9) If subsection (8) (deemed refusal after allowance of further time) applies, the Information Commissioner does not have the power to allow further time under this section in relation to the decision taken to be made under subsection (3) in its operation as affected by subsection (8).

16 Transfer of requests

- (1) Where a request is made to an agency for access to a document and:
- (a) the document is not in the possession of that agency but is, to the knowledge of that agency, in the possession of another agency; or
 - (b) the subject-matter of the document is more closely connected with the functions of another agency than with those of the agency to which the request is made;
- the agency to which the request is made may, with the agreement of the other agency, transfer the request to the other agency.
- (2) Where a request is made to an agency for access to a document that:
- (a) originated with, or has been received from, a body which, or person who, is specified in Part I of Schedule 2; and
 - (b) is more closely connected with the functions of that body or person than with those of the agency to which the request is made;
- the request shall be transferred:
- (c) to the Department corresponding to the Department of State administered by the Minister who administers the enactment by or under which the body or person is established, continued in existence or appointed; or
 - (d) if the request relates to a document that originated with, or has been received from, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2—to that Department.
- (3) Where a request is made to an agency for access to a document that:
- (a) originated in, or has been received from, another agency, being an agency specified in Part II of Schedule 2 or an agency that is a body corporate established by or under an Act specified in Part III of Schedule 2; and

(b) is more closely connected with the functions of the other agency in relation to documents in respect of which the other agency is exempt from the operation of this Act than with the functions of the agency to which the request is made;

the agency to which the request is made shall transfer the request to the other agency.

(3A) Where:

(a) a request is made to an agency for access to more than one document; and

(b) one or more of those documents is a document to which subsection (1), (2) or (3) applies;

this section applies to each of those documents as if separate requests for access had been made to the agency in respect of each of those documents.

(4) Where a request is transferred to an agency in accordance with this section, the agency making the transfer shall inform the person making the request accordingly and, if it is necessary to do so in order to enable the other agency to deal with the request, send the document to the other agency.

(5) Where a request is transferred to an agency in accordance with this section, the request is to be taken to be a request:

(a) made to the agency for access to the document that is the subject of the transfer; and

(b) received by the agency at the time at which it was first received by an agency.

(6) In this section, *agency* includes a Minister.

17 Requests involving use of computers etc.

(1) Where:

(a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;

(b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and

(ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and

(c) the agency could produce a written document containing the information in discrete form by:

(i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or

(ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

(2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

20 Forms of access

(1) Access to a document may be given to a person in one or more of the following forms:

(a) a reasonable opportunity to inspect the document;

(b) provision by the agency or Minister of a copy of the document;

(c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;

(d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the agency or Minister of a written transcript of the words recorded or contained in the document.

(2) Subject to subsection (3) and to section 22, where the applicant has requested access in a particular form, access shall be given in that form.

- (3) If the giving of access in the form requested by the applicant:
- (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of his or her functions, as the case may be;
 - (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or
 - (c) would, but for this Act, involve an infringement of copyright (other than copyright owned by the Commonwealth, an agency or a State) subsisting in matter contained in the document, being matter that does not relate to the affairs of an agency or of a Department of State;
- access in that form may be refused and access given in another form.
- (4) Subject to subsection 17(1), where a person requests access to a document in a particular form and, for a reason specified in subsection (3), access in that form is refused but access is given in another form, the applicant shall not be required to pay a charge in respect of the provision of access to the document that is greater than the charge that he or she would have been required to pay if access had been given in the form requested.

21 Deferment of access

- (1) An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned:
- (a) if the publication of the document concerned is required by law—until the expiration of the period within which the document is required to be published;
 - (b) if the document concerned has been prepared for presentation to Parliament or for the purpose of being made available to a particular person or body or with the intention that it should be so made available—until the expiration of a reasonable period after its preparation for it to be so presented or made available;
 - (c) if the premature release of the document concerned would be contrary to the public interest—until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest; or
 - (d) if a Minister considers that the document concerned is of such general public interest that the Parliament should be informed of the contents of the document before the document is otherwise made public—until the expiration of 5 sitting days of either House of the Parliament.
- (2) Where the provision of access to a document is deferred in accordance with subsection (1), the agency or Minister shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

22 Access to edited copies with exempt matter deleted

Scope

- (1) This section applies if:
- (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request);
- and

- (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

(2) The agency or Minister must:

- (a) prepare the edited copy as mentioned in paragraph (1)(b); and
- (b) give the applicant access to the edited copy.

Notice to applicant

(3) The agency or Minister must give the applicant notice in writing:

- (a) that the edited copy has been prepared; and
- (b) of the grounds for the deletions; and
- (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act; and
- (d) in the case of a decision to refuse to give access to an exempt document that is conditionally exempt—the reasons for the decision, including the public interest factors taken into account in making the decision.

(4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

23 Decisions to be made by authorised persons

(1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

(2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

24 Power to refuse request—diversion of resources etc.

(1) If an agency or Minister is satisfied, when dealing with a request, that a practical refusal reason (see section 24AA) exists in relation to the request, the agency or Minister:

- (a) must undertake a request consultation process (see section 24AB); and
- (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to deal with the request.

(2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that the requests relate to the same document or documents.

24AA When does a practical refusal reason exist?

(1) For the purposes of section 24, a practical refusal reason exists in relation to a request if either (or both) of the following applies:

(a) the work involved in processing the request:

(i) in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations; or

(ii) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister's functions;

(b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents). (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:

(a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;

(b) deciding whether to grant, refuse or defer access to documents to which the request relates, or to grant access to edited copies of such documents, including resources that would have to be used for:

(i) examining the document; or

(ii) consulting with any person or body in relation to the request;

(c) making a copy, or an edited copy, of the document;

(d) notifying any interim or final decision on the request.

(3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:

(a) any reasons that the applicant gives for requesting access; or

(b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or

(c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

24AB What is a request consultation process?

Scope

(1) This section sets out what is a request consultation process for the purposes of section 24.

Requirement to notify

(2) The agency or Minister must give the applicant a written notice stating the following:

(a) an intention to refuse access to a document in accordance with a request;

(b) the practical refusal reason;

24AB What is a request consultation process?

Scope

(1) This section sets out what is a request consultation process for the purposes of section 24.

Requirement to notify

(2) The agency or Minister must give the applicant a written notice stating the following:

(a) an intention to refuse access to a document in accordance with a request;

(b) the practical refusal reason;

(c) the name of an officer of the agency or member of staff of the Minister (the contact person) with whom the applicant may consult during a period;

(d) details of how the applicant may contact the contact person;

(e) that the period (the consultation period) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

(3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.

(4) For the purposes of subsection (3), reasonable steps includes the following:

- (a) giving the applicant a reasonable opportunity to consult with the contact person;
- (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

(5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

(6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

- (a) withdraw the request;
- (b) make a revised request;
- (c) indicate that the applicant does not wish to revise the request.

(7) The request is taken to have been withdrawn under subsection (6)

at the end of the consultation period if:

- (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
- (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Consultation period to be disregarded in calculating processing period

(8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 1 5(5)(b).

No more than one request consultation process required

(9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

(1) An agency or Minister may refuse a request for access to document if:

- (a) all reasonable steps have been taken to find the document;
- and
- (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Document not received as required by contract

(2) An agency may refuse a request for access to a document if:

- (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document;
- (b) the agency has not received the document; and(c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

25 Information as to existence of certain documents

(1) Nothing in this Act shall be taken to require an agency or Minister to give information as to the existence or non-existence of a document where information as to the existence or non-existence of that document, if included in a document of an agency, would cause the last-mentioned document to be an exempt document by virtue of section 33 or subsection 37(1).

(2) Where a request relates to a document that is, or if it existed would be, of a kind referred to in subsection (1), the agency or Minister dealing with the request may give notice in writing to the applicant that the agency or the Minister, as the case may be, neither confirms nor denies the existence, as a document of the agency or an official document of the Minister, of such a document but that, assuming the existence of such a document, it would be an exempt document under section 33 or subsection 37(1) and, where such a notice is given:

(a) section 26 applies as if the decision to give such a notice were a decision referred to in that section; and

(b) the decision shall, for the purposes of Part VI, be deemed to be a decision refusing to grant access to the document in accordance with the request for the reason that the document would, if it existed, be an exempt document under section 33 or subsection 37(1), as the case may be.

26 Reasons and other particulars of decisions to be given

(1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:

(a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and

(aa) in the case of a decision to refuse to give access to an exempt document that is conditionally exempt—include in those reasons the public interest factors taken into account in making the decision; and

(b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and

(c) give to the applicant appropriate information concerning:

(i) his or her rights with respect to review of the decision;

(ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and

(iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.

(1A) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in subsection (1).

(2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

26A Consultation—documents affecting Commonwealth-State relations

Scope

This section applies if:

(a) arrangements have been entered into between the

Commonwealth and a State about consultation under this section; and

- (b) a request is made to an agency or Minister for access to a document that:
- (i) originated with, or was received from, the State or an authority of the State; or
 - (ii) contains information (State-originated information) that originated with, or was received from, the State or an authority of the State; and
- (c) it appears to the agency or Minister that the State may reasonably wish to contend that:
- (i) the document is conditionally exempt under section 47B (Commonwealth-State relations); and
 - (ii) subsection 11A(5) does not apply to the document.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

Consultation required

(2) The agency or Minister must not decide to give the applicant access to the document unless consultation has taken place between the Commonwealth and the State in accordance with the arrangements.

Decision to give access

(3) If, after such consultation has taken place, the agency or Minister decides to give the applicant access to the document, the agency or

Minister must give written notice of the decision to both of the following:

- (a) the State;
- (b) the applicant.

Access not to be given until review opportunities have run out

(4) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the

State for review under this Act in relation to the decision to give access to the document have run out, the decision still stands, or is confirmed.

Edited copies and State-originated information

(5) This section applies:

- (a) in relation to an edited copy of a document—in the same way as it applies to the document; and
- (b) in relation to a document containing State-originated information—to the extent to which the document contains such information.

27 Consultation—business documents

Scope

(1) This section applies if:

(a) a request is made to an agency or Minister for access to a document containing information (business information)

covered by subsection (2) in respect of a person, organisation or undertaking; and

(b) it appears to the agency or Minister that the person, organisation or proprietor of the undertaking (the person or organisation concerned) might reasonably wish to make a contention (the exemption contention) that:

- (i) the document is conditionally exempt under section 47G; and
- (ii) subsection 11A(5) does not apply to the document.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

(2) This subsection covers the following information:

- (a) in relation to a person—information about the person’s business or professional affairs;
- (b) in relation to an organisation or undertaking—information about the business, commercial or financial affairs of the organisation or undertaking.
- (3) In determining, for the purposes of paragraph (1)(b), whether the person or organisation concerned might reasonably wish to make an exemption contention because of business information in a document, the agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person, organisation or undertaking is known to be associated with the matters dealt with in the information;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.

Opportunity to make submissions

- (4) The agency or Minister must not decide to give access to the document unless:
 - (a) the person or organisation concerned is given a reasonable opportunity to make submissions in support of the exemption contention; and
 - (b) the agency or the Minister has regard to any submissions so made.
- (5) However, subsection (4) only applies if it is reasonably practicable for the agency or Minister to give the person or organisation concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances (including the application of subsections 15(5) and
- (6) (time limits for processing requests)).

Decision to give access

- (6) If the agency or Minister decides to give the applicant access to the document, the agency or Minister must give written notice of the decision to both of the following:
 - (a) the person or organisation concerned;
 - (b) the applicant.

Access not to be given until review opportunities have run out

- (7) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person or organisation concerned for review under this Act in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.

Edited copies and business information

- (8) This section applies:
 - (a) in relation to an edited copy of a document—in the same way as it applies to the document; and
 - (b) in relation to a document containing business information—to the extent to which the document contains such information.

27A Consultation—documents affecting personal privacy

Scope

- (1) This section applies if:
 - (a) a request is made to an agency or Minister for access to a document containing personal information about a person (including a person who has died); and
 - (b) it appears to the agency or Minister that the person or the person’s legal personal representative (the person concerned) might reasonably wish to make a contention (the exemption contention) that:
 - (i) the document is conditionally exempt under section 47F; and
 - (ii) subsection 11A(5) does not apply to the document.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

(2) In determining, for the purposes of paragraph (1)(b), whether the person concerned might reasonably wish to make an exemption contention because of personal information in a document, the agency or Minister must have regard to the following matters:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the information;
- (c) the availability of the information from publicly accessible sources;
- (d) any other matters that the agency or Minister considers relevant.

Opportunity to make submissions

(3) The agency or Minister must not decide to give the applicant access to the document unless:

(a) the person concerned is given a reasonable opportunity to make submissions in support of the exemption contention;

and

(b) the agency or the Minister has regard to any submissions so made.

(4) However, subsection (3) only applies if it is reasonably practicable for the agency or Minister to give the person concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances

(including the application of subsections 15(5) and (6) (time limits for processing requests)).

Decision to give access

(5) If the agency or Minister decides to give the applicant access to the document, the agency or Minister must give written notice of the decision to both of the following:

- (a) the person concerned;
- (b) the applicant.

Access not to be given until review opportunities have run out

(6) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person concerned for review under this Act in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.

Edited copies and personal information

(7) This section applies:

- (a) in relation to an edited copy of a document—in the same way as it applies to the document; and
- (b) in relation to a document containing personal information—to the extent to which the document contains such information.

29 Charges

(1) Where, under the regulations, an agency or Minister decides that an applicant is liable to pay a charge in respect of a request for access to a document, or the provision of access to a document, the agency or Minister must give to the applicant a written notice stating:

- (a) that the applicant is liable to pay a charge; and
- (b) the agency's or Minister's preliminary assessment of the amount of the charge, and the basis on which the assessment is made; and
- (c) that the applicant may contend that the charge has been wrongly assessed, or should be reduced or not imposed; and
- (d) the matters that the agency or Minister must take into account under subsection (5) in deciding whether or not to reduce, or not impose, the charge; and

- (e) the amount of any deposit that the agency or Minister has determined, under the regulations, that the applicant will be required to pay if the charge is imposed; and
- (f) that the applicant must, within the period of 30 days, or such further period as the agency or Minister allows, after the notice was given, notify the agency or Minister in writing:
- (i) of the applicant's agreement to pay the charge; or
- (ii) if the applicant contends that the charge has been wrongly assessed, or should be reduced or not imposed, or both—that the applicant so contends, giving the applicant's reasons for so contending; or
- (iii) that the applicant withdraws the request for access to the document concerned; and
- (g) that if the applicant fails to give the agency or Minister such a notice within that period or further period, the request for access to the document will be taken to have been withdrawn.
- (2) If the applicant fails to notify the agency or Minister in a manner mentioned in paragraph (1)(f) within the period or further period mentioned in that paragraph, the applicant is to be taken to have withdrawn the request for access to the document concerned.
- (3) An agency or Minister must not impose a charge in respect of a request for access to a document, or the provision of access to a document, until:
- (a) the applicant has notified the agency or Minister in a manner mentioned in paragraph (1)(f); or
- (b) the end of the period or further period mentioned in that paragraph.
- (4) Where the applicant has notified the agency or Minister, in a manner mentioned in subparagraph (1)(f)(ii), that the applicant contends that the charge should be reduced or not imposed, the agency or Minister may decide that the charge is to be reduced or not to be imposed.
- (5) Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:
- (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and
- (b) whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.
- (6) If the applicant has notified the agency or Minister in the manner mentioned in subparagraph (1)(f)(ii), the agency or Minister must take all reasonable steps to enable the applicant to be notified of the decision on the amount of charge payable as soon as practicable but in any case no later than 30 days after the day on which the applicant so notified the agency or Minister.
- (7) If:
- (a) that period of 30 days has elapsed since the day on which the agency or Minister was so notified; and
- (b) the applicant has not received notice of a decision on the amount of charge payable; the principal officer of the agency, or the Minister, as the case requires, is, for all purposes of this Act, taken to have made, on the last day of the period, a decision to the effect that the amount of charge payable is the amount equal to the agency's or Minister's preliminary assessment of the amount of the charge mentioned in paragraph (1)(b).
- (8) If:
- (a) the applicant makes a contention about a charge as mentioned in subsection (4); and
- (b) the agency or Minister makes a decision to reject the contention, in whole or in part; the agency or Minister, as the case requires, must give the applicant written notice of the decision and of the reasons for the decision.
- (9) A notice under subsection (8) must also state the name and designation of the person making the decision and give the applicant appropriate information about:
- (a) his or her rights with respect to review of the decision; and

(b) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and

(c) the procedure for the exercise of those rights;

including (where applicable) particulars of the manner in which an application for “internal review (Part VI) and IC review (Part VII) may be made.

(10) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in subsection (8).

(11) A notice under subsection (8) is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

PART IV—EXEMPT DOCUMENTS

DIVISION 1—PRELIMINARY

31 Decision to impose charge—extended period for processing request

Scope

(1) This section applies if:

(a) on a particular day (the charge notice day) an applicant in relation to a request receives a notice under subsection 29(1)

or (6) to the effect that the applicant is liable to pay a charge in respect of the request; and

(b) the notice is received before the end of the period (the processing period) applicable under paragraph 15(5)(b) in relation to the request (or that period as extended, otherwise than under this section).

Extended period for processing request

(2) For the purposes of paragraph 15(5)(b), the processing period for the request is extended (or further extended) by the number of days in the period starting on the charge notice day and ending on the earliest occurring of the following days:

(a) the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations), whether or not the decision to impose the charge has been considered under section 29, or is the subject of a review under this Act;

(b) if the amount of the charge is changed under section 29, or following a review under this Act—the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations) as changed following the review;

(c) if, under section 29, or following a review under this Act, a decision is made with the effect that the charge is not imposed—the day the applicant is notified of the decision.

31A Access to exempt and conditionally exempt documents

The following table summarises how this Act applies to exempt documents and documents that are conditionally exempt:

| How this Act applies to exempt and conditionally exempt documents | | | |
|--|---|--|---|
| Item | If ... | then ... | because of ... |
| 1 | a document is an exempt document under Division 2 (exemptions) or under paragraph (b) or (c) of the definition of <i>exempt document</i> in subsection 4(1) | access to the document is not required to be given | subsection 11A(4). |
| 2 | a document is a conditionally exempt document under Division 3 (public interest conditional exemptions) | access to the document is required to be given, unless it would be contrary to the public interest | subsection 11A(5) (see also section 11B (public interest factors)). |
| 3 | a document is an exempt document as mentioned in item 1, and also a conditionally exempt document under Division 3 | access to the document is not required to be given | subsections 11A(4) and (6), and section 32 (interpretation). |
| 4 | access to a document is refused because it contains exempt matter, and the exempt matter can be deleted | (a) an edited copy deleting the exempt matter must be prepared (if practicable); and (b) access to the edited copy must be given; | section 22. |
| 5 | a document is an exempt document because of any provision of this Act | access to the document may be given apart from under this Act | section 3A (objects—information or documents otherwise accessible). |

31B Exempt documents for the purposes of this Part

A document is exempt for the purposes of this Part if:

- (a) it is an exempt document under Division 2; or
- (b) it is conditionally exempt under Division 3, and access is not required to be given to the document because subsection 11A(5) does not apply to the document.

32 Interpretation

A provision of this Part by virtue of which documents referred to in the provision are exempt documents, or are conditionally exempt:

- (a) shall not be construed as limited in its scope or operation in any way by any other provision of this Part by virtue of which documents are exempt documents, or are conditionally exempt; and
- (b) shall not be construed as not applying to a particular document by reason that another provision of this Part of a kind mentioned in paragraph (a) also applies to that document.

DIVISION 2—EXEMPTIONS

33 Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth; or
 - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

34 Cabinet documents

General rules

(1) A document is an exempt document if:

- (a) both of the following are satisfied:
 - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
 - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
- (b) it is an official record of the Cabinet; or
- (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
- (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.

(2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.

(3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Exceptions

(4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

Note: However, the attachment itself may be an exempt document.

(5) A document by which a decision of the Cabinet is officially published is not an exempt document.

(6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:

- (a) the disclosure of the information would reveal a Cabinet deliberation or decision; and
- (b) the existence of the deliberation or decision has not been officially disclosed.

37 Documents affecting enforcement of law and protection of public safety

(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

- (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
- (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or
- (c) endanger the life or physical safety of any person.

(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

- (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;
- (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
- (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

(2A) For the purposes of paragraph (1)(b), a person is taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection under a program conducted under the auspices of the Australian Federal Police, or the police force of a State or Territory, for the protection of:

- (a) witnesses; or
- (b) people who, because of their relationship to, or association with, a witness need, or may need, such protection; or
- (c) any other people who, for any other reason, need or may need, such protection.

(3) In this section, *law* means law of the Commonwealth or of a State or Territory.

38 Documents to which secrecy provisions of enactments apply

(1) Subject to subsection (1A), a document is an exempt document if:

- (a) disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and
- (b) either:
 - (i) that provision is specified in Schedule 3; or
 - (ii) this section is expressly applied to the document, or information, by that provision, or by another provision of that or any other enactment.

(1A) A person's right of access to a document under section 11 or 22 is not affected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment concerned or any other enactment.

(2) Subject to subsection (3), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.

(3) This section applies in relation to a document so far as it contains personal information about a person if:

(a) the person requests access to the document; and

(b) disclosure of the document, or information contained in the document, is prohibited under section 503A of the *Migration Act 1958* as affected by section 503D of that Act.

42 Documents subject to legal professional privilege

(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document of the kind referred to in subsection 9(1) is not an exempt document by virtue of subsection (1) of this section by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in subsection 9(1).

45 Documents containing material obtained in confidence

(1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.

(2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:

(a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
(b) an agency or the Commonwealth.

46 Documents disclosure of which would be contempt of Parliament or contempt of court

A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown:

(a) be in contempt of court;

(b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or

(c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island.

47A Electoral rolls and related documents

(1) In this section:

Electoral Act means the Commonwealth Electoral Act 1918.

Electoral roll means:

(a) a Roll of the electors of:

(i) a State or Territory; or

(ii) a Division (within the meaning of the Electoral Act); or

(iii) a Subdivision (within the meaning of the Electoral Act);

prepared under the Electoral Act; or

(b) any part of a Roll referred to in paragraph (a).

- (2) Subject to this section, a document is an exempt document if it is:
- (a) an electoral roll; or
 - (b) a print, or a copy of a print, of an electoral roll; or
 - (c) a microfiche of an electoral roll; or
 - (d) a copy on tape or disk of an electoral roll; or
 - (e) a document that:
 - (i) sets out particulars of only one elector; and
 - (ii) was used to prepare an electoral roll; or
 - (f) a document that:
 - (i) is a copy of a document referred to in paragraph (e); or
 - (ii) contains only copies of documents referred to in paragraph (e); or
 - (g) a document (including a habitation index within the meaning of the Electoral Act) that:
 - (i) sets out particulars of electors; and
 - (ii) was derived from an electoral roll.
- (3) The part of an electoral roll that sets out the particulars of an elector is not an exempt document in relation to the elector.
- (4) Any print, copy of a print, microfiche, tape or disk that sets out or reproduces only the particulars entered on an electoral roll in respect of an elector is not an exempt document in relation to the elector.
- (5) A document that sets out only the particulars of one elector and:
- (a) is a copy of a document referred to in paragraph (2)(e); or
 - (b) is a copy, with deletions, of a document referred to in paragraph (2)(e), (f) or (g);
- is not an exempt document in relation to the elector.

DIVISION 3—PUBLIC INTEREST CONDITIONAL EXEMPTIONS

47B Public interest conditional exemptions—Commonwealth-State relations

A document is conditionally exempt if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if it includes matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Government of the Commonwealth.

Exceptions

- (2) Deliberative matter does not include either of the following:

- (a) operational information (see section 8A);
- (b) purely factual material.
- (3) This section does not apply to any of the following:
 - (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

47D Public interest conditional exemptions—financial or property interests of the Commonwealth

A document is conditionally exempt if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency.

47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

47F Public interest conditional exemptions—personal privacy

General rule

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- (c) the availability of the information from publicly accessible sources;
- (d) any other matters that the agency or Minister considers relevant.

(3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

(4) Subsection (5) applies if:

- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant,

being information that was provided by a qualified person acting in his or her capacity as a qualified person; and

(b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.

(5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:

(a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and

(b) is to be nominated by the applicant.

(6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and,

without limiting the generality of the foregoing, includes any of the following:

(a) a medical practitioner;

(b) a psychiatrist;

(c) a psychologist;

(d) a counsellor;

(e) a social worker.

47G Public interest conditional exemptions—business

(1) A document is conditionally exempt if its disclosure under this Act would disclose: trade secrets; or

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or

(c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(i) would, or could reasonably be expected to,

unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(ii) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not have effect in relation to a request by a person for access to a document: (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth or a State or by a local government authority.

(4) For the purposes of paragraph (1)(c), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

47H Public interest conditional exemptions—research

A document is conditionally exempt if:

(a) it contains information relating to research that is being, or is to be, undertaken by an officer of an agency specified in

Schedule 4; and

(b) disclosure of the information before the completion of the research would be likely unreasonably to expose the agency or officer to disadvantage.

47J Public interest conditional exemptions—the economy

(1) A document is conditionally exempt if its disclosure under this Act would, or could be reasonably expected to, have a substantial adverse effect on Australia's economy by:

(a) influencing a decision or action of a person or entity; or

(b) giving a person (or class of persons) an undue benefit or detriment, in relation to business carried on by the person (or class), by providing premature knowledge of proposed or possible action or inaction of a person or entity.

Note: A person includes a body corporate and a body politic (see section 22 of the Acts Interpretation Act 1901). Examples of a body politic include the government of the Commonwealth, a State, a Territory or a foreign country.

(2) For the purposes of subsection (1), a substantial adverse effect on Australia's economy includes a substantial adverse effect on:

(a) a particular sector of the economy; or

(b) the economy of a particular region of Australia.

(3) The documents to which subsection (1) applies include, but are not limited to, documents containing matter relating to any of the following:

(a) currency or exchange rates;

(b) interest rates;

(c) taxes, including duties of customs or of excise;

(d) the regulation or supervision of banking, insurance and other financial institutions;

(e) proposals for expenditure;

(f) foreign investment in Australia;

(g) borrowings by the Commonwealth, a State or an authority of the Commonwealth or of a State.

PART V—AMENDMENT AND ANNOTATION OF PERSONAL RECORDS

48 Application for amendment or annotation of personal records

Where a person claims that a document of an agency or an official document of a Minister to which access has been lawfully provided to the person, whether under this Act or otherwise, contains personal information about that person:

- (a) that is incomplete, incorrect, out of date or misleading; and
- (b) that has been used, is being used or is available for use by the agency or Minister for an administrative purpose;

the person may apply to the agency or Minister for:

- (c) an amendment; or
- (d) an annotation;

of the record of that information kept by the agency or Minister.

49 Requirements of an application for amendment

An application for amendment must:

- (a) be in writing; and
- (b) as far as practicable, specify:
 - (i) the document or official document containing the record of personal information that is claimed to require amendment; and
 - (ii) the information that is claimed to be incomplete, incorrect, out of date or misleading; and
 - (iii) whether the information is claimed to be incomplete, incorrect, out of date or misleading; and
 - (iv) the applicant's reasons for so claiming; and
 - (v) the amendment requested by the applicant; and
- (c) specify an address in Australia to which a notice under this Part may be sent to the applicant; and
- (d) be sent by post to the agency or Minister, or delivered to an officer of the agency or a member of the staff of the Minister, at the address of the office of the agency or Minister (as the case may be) determined in accordance with paragraph 15(2)(d).

50 Amendment of records

(1) Subject to section 51C, where the agency or Minister to whom such an application is made is satisfied that:

- (a) the record of personal information to which the request relates is contained in a document of the agency or an official document of the Minister, as the case may be; and
- (b) the information is incomplete, incorrect, out of date or misleading; and
- (c) the information has been used, is being used or is available for use by the agency or Minister for an administrative purpose;

the agency or Minister may amend the record of information.

(2) The agency or Minister may make the amendment:

- (a) by altering the document or official document concerned to make the information complete, correct, up to date or not misleading; or
- (b) by adding to that document or official document a note:
 - (i) specifying the respects in which the agency or Minister is satisfied that the information is incomplete, incorrect, out of date or misleading; and
 - (ii) in a case where the agency or Minister is satisfied that the information is out of date—setting out such information as is required to bring the information up to date.

(3) To the extent that it is practicable to do so, the agency or Minister must, when making an amendment under paragraph (2)(a), ensure that the record of information is amended in a way that does not obliterate the text of the record as it existed prior to the amendment.

51 Annotations of records etc. following unsuccessful applications for amendments of records

(1) Where an agency or Minister decides not to amend a document or official documents wholly or partly in accordance with an application under section 48, the agency or Minister must:

(a) take such steps as are reasonable in the circumstances to enable the applicant to provide a statement of the kind mentioned in paragraph 51A(c); and

(b) subject to subsection (2), annotate the document or official document concerned by adding to it the statement so provided.

(2) Paragraph (1)(b) does not apply if the agency or Minister considers the statement to be irrelevant, defamatory or unnecessarily voluminous.

(3) For the purposes of this Act, the provision by the applicant of a statement under subsection (1) is taken to be an application made under section 51A on the day the statement is so provided.

51A Requirements of an application for annotation

An application for annotation must:

(a) be in writing; and

(b) as far as practicable, specify the document or official document containing the record of personal information that is claimed to require annotation; and

(c) be accompanied by a statement by the applicant that specifies:

(i) the information that is claimed to be incomplete, incorrect, out of date or misleading; and

(ii) whether the information is claimed to be incomplete, incorrect, out of date or misleading; and

(iii) the applicant's reasons for so claiming; and

(iv) such other information as would make the information complete, correct, up to date or not misleading; and

(d) specify an address in Australia to which a notice under this Part may be sent to the applicant; and

(e) be sent by post to the agency or Minister, or delivered to an officer of the agency or a member of the staff of the Minister, at the address of the office of the agency or Minister (as the case may be) determined in accordance with paragraph 15(2)(d).

51B Annotation of records

(1) Subject to section 51C, where the agency or Minister to whom such an application is made is satisfied that the record of personal information to which the request relates is contained in a document of the agency or an official document of the Minister (as the case may be), the agency or Minister must annotate the document or official document by adding to it the statement provided by the applicant under paragraph 51A(c).

(2) Subsection (1) does not apply if the agency or Minister considers the statement to be irrelevant, defamatory or unnecessarily voluminous.

51C Transfer of requests

(1) Where an application is made under section 48 to an agency or a Minister and:

- (a) the document containing the record of personal information to which the request relates is not in the possession of that agency or Minister, but is, to the knowledge of the agency or Minister, in the possession of another agency or Minister; or
- (b) the subject matter of that document is more closely connected with the functions of another agency or Minister than with those of the agency or Minister to whom the application is made; the agency or Minister to whom the application is made may, with the agreement of the other agency or Minister, transfer the application to the other agency or Minister.
- (2) Where an application is made under section 48 to an agency or Minister and the document containing the record of personal information to which the application relates:
- (a) originated with, or has been received from, a body or person specified in Part I of Schedule 2; and
- (b) is more closely connected with the functions of that body or person than with those of the agency or Minister to whom the application is made;
- the agency or Minister to whom the application is made must transfer the application:
- (c) to the Department corresponding to the Department of State administered by the Minister who administers the enactment by or under which the body or person is established, continued in existence or appointed; or
- (d) if the application relates to a document that originated with, or has been received from, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2—to that Department.
- (3) Where an application is made under section 48 to an agency or a Minister and the document containing the record of personal information to which the application relates:
- (a) originated in, or has been received from, another agency, being an agency specified in Part II of Schedule 2 or an agency that is a body corporate established by or under an Act specified in Part III of Schedule 2; and
- (b) is more closely connected with the functions of the other agency in relation to documents in respect of which the other agency is exempt from the operation of this Act than with the functions of the agency or Minister to whom the application is made;
- the agency or Minister to whom the application is made must transfer the application to the other agency.
- (4) Where:
- (a) an application made under section 48 to an agency or a Minister concerns records of personal information contained in more than one document; and
- (b) one or more of those documents is a document to which subsection (1), (2) or (3) applies;
- this section applies to each of those documents as if separate applications had been made to the agency or Minister in respect of records of personal information contained in each of those documents.
- (5) Where an application is transferred to an agency or Minister under this section, the agency or Minister making the transfer must:
- (a) inform the person making the application of the transfer; and
- (b) if it is necessary to do so in order to enable the other agency or Minister to deal with the application, send the document concerned to the other agency or Minister.
- (6) Where an application is transferred to an agency or a Minister under this section, the application is to be taken to be an application:
- (a) made to that agency or Minister under section 48; and
- (b) received by the agency or Minister at the time at which it was first received by an agency or Minister.
- (7) Where:
- (a) an application has been transferred to an agency or Minister in accordance with this section; and

- (b) the agency or Minister to whom the application has been transferred decides to amend or annotate, under this Part, a record of personal information to which the application relates; the agency or Minister must, by written notice, notify the agency or Minister who made the transfer:
 - (c) of that decision; and
 - (d) of any amendment or annotation made by the first-mentioned agency or Minister in relation to that record.
- (8) Where the agency or Minister receiving a notice under subsection (7) is in possession of a document containing the record of personal information to which the application relates, the agency or Minister must, upon receiving the notice, amend or annotate the record in the same manner as the record was amended or annotated by the agency or Minister to whom the application was transferred.

51D Notification etc. of a decision under this Part

- (1) Where an application is made to an agency or Minister under this Part, the agency or Minister must take all reasonable steps to enable the applicant to be notified of a decision on the application as soon as practicable but in any case not later than 30 days after the day on which the request is received by or on behalf of the agency or Minister.
- (2) Section 23 applies in relation to a decision on an application made under section 48.
- (3) Section 26 applies in relation to a decision made under this Part refusing to amend or annotate a record as if that decision were a decision made under Part III refusing to grant access to a document in accordance with a request made under subsection 15(1).

51DA Decision not made on request for amendment or annotation — deemed refusal

- (1) This section applies if:
 - (a) an application has been made to an agency or Minister under section 48; and
 - (b) the period of 30 days mentioned in section 51D (the initial decision period) has ended since the day the application was received by, or on behalf of, the agency or Minister; and
 - (c) notice of a decision on the application has not been received by the applicant.

Deemed refusal

- (2) Subject to this section:
 - (a) the principal officer of the agency or the Minister is taken to have made a decision personally refusing to amend or annotate the record of personal information to which the application relates on the last day of the initial decision period; and
 - (b) notice of the decision is taken to have been given under section 26 to the applicant on the same day.

Agency or Minister may apply for further time

- (3) However, the agency or Minister concerned may apply, in writing, to the Information Commissioner for further time to deal with the application.
- (4) The Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency or Minister to deal with the application.
- (5) If the Information Commissioner allows further time, the Information Commissioner may impose any condition that he or she considers appropriate.
- (6) Subsection (2) (deemed refusal) does not apply, and is taken never to have applied, if the agency or Minister:
 - (a) makes a decision on the application within the further time allowed; and
 - (b) complies with any condition imposed under subsection (5).

(7) However, subsection (2) (deemed refusal) applies as if the initial decision period were extended by the time allowed by the

Information Commissioner under subsection (4) if the agency or Minister:

(a) does not make a decision on the request within the further time allowed; or

(b) does not comply with any condition imposed under subsection (5).

No further time allowed

(8) If subsection (7) (deemed refusal after allowance of further time)

applies, the Information Commissioner does not have the power to allow further time under this section in relation to the decision taken to be made under subsection (2) in its operation as affected by subsection (7).

51E Comments on annotations

Nothing in this Part prevents an agency or Minister adding the agency's or Minister's comments to an annotation made to a record of information under section 51 or 51B.

PART VI—REVIEW OF DECISIONS

52 Internal review of decisions—guide to this Part

This Part provides for internal review of decisions by agencies, other than decisions made personally by the principal officer of an agency or the responsible Minister. Agencies are required to complete internal reviews within 30 days. However, this period may be extended.

Sections 53A, 53B and 53C define the terms access refusal decision, access grant decision and affected third party. These terms are used in this Part and in Parts VII and VIIA.

53 Interpretation

For the purposes of this Act, unless the contrary intention appears, a claim that a document would, if it exists, be an exempt document under section 34 is to be deemed to be a claim that the document is an exempt document under that section despite the fact that the existence or non-existence of the document is not acknowledged.

53A What is an access refusal decision?

An access refusal decision is any of the following decisions:

- (a) a decision refusing to give access to a document in accordance with a request;
- (b) a decision giving access to a document but not giving, in accordance with the request, access to all documents to which the request relates;
- (c) a decision purporting to give, in accordance with a request, access to all documents to which the request relates, but not actually giving that access;
- (d) a decision to defer the provision of access to a document (other than a document covered by paragraph 21(1)(d) (Parliament should be informed of contents));
- (e) a decision under section 29 relating to imposition of a charge or the amount of a charge;
- (f) a decision to give access to a document to a qualified person under subsection 47F(5);
- (g) a decision refusing to amend a record of personal information in accordance with an application made under section 48;
- (h) a decision refusing to annotate a record of personal information in accordance with an application made under section 48.

53B What is an access grant decision?

An access grant decision is a decision covered by the following table.

| Access grant decisions | | |
|------------------------|--|--|
| Item | If, in relation to a request for access to a document . | the <i>access grant decision</i> is ... |
| 1 | consultation with a State under section 26A (documents affecting Commonwealth-State relations) is required | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because: (a) the document is not conditionally exempt under section 47B (Commonwealth-State relations); or (b) subsection 11A(5) applies to the document. |
| 2 | section 27 (business documents) applies in relation to business information in the document | a decision of an agency or Minister to give access to the document (or an edited copy of the document) because: (a) the document is not conditionally exempt under section 47G (business documents); or (b) subsection 11A(5) applies to the document. |
| 3 | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a living person | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because: (a) the document is not conditionally exempt under section 47F (personal privacy); or (b) subsection 11A(5) applies to the document. |
| 4 | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a deceased person | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because: (a) the document is not conditionally exempt under section 47F (personal privacy); or (b) subsection 11A(5) applies to the document. privacy) |

53C Internal review—**who is an affected third party?**

The following table has effect:

| Who is an affected third party? | | |
|---------------------------------|--|--|
| Item | If, in relation to a request for access to a document | the affected third party for the document is |
| 1 | consultation with a State under section 26A (documents affecting Commonwealth-State relations) is required | the State. |
| 2 | section 27 (business documents) applies in relation to business information in the document | the person or organisation concerned (within the meaning of section 27). |
| 3 | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a living person | the person. |
| 4 | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a deceased person | the legal personal representative of the deceased person. |

54 Internal review—**access refusal decision**

(1) This section applies if an access refusal decision is made in relation to a request to an agency, other than a decision made personally by the principal officer of the agency or the responsible Minister.

(2) The applicant in relation to the request may apply under this Part for the review (the internal review) of the access refusal decision.

54A Internal review—**access grant decision**

(1) This section applies if an access grant decision is made in relation to a request to an agency for access to a document, other than a decision made personally by the principal officer of the agency or the responsible Minister.

(2) The affected third party for the document may apply under this Part for the review (the internal review) of the access grant decision.

54B Internal review—**application for review**

(1) An application for internal review must be in writing and must be made:

- (a) within 30 days, or such further period as the agency allows, after the day the decision is notified to the applicant for internal review (the internal review applicant); or
- (b) in the case of an access refusal decision of a kind mentioned in paragraph 53A(b), (c) or (f), within whichever of the following is the longer period:
 - (i) 30 days, or such further period as the agency allows, after the day the decision is notified to the internal review applicant;
 - (ii) 15 days after the day the access referred to in that paragraph was given (or purported to be given).

(2) A decision by an agency to allow a further period for making an application may be made whether or not the time for making such an application has already expired.

- (3) The agency's power to allow a further period for making an application may be exercised by an officer of the agency who is:
- (a) acting within the scope of authority exercisable by him or her; and
 - (b) acting in accordance with arrangements approved by the responsible Minister or principal officer of the agency.

54C Internal review—decision on internal review

Scope

- (1) This section applies if an application for internal review of an access refusal decision or an access grant decision (the original decision) is made in accordance with this Part.

Decision

- (2) The agency must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.
- (3) The person must make a fresh decision on behalf of the agency within 30 days after the day on which the application was received by, or on behalf of, the agency.

Notice of decision

- (4) Section 26 extends to a decision made under this section.

54D Internal review—deemed affirmation of original decision

- (1) This section applies if:

- (a) an application for internal review has been made to an agency; and
 - (b) the period (the initial decision period) of 30 days (as mentioned in subsection 54C(3)) has ended since the day the application for internal review was received by the agency;
- and
- (c) notice of a decision on the application has not been received by the internal review applicant.

- (2) Subject to this section:

- (a) the principal officer of the agency is taken to have made a decision personally affirming the original decision on the last day of initial decision period; and
- (b) notice of the decision is taken to have been given under section 26 to the internal review applicant on the same day.

Agency may apply for further time

- (3) However, the agency may apply, in writing, to the Information Commissioner for further time to deal with the application.
- (4) The Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency to deal with the application.
- (5) If the Information Commissioner allows further time the Information Commissioner may impose any condition that he or she considers appropriate.
- (6) Subsection (2) (deemed affirmation) does not apply, and is taken never to have applied, if the agency:
- (a) makes a decision on the application within the further time allowed; and
 - (b) complies with any condition imposed under subsection (5).
- (7) However, subsection (2) (deemed affirmation) applies as if the initial decision period were extended by the time allowed by the Information Commissioner under subsection (4) if the agency:
- (a) does not make a decision on the request within the further time allowed; or
 - (b) does not comply with any condition imposed under subsection (5).
- No further time allowed

(8) If subsection (7) (deemed affirmation after allowance of further time) applies, the Information Commissioner does not have the power to allow further time under this section in relation to the decision taken to be made under subsection (2) in its operation as affected by subsection (7).

54E Internal review—decisions to which this Part does not apply

This Part does not apply in relation to:

- (a) a decision on internal review; or
- (b) a decision in relation to the provision of access to a document upon a request that is taken to have been made under section 15AB or 51DA.

PART VII—REVIEW BY INFORMATION COMMISSIONER

DIVISION 1—GUIDE TO THIS PART

54F Review by the Information Commissioner—guide

This Part sets up a system for review of decisions by the Information Commissioner. Division 2 sets out the key concepts for the Part. Division 3 sets out the types of decisions that are reviewable. Division 4 provides for the making of applications for review by the Information Commissioner, including the time limits within which applications must be made. The Information Commissioner may make preliminary inquiries before deciding whether or not to conduct a review. In certain circumstances, the Information Commissioner may decide not to review of a decision (or a part of a decision) (see Division 5). Division 6 provides for the procedure in an IC review, including the parties to the proceeding, circumstances in which a hearing may be held and who bears the onus of proof. The Information Commissioner may refer questions of law to the Federal Court of Australia at any time during the review. The Information Commissioner must make a decision on the review in accordance with Division 7. The Information Commissioner has powers to gather information for the purposes of an IC review (see Division 8). In certain circumstances, the Inspector General of Intelligence and Security must be called to give evidence (see Division 9). An application for review of a decision of the Information Commissioner may be made to the Administrative Appeals Tribunal. A review party may appeal to the Federal Court of Australia, on a question of law, from a decision of the Information Commissioner (see Division 10).

DIVISION 2—KEY CONCEPTS

54G Key concepts—what is an IC review?

An IC review is a review of an IC reviewable decision undertaken by the Information Commissioner under this Part.

54H Key concepts—what is an IC review application?

An IC review application is an application made under Division 4 for the review of an IC reviewable decision.

54J Key concepts—who is an IC review applicant?

An IC review applicant is a person who applies for an IC review under section 54L or 54M.

54K Key concepts—what is an IC reviewable decision?

An IC reviewable decision is:

- (a) a decision covered by subsection 54L(2) (access refusal decisions); or
- (b) a decision covered by subsection 54M(2) (access grant decisions).

DIVISION 3—IC REVIEWABLE DECISIONS

54L IC reviewable decisions—access refusal decisions

(1) An application may be made to the Information Commissioner for a review of a decision covered by subsection

54L IC reviewable decisions—access refusal decisions

An IC reviewable decision is:

- (a) a decision covered by subsection 54L(2) (access refusal decisions); or
- (b) a decision covered by subsection 54M(2) (access grant decisions).

(2) This subsection covers the following decisions:

- (a) a decision made by an agency on internal review of an access refusal decision (see section 54C);
- (b) an access refusal decision made personally by the responsible Minister or the principal officer of an agency with respect to a document of the agency;
- (c) an access refusal decision made by, or on behalf of, a Minister with respect to an official document of the Minister;
- (d) a decision refusing to allow a further period for making an application for internal review of an access refusal decision (under section 54B).

Note: If no decision is made on internal review within 30 days, a decision to affirm the original access refusal decision is taken to have been made (see section 54D).

(3) The IC review application may be made by, or on behalf of, the person who made the request to which the decision relates.

54M IC reviewable decisions—access grant decisions

(1) An application may be made to the Information Commissioner for a review of a decision covered by subsection (2).

(2) This subsection covers the following decisions:

- (a) an access grant decision;
- (b) a decision made by an agency on internal review of an access grant decision (see section 54C);
- (c) a decision refusing to allow a further period for making an application for internal review of an access grant decision (under section 54B).

Note: If no decision is made on internal review within 30 days, a decision to affirm the original access grant decision is taken to have been made (see section 54D).

(3) The IC review application may be made by, or on behalf of, the following:

- (a) in any case—an affected third party for the document in relation to which the decision covered by subsection (2) was made;
- (b) in a case covered by paragraph (2)(b)—the person who made the request to which the decision relates.

54M IC reviewable decisions—access grant decisions

- (1) An application may be made to the Information Commissioner for a review of a decision covered by subsection (2).
- (2) This subsection covers the following decisions:
- (a) an access grant decision;
 - (b) a decision made by an agency on internal review of an access grant decision (see section 54C);
 - (c) a decision refusing to allow a further period for making an application for internal review of an access grant decision (under section 54B).
- Note: If no decision is made on internal review within 30 days, a decision to affirm the original access grant decision is taken to have been made (see section 54D).
- (3) The IC review application may be made by, or on behalf of, the following:
- (a) in any case—an affected third party for the document in relation to which the decision covered by subsection (2) was made;
 - (b) in a case covered by paragraph (2)(b)—the person who made the request to which the decision relates.

DIVISION 4—IC REVIEW APPLICATIONS

SUBDIVISION A—MAKING AN APPLICATION

54N IC review applications—application

Content of application

- (1) An IC review application must be in writing, and must:
- (a) give details of how notices under this Part may be sent to the IC review applicant (for example, by providing an electronic address to which notices may be sent by electronic communication); and
 - (b) give particulars of the IC reviewable decision of which an IC review is sought.
- (2) The IC review application may contain particulars of the basis on which the IC review applicant disputes the IC reviewable decision.
- (3) The Office of the Information Commissioner must provide appropriate assistance to a person who:
- (a) wishes to make an IC review application; and
 - (b) requires assistance to prepare the IC review application.

Delivery of application

- (4) The IC review application must be sent to the Information Commissioner. The IC review application may be sent in any of the following ways:
- (a) delivery to the Information Commissioner at the address of the Information Commissioner specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the Information Commissioner.

54P IC review applications—requirement to notify affected third Parties

Scope

- (1) This section applies if:

- (a) an agency or Minister decides not to give access to a document to which a consultation requirement applies under section 26A, 27 or 27A; and
- (b) an IC review application is made for an IC review of that decision.

Requirement to notify

- (2) The agency or Minister must, as soon as practicable, take all reasonable steps to notify the affected third party for the document of the application.
- (3) The agency or Minister must, as soon as practicable, give a copy of the notice to the Information Commissioner.

54Q IC review applications—circumstances in which not giving notice is appropriate

- (1) This section applies in relation to a document to which a consultation requirement applies under section 27 or 27A.
- (2) An agency or Minister is not required to notify an affected third party for the document under subsection 54P(2) if:
 - (a) the agency or the Minister applies to the Information Commissioner for an order that it would not be appropriate to notify the affected third party in the circumstances covered by subsection (3); and
 - (b) the Information Commissioner makes the order.
- (3) The circumstances covered by this subsection are whether notifying the affected third party would, or could reasonably be expected to, do any of the following:
 - (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation;
 - (b) prejudice the enforcement or proper administration of the law in a particular instance;
 - (c) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law;
 - (d) endanger the life or physical safety of any person;
 - (e) cause damage to the security, defence or international relations of the Commonwealth.

54R IC review applications—withdrawal

- (1) An IC review applicant may, in writing, withdraw the IC review application at any time before the Information Commissioner makes a decision under section 55J.
- (2) If the IC review application is withdrawn, it is taken never to have been made.

SUBDIVISION B—TIME LIMITS

54S IC review applications—time limits

Access refusal decisions

- (1) An IC review application in relation to a decision covered by subsection 54L(2) (access refusal decisions) must be made within 60 days after the day notice of the IC reviewable decision was given under section 26.

Access grant decisions

- (2) An IC review application in relation to a decision covered by subsection 54M(2) (access grant decisions) must be made within 30 days after the day notice under section 26A, 27 or 27A was given to the affected third party for the document in relation to which the decision was made.

54T IC review applications—extension of time

Application for extension of time

(1) A person may apply to the Information Commissioner for an extension of time for making an IC review application.

(2) The Information Commissioner may extend the time if the Information Commissioner is satisfied that it is reasonable in all the circumstances to do so.

(3) The time for making an IC review application may be extended under this section although the period mentioned in section 54S has ended.

Requirement to notify

(4) Before determining an application under subsection (1), the Information Commissioner may require the IC review applicant to give notice of the application to a specified person or persons that the Information Commissioner considers is affected by the application.

Person may oppose application

(5) A person to whom notice is given under subsection (4) may notify the Information Commissioner in writing that he or she opposes the application under subsection (1). The person must do so within the time required by the Information Commissioner.

Reasonable opportunity to be heard

(6) If notice is given under subsection (5), the Information Commissioner must give the IC review applicant and the person to whom notice has been given under subsection (4) a reasonable opportunity to present their cases before determining the application under subsection (1).

DIVISION 5—DECISION TO REVIEW

54U Decision to review—interpretation

This Division applies to a part of an IC review application as if a reference to an IC review application were a reference to the part of the IC review application.

The Information Commissioner may make inquiries of the review parties for the purpose of determining whether or not to undertake an IC review.

54W Decision to review—discretion not to review

The Information Commissioner may decide not to undertake an IC review, or not to continue to undertake an IC review, if:

(a) the Information Commissioner is satisfied of any of the following:

(i) the IC review application is frivolous, vexatious,

misconceived, lacking in substance or not made in good faith;

(ii) the IC review applicant has failed to cooperate in progressing the IC review application, or the IC review,

without reasonable excuse;

(iii) the Information Commissioner cannot contact the IC review applicant after making reasonable attempts; or

(b) the Information Commissioner is satisfied that the interests of the administration of this Act make it desirable that the IC

reviewable decision be considered by the Tribunal; or

(c) the IC review applicant fails to comply with a direction of the Information Commissioner.

54X Decision to review—notice requirement if discretion not to review exercised

(1) This section applies if the Information Commissioner decides not to undertake an IC review, or not to continue to undertake an IC review.

(2) The Information Commissioner must, as soon as practicable, notify the review parties of the decision in writing.

(3) The notice must:

(a) state the reasons for the Information Commissioner's decision; and

(b) if the Information Commissioner makes a decision under paragraph 54W(b)—state that an application for review of the relevant IC reviewable decision may be made to the Tribunal under section 57A.

Note: Subsection 29(2) of the Administrative Appeals Tribunal Act 1975 sets out the time within which the application for review must be made.

(4) However, the notice must not include:

(a) exempt matter; or

(b) information of the kind referred to in subsection 25(1).

Note: Subsection 25(1) deals with information about the existence or otherwise of certain documents.

54Y Decision to review—actual decisions made after IC review has commenced

(1) This section applies if:

(a) an agency or Minister has been taken to have made a decision (the deemed decision) under subsection 15AB(3), 51DA(2) or 54D(2); and

(b) a person makes an IC review application for review of the deemed decision; and

(c) the Information Commissioner has not made a decision under section 54W (decision not to review) or 55J (decision on review) in relation to the deemed decision; and

(d) subsection 15AB(7), 51DA(6) or 54D(6) applies in relation to a decision (the actual decision) made by the agency or Minister.

(2) The Information Commissioner must deal with the IC review application for review of the deemed decision as if it were an IC

review application for the review of the actual decision, subject otherwise to this Part.

Before undertaking an IC review, the Information Commissioner must inform:

(a) the person, agency or Minister who made the decision; or

(b) if the IC review application is made under section 54M (access grant decisions)—the person who made the request.

55 Procedure in IC review—general

(1) The Information Commissioner may, for the purposes of an IC review, review an IC reviewable decision by considering the documents or other material lodged with or provided to the Information Commissioner, and without holding a hearing, if:

(a) it appears to the Information Commissioner that the issues for determination on the IC review can be adequately determined in the absence of the review parties; and

(b) the Information Commissioner is satisfied that there are no unusual circumstances that would warrant the Information

Commissioner holding a hearing; and

(c) none of the review parties have applied for a hearing under section 55B.

(2) The Information Commissioner may otherwise:

(a) conduct an IC review in whatever way he or she considers appropriate; and

- (b) use any technique that the Information Commissioner considers appropriate to facilitate an agreed resolution of matters at issue in the IC review (for example by using techniques that are used in alternative dispute resolution processes); and
- (c) allow a person to participate in an IC review by any means of communication; and
- (d) obtain any information from any person, and make any inquiries, that he or she considers appropriate; and
- (e) give written directions as to the procedure to be followed in relation to:
 - (i) IC reviews generally; or
 - (ii) a particular IC review.

Example 1: The Information Commissioner may allow a person under paragraph (2)(c) to participate in a hearing by telephone.

Example 2: The Information Commissioner may give written directions under subparagraph (2)(e)(ii) as to the procedure to be followed when dealing with confidential documents in a particular IC review.

(3) A direction given under paragraph (2)(e) is not a legislative instrument.

(4) Without limiting subsection (2), the Information Commissioner must, in relation to an IC review:

- (a) conduct the IC review with as little formality and as little technicality as is possible given:
 - (i) the requirements of this Act; and
 - (ii) the requirements of any other law; and
 - (iii) a proper consideration of the matters before the Information Commissioner; and

- (b) ensure that each review party is given a reasonable opportunity to present his or her case; and
- (c) conduct the IC review in as timely a manner as is possible given the matters mentioned in subparagraphs (a)(i) to (iii).

(5) If the Information Commissioner holds a hearing, the Information Commissioner:

- (a) must hold the hearing in public, unless the Information Commissioner is satisfied that it is not desirable to do so:
 - (i) because of the confidential nature of any evidence or matter relating to the proceeding; or
 - (ii) for any other reason; and
- (b) is not bound by the rules of evidence; and
- (c) may hold a part of the hearing in the absence of a review party (or a review party's representative) if it is necessary to do so to prevent disclosure to the review party (or the review party's representative).

55A Procedure in IC review—parties to proceeding

Who are the review parties?

(1) The parties to an IC review (the review parties) are as follows:

- (a) the IC review applicant;
- (b) the principal officer of the agency, or the Minister, to whom the request was made;
- (c) an affected third party (if any) required to be notified of the IC review application under section 54P (requirement to notify affected third parties);
- (d) a party to the proceeding under subsection (3).

Note: For affected third party see section 53C.

Application to become a review party

(2) If an IC review application is made in relation to an IC reviewable decision, a person whose interests are affected by the IC

reviewable decision may apply, in writing, to the Information Commissioner to be a review party.

(3) The Information Commissioner may, by notice in writing, make a person who applies under subsection (2) an IC review party.

55B Procedure in IC review—application for hearing

(1) At any time during an IC review, a review party may apply to the Information Commissioner requesting that the Information Commissioner hold a hearing for the purposes of the IC review.

(2) The Information Commissioner must notify the other review parties of the application.

(3) The Information Commissioner must:

- (a) give all review parties a reasonable opportunity to make submissions on the application; and
- (b) decide whether or not to hold a hearing.

55C Procedure in IC review—representation

At the hearing of a proceeding before the Information Commissioner, a review party may:

- (a) appear in person; or
- (b) be represented by another person.

55D Procedure in IC review—onus

(1) Subject to subsection (2), in an IC review the principal officer of the agency, or the Minister, to whom the request was made has the onus of establishing that:

- (a) a decision given in respect of the request was justified; or
- (b) the Information Commissioner should give a decision adverse to the IC review applicant.

(2) In an IC review of a decision for which an IC review application is made under section 54M (access grant decisions), the affected third party for the document in relation to which the decision was made has the onus of establishing that:

- (a) a decision refusing the request is justified; or
- (b) the Information Commissioner should give a decision adverse to the person who made the request.

55E Procedure in IC review—inadequate reasons from decision

Maker

(1) This section applies if:

- (a) an IC review application is made in relation to an IC reviewable decision made by an agency or a Minister; and
- (b) the agency or Minister was required to provide a statement of reasons under subsection 26(1) for the decision to the person who made the request; and
- (c) the Information Commissioner believes that:
 - (i) no statement has been provided; or
 - (ii) the statement that has been provided is inadequate.

(2) The Information Commissioner may, by notice in writing, require the agency or Minister to provide an adequate statement of reasons as mentioned in subsection 26(1).

(3) If the Information Commissioner gives notice under subsection (2),

the agency or Minister must provide the adequate statement of reasons to the IC review applicant and the Information

Commissioner within:

- (a) the period specified in the notice; or
- (b) if no period is specified in the notice—28 days after the day the notice was given to the agency or Minister.

55F Procedure in IC review—review parties reach agreement

(1) This section applies if, at any stage of an IC review:

(a) the review parties reach agreement as to the terms of a decision on an IC review:

(i) on the IC review application; or

(ii) in relation to a part of the IC review application; or

(iii) in relation to a matter arising out of the IC review application; and

(b) the agreement is acceptable to all of the review parties; and

(c) the terms of the agreement are reduced to writing, signed by, or on behalf of, the review parties and given to the

Information Commissioner; and

(d) the Information Commissioner is satisfied that a decision in those terms or consistent with those terms would be within the powers of the Information Commissioner.

(2) The Information Commissioner may, if satisfied that it is appropriate:

(a) in the case of an agreement as to the terms of a decision of the Information Commissioner on the IC review—make a decision in accordance with those terms without completing the IC review; or

(b) in the case of an agreement that relates to a part of the proceeding or a matter arising out of the proceeding—in the

Information Commissioner's decision on the IC review, give effect to the terms of the agreement without completing the

IC review with respect to the part.

55G Procedure in IC review—reference of questions of law to the Federal Court of Australia

(1) The Information Commissioner may, at any time during an IC review, refer a question of law arising in an IC review to the Federal Court of Australia for decision.

(2) The Information Commissioner may refer the question of law:

(a) on the application of a review party; or

(b) on the Information Commissioner's initiative.

(3) The Federal Court of Australia has jurisdiction to hear and determine a question of law referred to it.

(4) The jurisdiction of the Federal Court of Australia may be exercised by a single judge of the Court.

(5) If a question of law is referred, the Information Commissioner must not, for the purposes of the IC review:

(a) give a decision to which the question is relevant before the

Federal Court of Australia makes a decision in relation to the reference; or

(b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the Federal Court of Australia on the question.

55H Procedure in IC review—sending of documents to, and disclosure of documents by, the Federal Court of Australia

If a question of law is referred under section 55G:

(a) the Information Commissioner must cause all documents and information in the possession of the Information

Commissioner that relate to the IC review and to the reference to be sent to the Federal Court of Australia; and

(b) at the conclusion of the proceeding before the Federal Court of Australia, the Court must cause the documents to be returned to the Information Commissioner.

DIVISION 7—DECISION ON IC REVIEW

55J Decision on IC review—decision of Information Commissioner

(1) After undertaking an IC review, the Information Commissioner must make a decision in writing:

(a) affirming the IC reviewable decision; or

(b) varying the IC reviewable decision; or

(c) setting aside the IC reviewable decision and making a decision in substitution for that decision.

(2) For the purposes of implementing a decision on an IC review, the

Information Commissioner may perform the functions, and exercise the powers, of the person who made the IC reviewable decision.

(3) A decision of the Information Commissioner on an IC review has the same effect as a decision of the agency or Minister who made the IC reviewable decision.

Content of the decision

(4) A decision on an IC review must include the following:

(a) a statement of reasons for the decision;

(b) a statement of the rights of the review parties to apply to the Tribunal for review of the decision under section 57A.

(5) However, a decision on an IC review must not include:

(a) information of the kind referred to in subsection 25(1); or

(b) exempt matter.

Providing copy of decision

(6) The Information Commissioner must give a copy of a decision on an IC review to each review party.

Copy of decision prima facie evidence

(7) A document is prima facie evidence of a decision on an IC review if:

(a) the document purports to be a copy of the decision; and

(b) the document purports to be certified by, or on behalf of, the Information Commissioner to be a true copy of the decision.

Publication requirement

(8) The Information Commissioner must publish a decision on an IC review to members of the public generally.

55K Decision on IC review—no power to give access to exempt documents

(1) This section applies if it is established in proceedings on an IC review that a document is an exempt document.

(2) The Information Commissioner does not have power to decide that access to the document is to be given, so far as it contains exempt matter.

55L Decision on IC review—limitation on amending records

(1) The Information Commissioner may, in a decision under section 55J, recommend that an amendment be made to a record that relates to a record of an opinion only if he or she is satisfied of either (or both) of the following:

(a) the opinion was based on a mistake of fact;

(b) the author of the opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion.

(2) The Information Commissioner must not, in a decision under section 55J, recommend that an amendment be made to a record if he or she is satisfied of either of the following:

(a) the record is a record of a decision, under an enactment, by a court, tribunal, authority or person;

(b) the decision whether to amend the record involves the determination of a question that the person seeking amendment of the record is, or has been, entitled to have determined by the agency (on internal review), the

Information Commissioner, a court or tribunal.

55M Decision on IC review—obligation to comply with decision

A principal officer of an agency or a Minister must comply with a decision of the Information Commissioner under section 55J on an IC review.

55N Decision on IC review—enforcement of decision against agency

(1) If the principal officer of an agency or a Minister fails to comply with section 55M, an application may be made to the Federal Court of Australia for an order directing the principal officer or Minister to comply.

(2) The application may be made by:

(a) the Information Commissioner; or

(b) the IC review applicant.

(3) The court may make any other orders that it thinks fit to secure compliance by the principal officer or the Minister.

(4) An application under subsection (1) may only be made if:

(a) the time has ended for making an application to the Tribunal under section 57A for review of the Information

Commissioner's decision; and

(b) such an application is not made before the end of the time.

55P Decision on IC review—correction of errors

(1) The Information Commissioner may correct an obvious error in a decision under section 55J of the Information Commissioner on an IC review.

Example: The following are examples of obvious errors:

(a) an obvious clerical or typographical error in the text of the decision or statement of reasons;

(b) an inconsistency between the decision and the statement of reasons.

- (2) The Information Commissioner may correct an obvious error:
- (a) on an application by a review party; or
 - (b) on the Information Commissioner's initiative.

DIVISION 8—INFORMATION GATHERING POWERS

55Q Information gathering powers—obliging production of information and documents

Scope

- (1) This section applies if the Information Commissioner has reason to believe that a person has information, or a document, relevant to an IC review.
- (2) This section applies subject to sections 55S (exempt documents generally) and 55T (particular exempt documents).

Notice to produce

- (3) The Information Commissioner may, by written notice, require a person to, for the purposes of an IC review:
- (a) give the Information Commissioner information of a kind specified by the notice; or
 - (b) produce to the Information Commissioner a document specified by the notice.
- (4) The notice must:
- (a) be in writing; and
 - (b) specify the place at which the person must comply with the notice; and
 - (c) state that the person must comply with the notice:
 - (i) within a specified period that is not less than 14 days after the day on which the person is given the notice; or
 - (ii) at a specified time that is not less than 14 days after the time at which the person is given the notice.

Offence for failure to comply

- (5) A person commits an offence if:
- (a) the person is subject to a requirement specified in a notice under subsection (3); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty for a contravention of this subsection: Imprisonment for 6 months.

55R Information gathering powers—dealings with documents

What the Information Commissioner may do with documents

- (1) The Information Commissioner may do any of the following in relation to any documents produced in accordance with a notice under subsection 55Q(3):
- (a) take possession of the documents;
 - (b) make copies of the documents;
 - (c) take extracts from the documents;
 - (d) hold the documents for a period that is necessary for the purposes of the IC review.

Information Commissioner must permit access by those entitled

- (2) For the purposes of an IC review, the Information Commissioner must permit a person to inspect a document that the person would be entitled to inspect if the document were not held by the Information Commissioner.

(3) The Information Commissioner must permit the person to inspect the document at any reasonable time.

55S Information gathering powers—production of exempt documents generally

Scope

(1) This section applies to an IC review of a decision in relation to a document if:

(a) the principal officer of an agency or a Minister claims that the document is an exempt document; and

(b) section 55T does not apply to the document.

Exempt document produced under obligation

(2) The Information Commissioner may, for the purposes of deciding whether the document is an exempt document, require the document to be produced.

(3) If the Information Commissioner is satisfied that the document is an exempt document, the Information Commissioner must return the document to the person by whom it was produced.

Production to determine whether access can be given to part of document

(4) The Information Commissioner may require the production of an exempt document for the purpose of determining whether it is practicable for an agency or a Minister to give access to an edited copy of the document.

(5) If the document is produced to the Information Commissioner (whether under this section or voluntarily), only the following persons may have access to the document, or to the contents of the document:

(a) the Information Commissioner;

(b) a member of the staff of the Information Commissioner in the course of the performance of his or her duties as a member of that staff.

55T Information gathering powers—production of national security and cabinet documents

(1) This section applies to an IC review of a decision in relation to a document that is claimed to be an exempt document under section 33 (national security documents) or 34 (cabinet documents).

(2) The Information Commissioner may only require the production of the document in accordance with this section.

(3) If the Information Commissioner is not satisfied by evidence on affidavit or otherwise that the document is an exempt document under section 33 or 34, the Information Commissioner may require the document to be produced for inspection by the Information Commissioner.

(4) If the Information Commissioner is satisfied that the document is an exempt document, the Information Commissioner must return the document to the person by whom it was produced without permitting a person to have access to the document or disclosing the contents of the document to a person, unless the person is:

(a) the Information Commissioner; or

(b) a member of the staff of the Information Commissioner in the course of the performance of his or her duties as a member of that staff; or

(c) in the circumstances permitted under paragraph 55ZC(3)(a)—the Inspector-General of Intelligence and Security.

55U Information gathering powers—further searches for a

Document

- (1) This section applies to an IC review in relation to a request for access to a document if:
 - (a) access to the document is refused under section 24A (document cannot be found etc.); or
 - (b) access is purportedly given to the document (amongst others to which the request relates), but is not actually given.
- (2) The Information Commissioner may require the agency or Minister concerned to conduct further searches for the document.

55V Information gathering powers—obliging persons to appear

Notice to appear

- (1) The Information Commissioner may, by written notice, require a person to appear before the Information Commissioner to answer questions for the purposes of an IC review.
- (2) The notice must:
 - (a) be in writing; and
 - (b) state that the person must comply with the notice at a specified time that is not less than 14 days after the time at which the person is given the notice; and
 - (c) specify the place at which the person must comply with the notice.

Offence for failure to comply

- (3) A person commits an offence if:
 - (a) the person is subject to a requirement specified in a notice under subsection (1); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty for a contravention of this subsection: 6 months imprisonment.

55W Information gathering powers—administration of oath or Affirmation

- (1) If, by a notice under subsection 55V(1), the Information Commissioner requires a person to appear before him or her, the Information Commissioner may:
 - (a) administer an oath or affirmation to the person; and
 - (b) examine the person on oath or affirmation.
- (2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.
- (3) A person commits an offence if:
 - (a) the person is required under this section to be examined on oath or affirmation; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches that requirement.

Penalty for a contravention of this subsection: 6 months imprisonment.

55X Information gathering powers—no loss of legal professional Privilege

Information or a document does not cease to be the subject of legal professional privilege merely because it is given, provided, produced or referred to for the purposes of this Part.

55Y Information gathering powers—protection from liability

- (1) This section applies if a person does any of the following for the purposes of an IC review:
 - (a) gives information;
 - (b) produces a document;

(c) answers a question.

(2) If this section applies:

(a) civil proceedings do not lie against the person in respect of loss, damage or injury of any kind suffered by another person because the person does any of the matters mentioned in paragraphs (1)(a) to (c) in good faith; and

(b) the person is not liable to a penalty under the provisions of any law because he or she does any of those matters.

(3) This section applies whether or not the person is required to do a thing mentioned in subsection (1) in accordance with this Division.

DIVISION 9—EVIDENCE BY INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

55Z Evidence by Inspector-General of Intelligence and Security—

Scope

This Division applies in an IC review of a decision in relation to a document that is claimed to be an exempt document under section 33 (national security documents).

55ZA Evidence by Inspector-General of Intelligence and Security—

(1) Before determining that a document is not an exempt document under section 33, the Information Commissioner must request the Inspector-General of Intelligence and Security to appear personally and give evidence on:

(a) the damage that would, or could reasonably be expected to, be caused to:

(i) the security of the Commonwealth; or

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth;

if access to the document were given in accordance with the request; or

(b) whether giving access to the document in accordance with the request would divulge any information or matter communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

(2) Before determining that an agency or Minister must grant access to a copy of the document with deletions, the Information Commissioner must request the Inspector-General to appear personally and give evidence on:

(a) the damage that would, or could reasonably be expected to, be caused to:

(i) the security of the Commonwealth; or

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth;

if the proposed deletions were not made; or

(b) whether giving access to the document without the proposed deletions would divulge any information or matter communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

(3) Before hearing the evidence of the Inspector-General, the Information Commissioner must hear any evidence to be given or submissions to be made by, or on behalf of, the agency to which, or the Minister to whom, the request was made for access to the document.

(4) The Information Commissioner is not bound by any opinion of the Inspector-General expressed while giving evidence under this Subdivision.

55ZB Evidence by Inspector-General of Intelligence and Security—compliance with request

The Inspector-General of Intelligence and Security must comply with a request under section 55ZA unless, in the opinion of the Inspector-General, the Inspector-General is not appropriately qualified to give evidence on the matters in relation to which the Inspector-General has been requested to give evidence.

55ZC Evidence by Inspector-General of Intelligence and Security—procedural matters

(1) This section applies for the purposes of enabling the Inspector-General of Intelligence and Security to comply with a request under section 55ZA.

(2) The Information Commissioner must allow the Inspector-General to take possession of, and make copies of or take extracts from, any document given to the Information Commissioner for the purposes of the proceeding.

(3) The Inspector-General may require the production of the following:

(a) the document that is claimed to be an exempt document under section 33 by the agency to which or the Minister to whom the request was made for access to the document;

(b) any document of an agency or official document of a Minister that relates to the document mentioned in subsection (2) by the agency or Minister.

(4) The Inspector-General may make copies of, or take extracts from, the documents mentioned in subsection (3).

(5) After the period that is reasonably necessary for the purposes of giving evidence to the Information Commissioner, the Inspector-General must:

(a) return the original of any document to the Information Commissioner or to the agency or Minister; and

(b) destroy any copies of or extracts taken from any document.

(6) The Inspector-General must permit a person to inspect a document that the person would be entitled to inspect if the document were not held by the Inspector-General.

(7) The Inspector-General must permit the person to inspect the document at all reasonable times.

(8) The Information Commissioner must allow the Inspector-General a period within which to consider the documents mentioned in subsections (2) to (4) that is reasonable having regard to:

(a) the nature of the evidence that the Inspector-General has been requested to give; and

(b) the time required by the Inspector-General to perform the Inspector-General's other functions.

DIVISION 10—APPEALS

56 Appeals—appeals to Federal Court of Australia on questions of Law

(1) A review party may appeal to the Federal Court of Australia, on a question of law, from a decision of the Information Commissioner on an IC review.

(2) An appeal under this section must be instituted:

- (a) either:
 - (i) not later than 28 days after the day a decision under section 55J of the Information Commissioner on an IC review is given to the review party; or
 - (ii) within the further time that the Federal Court of Australia allows; and
- (b) in any way that is prescribed by rules of court made under the Federal Court of Australia Act 1976.
- (3) The Federal Court of Australia has jurisdiction to hear and determine appeals instituted under this section.
- (4) The jurisdiction of the Federal Court of Australia under subsection (3) includes jurisdiction to make findings of fact under section 56A.
- (5) The Federal Court of Australia:
 - (a) must hear and determine the appeal; and
 - (b) may make any order or orders that it thinks appropriate by reason of its decision.
- (6) Without limiting subsection (5), the orders that the Federal Court of Australia may make include the following:
 - (a) an order affirming the decision of the Information Commissioner;
 - (b) an order setting aside the decision of the Information Commissioner and making a decision in substitution for the decision;
 - (c) an order remitting the case to be considered and decided again by the Information Commissioner in accordance with the directions of the Court:
 - (i) with or without the holding of a hearing; and
 - (ii) with or without the hearing of further evidence.

56A Appeals—Federal Court of Australia may make findings of fact

- (1) If a review party appeals to the Federal Court of Australia under section 56, the Court may make findings of fact if:
 - (a) the findings of fact are not inconsistent with findings of fact made by the Information Commissioner (other than findings made by the Information Commissioner as the result of an error of law); and
 - (b) it appears to the Court that it is convenient for the Court to make the findings of fact, having regard to all of the following:
 - (i) the extent (if any) to which it is necessary for facts to be found;
 - (ii) the means by which those facts might be established;
 - (iii) the expeditious and efficient resolution of the whole of the matter to which the IC review relates;
 - (iv) the relative expense to the parties of the Court, rather than the Information Commissioner, making the findings of fact;
 - (v) the relative delay to the parties of the Court, rather than the Information Commissioner, making the findings of fact;
 - (vi) whether any of the parties considers that it is appropriate for the Court, rather than the Information Commissioner, to make the findings of fact;
 - (vii) such other matters (if any) as the Court considers relevant.
- (2) For the purposes of making findings of fact under subsection (1), the Federal Court of Australia may:
 - (a) have regard to the evidence given in the IC review; and
 - (b) receive further evidence.

(3) Subsection (2) does not limit the Federal Court of Australia's power under subsection 56(6) to make an order remitting the case to be heard and decided again by the Information Commissioner.

PART VIIA—REVIEW BY THE TRIBUNAL

DIVISION 1—GUIDE TO THIS PART

57 Guide to this Part

An application may be made to the Administrative Appeals Tribunal for the review of certain decisions (see section 57A).

Division 3 sets out the powers of the Tribunal in a review.

Division 4 deals with the procedure to be followed in a review by the Tribunal.

Division 5 deals with ensuring that exempt matter that comes before the Tribunal is protected from disclosure.

Division 6 deals with the circumstances in which the Tribunal may make recommendations as to costs.

Division 7 deals with the stay of decisions pending appeal to the Federal Court of Australia.

DIVISION 2—TRIBUNAL REVIEWABLE DECISIONS

57A Tribunal reviewable decisions—which decisions are reviewable?

An application may be made to the Tribunal for review of the following decisions:

- (a) a decision of the Information Commissioner on an IC review;
- (b) if the Information Commissioner makes a decision under paragraph 54W(b) (matters inappropriate for IC review)—the IC reviewable decision in relation to which the Information Commissioner makes the decision.

DIVISION 3—POWERS OF TRIBUNAL

58 Powers of Tribunal

(1) Subject to this section, in proceedings under this Part, the Tribunal has power, in addition to any other power, to review any decision that has been made by an agency or Minister in respect of the request and to decide any matter in relation to the request that, under this Act, could have been or could be decided by an agency or Minister, and any decision of the Tribunal under this section has the same effect as a decision of the agency or Minister.

(2) Where, in proceedings under this Act, it is established that a document is an exempt document, the Tribunal does not have power to decide that access to the document, so far as it contains exempt matter, is to be granted.

(3) Where there is in force in respect of a document a certificate under section 33, 33A, 34, 35 or 36, the powers of the Tribunal do not extend to reviewing the decision to give the certificate, but the Tribunal, constituted in accordance with section 58B, may determine such question in relation to that certificate as is provided for in whichever of subsections (4), (5) and (5A) applies in relation to that certificate.

(4) Where application is or has been made to the Tribunal for the review of a decision refusing to grant access to a document in accordance with a request, being a document that is claimed to be an exempt document under section 33, 33A, 34 or 35 and in respect of which a certificate (other than a certificate of a kind referred to in subsection (5A)) is in force under that section, the Tribunal shall, if the applicant so requests, determine the question whether there exist reasonable grounds for that claim.

(5) Where application is or has been made to the Tribunal for the review of a decision refusing to grant access to a document in accordance with a request, being a document that is claimed to be an exempt document under section 36 and in respect of which a certificate is in force under that section, the Tribunal shall, in a case where it is satisfied that the document is a document to which paragraph 36(1)(a) applies, if the applicant so requests, determine the question whether there exist reasonable grounds for the claim that the disclosure of the document would be contrary to the public interest.

(5A) Where application is or has been made to the Tribunal for the review of a decision refusing to grant access to a document in accordance with a request, being a document as described in the request in respect of which a certificate is in force under subsection 33(4) or 33A(4), the Tribunal shall, if the applicant so requests, determine the question whether there exist reasonable grounds for the claim that information as to the existence or non-existence of the document as so described would, if contained in a document of an agency:

(a) in a case where the certificate was given under subsection 33(4)—cause that document of an agency to be an exempt document for a reason referred to in subsection 33(1); or

(b) in a case where the certificate was given under subsection 33A(4):

(i) cause that document of an agency to be an exempt document for a reason referred to in subsection 33A(1); and

(ii) not cause that document of an agency to be a document containing matter the disclosure of which under this Act would be, on balance, in the public interest.

(6) The powers of the Tribunal under this section extend to matters relating to charges payable under this Act in relation to a request.

58A Powers of Tribunal—requiring further searches

(1) This section applies to a review on an application to the Tribunal under section 57A if:

(a) access to the document is refused under section 24A

(document cannot be found etc.); or

(b) access is purportedly given to the document (amongst others to which the request relates), but is not actually given.

(2) For the purposes of the review, the Tribunal may require the agency or Minister concerned to conduct further searches for the document.

58AA Powers of Tribunal—limitation on amending records

(1) The Tribunal may, in a decision on an application to the Tribunal under section 57A, recommend that an amendment be made to a record that relates to a record of an opinion only if he or she is satisfied of either (or both) of the following:

(a) the opinion was based on a mistake of fact;

(b) the author of the opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion.

(2) The Tribunal must not, in a decision on an application under section 57A, recommend that an amendment be made to a record if it is satisfied of either of the following:

(a) the record is a record of a decision, under an enactment, by a court, tribunal, authority or person;

(b) the decision whether to amend the record involves the determination of a question that the person seeking amendment of the record is, or has been, entitled to have determined by the agency (on internal review), the Information Commissioner, a court or tribunal

DIVISION 4—PROCEDURE IN TRIBUNAL.

58B Constitution of Tribunal for purposes of proceedings under subsection 58(4), (5) or (5A)

(1) If an application is made to the Tribunal for the review in relation to a decision refusing to grant access to a document in accordance with a request, being a document that is claimed to be an exempt document under section 33 or 34, then the Tribunal must be constituted in accordance with subsection (2) for the purposes of any proceeding in relation to the application.

(2) For the purposes of a proceeding referred to in subsection (1), the Tribunal shall be constituted by:

- (a) 3 presidential members; or
- (b) a presidential member alone.

(3) In its application to a proceeding referred to in subsection (1), section 21A of the *Administrative Appeals Tribunal Act 1975* applies as if:

(a) subsection (1) of that section were omitted and the following subsection substituted:

“(1) At any time during the hearing of a proceeding before the Tribunal constituted in accordance with subsection 58B(2) of the *Freedom of Information Act 1982* by a presidential member alone, a party to the proceeding may make an application to the Tribunal as constituted for the purposes of that proceeding requesting that the Tribunal be reconstituted for the purposes of that proceeding.”; and

(b) subsection (3) of that section were omitted and the following subsection substituted:

“(3) The President may, after taking the submissions into account, if he or she considers that the matters to which the proceeding relates are of such public importance as to justify him or her in so doing, give a direction varying the constitution of the Tribunal for the purposes of that proceeding so that the Tribunal is constituted by 3 presidential members.”.

(4) In its application to a proceeding referred to in subsection (1), section 22 of the *Administrative Appeals Tribunal Act 1975* applies as if there were inserted after paragraph (1)(aa) of that section the following paragraphs:

“(ab) if the Tribunal is constituted by presidential members of whom at least 2 are Judges and none of whom is the President—the senior Judge shall preside;

(ac) if the Tribunal is constituted by presidential members none of whom is a Judge—one of those presidential members who is directed by the President to do so shall preside;”.

58D Modification of section 42 of the Administrative Appeals Tribunal Act 1975

In its application to a proceeding referred to in subsection 58B(1) of this Act, section 42 of the *Administrative Appeals Tribunal Act 1975* applies as if subsection (3) of that section were omitted and the following subsection substituted:

“(3) A question of law arising in a proceeding before the Tribunal constituted in accordance with subsection 58B(2) of the *Freedom of Information Act 1982* by 3 presidential members shall:

(a) in a case where one only of those members is a Judge—be decided according to the opinion of that member; and

(b) in a case where 2 of those members are Judges—be decided according to the opinion of the majority.”.

58E Production to the Tribunal of certain exempt documents

- (1) In any proceedings before the Tribunal under this Act in relation to a document that is claimed to be an exempt document under section 33 or 34, the Tribunal is entitled to require the production of the document in accordance with this section and not in accordance with section 64, section 37 of the Administrative Appeals Tribunal Act 1975 or otherwise.
- (2) If the Tribunal is not satisfied by evidence on affidavit or otherwise that the document is an exempt document under section 33 or 34, the Tribunal may require the document to be produced for inspection by the Tribunal as constituted for the purposes of the proceeding.
- (3) If, after an inspection of a document under this section, the Tribunal is satisfied that the document is an exempt document, the Tribunal must return the document to the person by whom it was produced without permitting a person to have access to the document or disclosing the contents of the document to a person, unless the person is:
 - (a) a member of the Tribunal as constituted for the purposes of the proceeding; or
 - (b) a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of that staff; or
 - (c) in the circumstances permitted under paragraph 60A(6)(a)— the Inspector-General of Intelligence and Security.

60 Procedure in Tribunal—parties

- (1) This section applies for the purposes of this Part and of the application of the Administrative Appeals Tribunal Act 1975 in relation to proceedings under this Part.
- (2) A decision given by a person on behalf of an agency is taken to have been given by the agency.
- (3) The parties to a proceeding before the Tribunal for a review of a decision are as follows:
 - (a) the person who applied to the Tribunal for a review of the decision under section 57A;
 - (b) the person who made the request in respect of which the decision was made;
 - (c) the principal officer of the agency, or the Minister, to whom the request was made;
 - (d) an affected third party for the document in relation to which the decision was made;
 - (e) any other person who is made a party to the proceeding by the Tribunal under subsection 30(1A) of the Administrative Appeals Tribunal Act 1975.

61 Onus

- (1) Subject to subsection (2), in proceedings under this Part, the agency or Minister to which or to whom the request was made has the onus of establishing that a decision given in respect of the request was justified or that the Tribunal should give a decision adverse to the applicant.
- (2) In proceedings under this Part that relate to an access grant decision (see section 53B), the affected third party for the document in relation to which the decision was made has the onus of establishing that:
 - (a) a decision refusing the request is justified; or
 - (b) the Tribunal should give a decision adverse to the person who made the request.

62 Application of section 28 of Administrative Appeals Tribunal Act etc.

- (1) Where, in relation to a decision in respect of a request, the applicant has been given a notice in writing under section 26, section 28 of the *Administrative Appeals Tribunal Act 1975* does not apply to that decision.

(2) If the Tribunal, upon application for a declaration under this subsection made to it by a person to whom a notice has been furnished in pursuance of subsection 26(1), considers that the notice does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for the decision, the Tribunal may make a declaration accordingly, and, where the Tribunal makes such a declaration, the person responsible for furnishing the notice shall, as soon as practicable but in any case within 28 days after the Tribunal makes the declaration, furnish to the applicant an additional notice or additional notices containing further and better particulars in relation to matters specified in the declaration with respect to those findings, that evidence or other material or those reasons.

DIVISION 5—PROTECTION OF INFORMATION IN TRIBUNAL

63 Tribunal to ensure non-disclosure of certain matters

(1) In determining whether the Tribunal is satisfied that it is desirable to make an order or orders under subsection 35(2) of the Administrative Appeals Tribunal Act 1975, the Tribunal must:

(a) have regard to:

(i) the necessity of avoiding the disclosure to the applicant of exempt matter contained in a document to which the proceedings relate; and

(ii) the necessity of avoiding the disclosure to the applicant of information of the kind referred to in subsection 25(1); and

(b) where the proceedings relate to a document that is claimed to be an exempt document under section 33—give particular weight to a submission made by an agency or a Minister that it is desirable to make the order or orders under subsection 35(2) of the Administrative Appeals Tribunal Act 1975 because disclosure of the document:

(i) would, or could reasonably be expected to, cause damage to the security, defence or international relations of the Commonwealth; or

(ii) would divulge information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

(2) Notwithstanding anything contained in the *Administrative Appeals Tribunal Act 1975*:

(a) the Tribunal shall not, in its decision, or reasons for a decision, in a matter arising under this Act, include any matter or information of a kind referred to in ; paragraph (1)(a) and

(b) the Tribunal may receive evidence, or hear argument, in the absence of the applicant or his or her representative where it is necessary to do so in order to prevent the disclosure to the applicant of matter or information of a kind referred to in paragraph (1)(a).

64 Production of exempt documents

(1) Section 37 of the Administrative Appeals Tribunal Act 1975 does not apply in relation to a document that is claimed to be an exempt document, but in proceedings before the Tribunal in relation to such a document, the Tribunal may, for the purpose of deciding whether the document is an exempt document, require the document to be produced for inspection by members of the Tribunal only.

(1AA) If, upon the inspection, the Tribunal is satisfied that the document is an exempt document, the Tribunal must return the document to the person by whom it was produced without permitting a

person to have access to the document, or disclosing the contents of the document to a person, unless the person is:

- (a) a member of the Tribunal as constituted for the purposes of the proceeding; or
- (b) a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of that staff; or
- (c) in the circumstances permitted under paragraph 60A(6)(a)— the Inspector-General of Intelligence and Security.

(1A) If, for the purposes of proceedings before the Tribunal under this Act in relation to a document that is claimed to be an exempt document, the document is voluntarily produced to the Tribunal, then only:

- (a) the members of the Tribunal as constituted for the purposes of the review; or
- (b) a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of that staff; may inspect, or have access to, the document.

(2) The Tribunal may require the production, for inspection by members of the Tribunal only, of an exempt document for the purpose of determining whether it is practicable for an agency or a Minister to grant access to a copy of the document with such deletions as to make the copy not an exempt document and, where an exempt document is produced by reason of such a requirement, the Tribunal shall, after inspection of the document by the members of the Tribunal as constituted for the purposes of the proceeding, return the document to the person by whom it was produced without permitting a person to have access to the document, or disclosing the contents of the document to a person, unless the person is:

- (a) a member of the Tribunal as constituted for the purposes of the proceeding; or
- (b) a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of that staff; or
- (c) in the circumstances permitted under paragraph 60A(6)(a)— the Inspector-General of Intelligence and Security.

(4A) In making an order for the purposes of subsection (1), or (2) the Tribunal may require the relevant document to be produced at any time later than 28 days after the decision-maker was given notice of the application, even if that time is before the Tribunal has begun to hear argument or otherwise deal with the matter.

(5) Subsections (1), (1A) and (2) apply in relation to a document in the possession of a Minister that is claimed by the Minister not to be an official document of the Minister as if references in those subsections to an exempt document were references to a document in the possession of a Minister that is not an official document of the Minister.

(6) Subsection (1), (1A) or (2) does not operate so as to prevent the Tribunal from causing a document produced in accordance with that subsection to be sent to the Federal Court of Australia in accordance with section 46 of the *Administrative Appeals Tribunal Act 1975*, but, where such a document is so sent to the Court, the Court shall do all things necessary to ensure that the contents of the document are not disclosed (otherwise than in accordance with this Act) to any person other than a member of the Court as constituted for the purpose of the proceeding before the Court or a member of the staff of the Court in the course of the performance of his or her duties as a member of that staff.

(7) Subsection (6) does not prevent the Federal Court of Australia from causing the document concerned to be sent to the Federal Magistrates Court as mentioned in subparagraph 46(1)(c)(i) of the *Administrative Appeals Tribunal Act 1975*.

(8) If a document produced in accordance with subsection (1), (1A) or (2) is sent to the Federal Magistrates Court as mentioned in subparagraph 46(1)(c)(i) of the *Administrative Appeals Tribunal Act 1975*, the Federal Magistrates Court must do all things necessary to ensure that the contents of

the document are not disclosed (otherwise than in accordance with this Act) to any person other than:

- (a) the Federal Magistrate who constitutes the Federal Magistrates Court for the purposes of the proceeding before the Federal Magistrates Court; or
- (b) a member of the staff of the Federal Magistrates Court in the course of the performance of his or her duties as a member of that staff.

DIVISION 6—RECOMMENDATIONS AS TO COSTS

66 Tribunal may make recommendation that costs be available in certain circumstances

(1) Where:

- (a) a person applies, under section 57A, to the Tribunal for review of a decision of the Information Commissioner on an IC review; and
- (b) the person is successful, or substantially successful, in his or her application for review; the Tribunal may, in its discretion, recommend to the responsible Minister that the costs of the applicant in relation to the proceedings be paid by the Commonwealth.

(2) Without limiting the generality of the matters to which the Tribunal may have regard in deciding whether to make a recommendation under subsection (1), the Tribunal shall have regard to:

- (a) the question whether payment of the costs or any part of the costs would cause financial hardship to the applicant;
 - (b) the question whether the decision of the Tribunal on review will be of benefit to the general public;
 - (c) the question whether the decision of the Tribunal on review will be of commercial benefit to the person making application to the Tribunal; and
 - (d) the reasonableness of the decision reviewed by the Tribunal.
- (3) The responsible Minister may, pursuant to a recommendation of the Tribunal under subsection (1), authorize the payment of costs to an applicant.

DIVISION 7—AUTOMATIC STAY OF CERTAIN DECISIONS

67 Stay of Decisions

(1) This section applies if:

- (a) a person applies, under section 57A, to the Tribunal for review in relation to a decision by an agency or Minister refusing to grant access to a document in accordance with a request, being a document that is claimed to be an exempt document; and
- (b) the Tribunal decides that a person may have access to the document; and
- (c) the agency or the Minister institutes an appeal to the Federal Court of Australia from the decision of the Tribunal.

(2) If this section applies to a decision of the Tribunal, the operation of the decision is stayed by force of this section from the time at which the appeal is instituted.

(3) If the agency or the Minister appeals to the Federal Court of Australia from the decision of the Tribunal and the appeal in relation to the decision is determined by the Federal Court of Australia, the stay continues to have effect until the earlier of:

- (a) the time at which the decision of the Federal Court of Australia on the appeal takes effect; and
- (b) the time otherwise determined by the Federal Court of Australia.

(4) If the agency or the Minister appeals to the Federal Court of Australia from the decision of the Tribunal and the appeal in relation to the decision is determined by the Federal Magistrates Court, the stay continues to have effect until the earlier of:

(a) the time at which the decision of the Federal Magistrates Court on the appeal takes effect; and
(b) the time otherwise determined by the Federal Magistrates Court.

(5) Nothing in this section affects the power of the Federal Court of Australia or the Federal Magistrates Court to make orders under section 44A of the Administrative Appeals Tribunal Act 1975 in relation to matters other than staying the decision of the Tribunal.

PART VIIB—INVESTIGATIONS AND COMPLAINTS

DIVISION 1—GUIDE TO THIS PART

Investigations and complaints—guide

68 Guide

This Part is about investigations by the Information Commissioner and by the Ombudsman Division 2 sets up a system for investigations by the Information Commissioner.

The Information Commissioner may investigate an action taken by an agency in the performance of functions or the exercise of powers under this Act on a complaint from a person, or on the Information Commissioner's initiative.

If a person disputes the merits of an access refusal decision or an access grant decision, this Act provides elsewhere for the review of that decision (see Parts VI, VII and VIIA).

However, this does not prevent a person from making a complaint to the Information Commissioner about the way in which the agency has handled the decision.

The Information Commissioner has powers to obtain documents, to question persons and to enter premises (see Subdivision D).

At the conclusion of the investigation, the Information Commissioner must give a notice to the complainant and to the respondent agency about the Information Commissioner's findings, with any recommendations that the Information Commissioner believes the agency ought to implement (see section 86).

If the Information Commissioner is not satisfied that the agency has taken adequate and appropriate action to implement the recommendations, the Information Commissioner may take further steps (see sections 89, 89A and 89B).

Division 3 deals with the investigation of complaints by the Ombudsman about action taken under this Act.

DIVISION 2—INFORMATION COMMISSIONER INVESTIGATIONS

SUBDIVISION A—POWER TO INVESTIGATE

69 Information Commissioner investigations—power to investigate

Obligation to investigate

(1) The Information Commissioner must, subject to this Division, investigate a complaint made under section 70.

Discretion to investigate

(2) The Information Commissioner may, at the Information Commissioner's initiative, investigate an action taken by an agency (the respondent agency) in the performance of functions, or the exercise of powers, under this Act.

SUBDIVISION B—MAKING COMPLAINTS

70 Information Commissioner investigations—making complaints

(1) A person (the complainant) may complain to the Information Commissioner about an action taken by an agency in the performance of functions, or the exercise of powers, under this Act.

(2) A complaint must:

(a) be in writing; and

(b) identify the agency (also the respondent agency) in respect of which the complaint is made.

(3) The Office of the Information Commissioner must provide appropriate assistance to a person who:

- (a) wishes to make a complaint; and
- (b) requires assistance to formulate the complaint.

SUBDIVISION C—DECISION TO INVESTIGATE

71 Information Commissioner investigations—interpretation

This Subdivision applies to a part of a complaint as if:

- (a) a reference to a complaint were a reference to the part of the complaint; and
- (b) a reference to an action were a reference to an action to which the part of the complaint relates.

72 Information Commissioner investigations—preliminary inquiries

The Information Commissioner may make inquiries of the respondent agency for the purpose of determining whether or not to investigate a complaint made (or purported to be made) under section 70.

73 Information Commissioner investigations—discretion not to investigate

The Information Commissioner may decide not to investigate, or not to continue to investigate, a complaint about an action made under section 70 if the Information Commissioner is satisfied of any of the following:

- (a) that the action is not taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act;
- (b) that:
 - (i) the complainant has or had a right to cause the action to be reviewed by the respondent agency, the Information Commissioner, a court or a tribunal; and
 - (ii) the complainant has not exercised, or did not exercise, the right; and
 - (iii) it would be, or would have been, reasonable for the complainant to exercise the right;
- (c) that:
 - (i) the complainant has or had a right to complain about the action to another body; and
 - (ii) the complainant has not exercised, or did not exercise the right; and
 - (iii) it would be, or would have been, reasonable for the complainant to exercise the right;
- (d) that the complainant has complained to the respondent agency, and the respondent agency:
 - (i) has dealt, or is dealing, adequately with the complaint; or
 - (ii) has not yet had an adequate opportunity to deal with the complaint;
- (e) that the complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith;
- (f) that the complainant does not have a sufficient interest in the subject matter of the complaint.

74 Information Commissioner investigations—transfer to Ombudsman

Scope

This section applies if the Information Commissioner is satisfied that a complaint about an action could be more effectively or appropriately dealt with by the Ombudsman under the Ombudsman Act 1976.

Transfer of complaints to Ombudsman

(2) The Information Commissioner:

- (a) must consult the Ombudsman about the complaint with a view to avoiding inquiries being conducted into that matter by both the Information Commissioner and the Ombudsman; and

- (b) may decide not to investigate the action, or not to continue to investigate the action.
- (3) If the Information Commissioner decides not to investigate, or not to continue to investigate, the action under paragraph (2)(b), the Information Commissioner must:
 - (a) transfer the complaint to the Ombudsman; and
 - (b) give the Ombudsman any information or documents that relate to the complaint in the possession, or under the control of, the Information Commissioner; and
 - (c) notify the complainant in writing that the complaint has been transferred.
- (4) A notice under paragraph (3)(c) must state the reasons for the Information Commissioner's decision.
- (5) A complaint transferred under subsection (3) is taken to be a complaint made to the Ombudsman under the *Ombudsman Act 1976*.

75 Information Commissioner investigations—notice requirements

Notice to respondent agency before commencing investigation

- (1) Before beginning an investigation, the Information Commissioner must notify the respondent agency in writing.

Notice of decision not to investigate, or not to continue to investigate

- (2) Subsection (3) applies if the Information Commissioner decides:
 - (a) not to investigate, or not to continue to investigate, a complaint made under section 70; or
 - (b) not to continue an investigation commenced at the Information Commissioner's initiative.
- (3) The Information Commissioner must, as soon as practicable, notify the complainant (if any) and the respondent agency of the decision in writing.
- (4) A notice under subsection (3) must state the reasons for the Information Commissioner's decision.

SUBDIVISION D—INVESTIGATION PROCEDURE INFORMATION COMMISSIONER INVESTIGATIONS

76 conduct of investigation

- (1) An investigation must be conducted in private and in a way the Information Commissioner thinks fit.
- (2) For the purposes of an investigation, the Information Commissioner may obtain information from any officer of an agency, and make any inquiry, that he or she thinks is relevant to the investigation.

77 Information Commissioner investigations—general power to enter premises

Authority to enter premises

- (1) An authorised person may enter a place that:
 - (a) is occupied by an agency; or
 - (b) is occupied by a contracted service provider and used by the contracted service provider predominantly for the purposes of a Commonwealth contract.
- (2) The authorised person may enter a place only if:
 - (a) consent to the entry has been given by the person (the consenting person) who is:
 - (i) in the case of an agency—the principal officer of the agency; or
 - (ii) in the case of a contracted service provider—the person in charge (however described) of the contracted service provider; and
 - (b) before giving the consent, the authorised person informed the consenting person that he or she may refuse consent.

- (3) The authorised person must leave the premises if the consenting person asks the authorised person to do so.
- (4) If the consenting person consents to the entry under paragraph (2)(a), the authorised person may, at any reasonable time of day arranged with the consenting person:
- (a) enter and remain at the place; or
 - (b) carry on the investigation at that place; or
 - (c) inspect any documents relevant to the investigation kept at the place.
- (5) This section is subject to section 78.
- Who is an authorised person?
- (6) An authorised person is a person who is:
- (a) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Office of the Information Commissioner; and
 - (b) authorised by the Information Commissioner for the purposes of this section.

78 Information Commissioner investigations—places for which approval required before entry

Specific places and areas

- (1) Subsection (2) applies if an authorised person proposes to enter, or carry on an investigation, at any of the following:
- (a) a place referred to in paragraph 80(c) of the Crimes Act 1914;
 - (b) a place that is a prohibited area for the purposes of the Defence (Special Undertakings) Act 1952 because of section 7 of that Act;
 - (c) an area of land or water or an area of land and water that is declared under section 14 of the Defence (Special Undertakings) Act 1952 to be a restricted area for the purposes of that Act.
- (2) If this subsection applies, the authorised person must not enter, or carry on an investigation, unless:
- (a) the Minister administering that Act, or another Minister acting for and on behalf of the Minister, has, in writing, approved the entry or carrying on of the investigation; and
 - (b) the authorised person complies with any conditions specified in the approval.

Places in respect of which Attorney-General makes declaration

- (3) The Attorney-General may, by notice in writing to the Information Commissioner, declare a place to be a prohibited place if the Attorney-General is satisfied that the carrying on of an investigation at the place might prejudice the security or defence of the Commonwealth.
- (4) If a declaration under subsection (3) is in force, an authorised person must not enter, or carry on an investigation at, the prohibited place unless:
- (a) a Minister specified in the declaration, or another Minister acting for and on behalf of the Minister, has, in writing, approved the entry or carrying on of the investigation; and
 - (b) the authorised person complies with any conditions specified in the approval.

79 Information Commissioner investigations—obliging production of information and documents

Scope

- (1) This section applies if the Information Commissioner has reason to believe that a person has information, or a document, relevant to an investigation under this Part.
- (2) This section applies subject to section 81 (production of exempt documents).

Notice to produce

(3) The Information Commissioner may, by written notice, require a person, for the purposes of the investigation:

- (a) to give the Information Commissioner information of the kind referred to in the notice; or
- (b) to produce to the Information Commissioner the document referred to in the notice.

(4) The notice must:

- (a) be in writing; and
- (b) specify the place at which the person must comply with the notice; and (c) state that the person must comply with the notice:

(i) within a specified period that is not less than 14 days after the day on which the person is given the notice; or

(ii) at a specified time that is not less than 14 days after the time at which the person is given the notice.

Offence for failure to comply

(5) A person commits an offence if:

- (a) the person is subject to a requirement specified in a notice under subsection (3); and
- (b) the person engages in conduct; and
- (c) the person's conduct breaches the requirement.

Penalty for a contravention of this subsection: Imprisonment for 6 months.

80 Information Commissioner investigations dealings with documents

What the Information Commissioner may do with documents

- (b) make copies of the documents;
- (c) take extracts from the documents;
- (d) hold the documents for a period that is necessary for the purposes of the investigation.

Information Commissioner must permit access by those entitled

(2) During an investigation the Information Commissioner must permit a person to inspect a document that the person would be entitled to inspect if the document were not held by the Information Commissioner.

(3) The Information Commissioner must permit the person to inspect the document at any reasonable time.

(1) The Information Commissioner may do one or more of the following with respect to any documents produced in accordance with a notice under subsection 79(3):

- (a) take possession of the documents;

81 Information Commissioner investigations—exempt documents

Sections 55S and 55T apply to an investigation under this Part as if a reference in those sections to an IC review of a decision were a reference to an investigation of a complaint made under section 70.

82 Information Commissioner investigations — obliging persons to appear

Notice to require person to appear

(1) The Information Commissioner may, by written notice, require a person to appear before the Information Commissioner to answer questions for the purposes of an investigation.

(2) The notice must:

- (a) be in writing; and

(b) state that the person must comply with the notice at a specified time that is not less than 14 days after the time at which the person is given the notice; and

(c) specify the place at which the person must comply with the notice.

Offence for failure to comply

(3) A person commits an offence if:

(a) the person is subject to a requirement specified in a notice under subsection (1); and

(b) the person engages in conduct; and

(c) the person's conduct breaches the requirement.

Penalty for a contravention of this subsection: 6 months imprisonment.

83 Information Commissioner investigations—administration of oath or affirmation

requires a person to appear before him or her, the Information Commissioner may:

(a) administer an oath or affirmation to the person; and examine the person on oath or affirmation.

(2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

(3) A person commits an offence if:

(a) the person is required under this section to be examined on oath or affirmation; and the person engages in conduct; and

(c) the person's conduct breaches that requirement.

Penalty for a contravention of this subsection: 6 months imprisonment.

84 Information Commissioner investigations—no loss of legal professional privilege

Information or a document does not cease to be the subject of legal professional privilege merely because it is given, provided, produced or referred to for the purposes of this Part.

85 Information Commissioner investigations—protection from liability

(1) This section applies if a person does any of the following for the purposes of an investigation:

(a) gives information;

(b) produces a document;

(c) answers a question.

(2) If this section applies:

(a) civil proceedings do not lie against the person in respect of loss, damage or injury of any kind suffered by another person because the person does any of the matters mentioned in paragraphs (1)(a) to (c) in good faith; and

(b) the person is not liable to a penalty under the provisions of any law because he or she does any of those matters.

(3) This section applies whether or not the person is required to do a thing mentioned in subsection (1) in accordance with this Division.

(1) in accordance with this Division.

SUBDIVISION E—OUTCOME OF INVESTIGATION

86 Information Commissioner investigations—notice on completion

Requirement to notify respondent agency

(1) If the Information Commissioner completes an investigation, the Information Commissioner must, as soon as practicable, notify the respondent agency.

(2) The notice must state the following:

(a) the investigation results (see section 87);

(b) the investigation recommendations (if any) (see section 88);

(c) the reasons for the investigation results and the making of the investigation recommendations.

(3) The respondent agency may give to the Information Commissioner any comments about the notice that the agency wishes to make.

Requirement to notify complainant (if any)

(4) The Information Commissioner must give a copy (or a copy prepared in accordance with subsection (5)) of the notice to the complainant (if any).

(5) However, if the copy of the notice would contain matters of the kind mentioned in subsection 89C(2), the Information Commissioner must prepare a copy of the report to give to the complainant that excludes those matters.

87 Information Commissioner investigations—what are the investigation results?

The investigation results, in relation to the investigation, are the following:

- (a) the matters that the Information Commissioner has investigated;
- (b) any opinions that the Information Commissioner has formed in relation to those matters;
- (c) any conclusions that the Information Commissioner has reached in relation to those matters;
- (d) any suggestions to the respondent agency the implementation of which the Information Commissioner believes might improve the processes of the agency;
- (e) any other information of which the Information Commissioner believes the respondent agency ought to be aware.

88 Information Commissioner investigations—what are the investigation recommendations?

The investigation recommendations, in relation to the investigation, are the formal recommendations to the respondent agency that the Information Commissioner believes that the respondent agency ought to implement.

89 Information Commissioner investigations—failure to implement investigation recommendation

Scope

(1) This section applies if:

- (a) the Information Commissioner completes an investigation; and
- (b) the Information Commissioner gives an agency a notice under section 86; and
- (c) the Information Commissioner is not satisfied that the agency has taken action that is adequate and appropriate in the circumstances to implement the investigation recommendations for the investigation.

Giving implementation notices

- (2) The Information Commissioner may, by notice in writing (an implementation notice), require the respondent agency to:
 - (a) give to the Information Commissioner particulars of any action that the agency proposes to take to implement the investigation recommendations for the investigation; and
 - (b) give the particulars within the time specified in the notice.
- (3) The respondent agency must comply with the implementation notice.

89A Information Commissioner investigations—failure to take action in response to implementation notice

Scope

(1) This section applies if:

- (a) the Information Commissioner gives an implementation notice to a respondent agency; and

(b) the Information Commissioner is satisfied that:

- (i) the agency has not responded to the implementation notice within the time specified in the notice; or
- (ii) the agency has not taken action that is adequate and appropriate in the circumstances to implement the investigation recommendations for the investigation.

Report to responsible Minister

(2) The Information Commissioner may give a written report to the responsible Minister that contains the matters set out in section 89B.

Report to Minister
(3) If the Information Commissioner gives a report to the responsible Minister under subsection (2), the Information Commissioner must give a copy (or a copy prepared in accordance with subsection (4)) of the report to the Minister (the FOI Minister) responsible for the administration of this Act.

(4) However, if the copy of the report would contain matters of the kind mentioned in subsection 89C(2), the Information Commissioner must prepare a copy of the report to give to the FOI Minister that excludes those matters.

(5) The FOI Minister must cause the copy of the report to be laid before each House of the Parliament.

89B Information Commissioner investigations—requirements for Report

A report under subsection 89A(2) must:

- (a) include a copy of the notice given to the respondent agency under subsection 86(2) (notice on completion) and the implementation notice; and give details of the respondent agency's response (if any) to the implementation notice; and state that the Information Commissioner is not satisfied that the agency has taken action that is adequate and appropriate in the circumstances to implement the investigation recommendations for the investigation; and state the action that the Information Commissioner believes, if taken by the agency, would be adequate and appropriate in the circumstances to implement the investigation recommendations for the investigation.

89C Information Commissioner investigations—ensuring non-disclosure of certain matters

(1) This section applies to the following documents:

- (a) a notice to a complainant under section 86 (notice on completion);
- (b) a report to the FOI Minister under subsection 89A(3) (failure to take action).

(2) The Information Commissioner must not include in the document:

- (a) exempt matter; or
- (b) information of the kind referred to in subsection 25(1).

89D Information Commissioner investigations—limitation on amending records

Scope

(1) This section applies to the following documents:

- (a) a notice to a complainant under section 86 (notice on completion);
- (b) a report to the FOI Minister under subsection 89A(3) (failure to take action).

Restrictions on amendments

(2) The Information Commissioner may, in the document, recommend that an amendment be made to a record that relates to a record of an opinion only if he or she is satisfied of either (or both) of the following:

- (a) the opinion was based on a mistake of fact;

(b) the author of the opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion.

(3) The Information Commissioner must not, in the document, recommend that an amendment be made to a record if he or she is satisfied of either of the following:

- (a) the record is a record of a decision, under an enactment, by court, tribunal, authority or person;
- (b) the decision whether to amend the record involves the determination of a question that the person seeking amendment of the record is, or has been, entitled to have determined by the agency (on internal review), the Information Commissioner, a court or tribunal.

89E Information Commissioner investigations—protection from civil action

(1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because the first-mentioned person complains about an action under section 70.

(2) Subsection (1) only applies if the complaint is made in good faith.

DIVISION 3—COMPLAINTS TO OMBUDSMAN

89F Complaints to Ombudsman—powers not affected

This Part does not prevent the Ombudsman from exercising powers or performing functions under the Ombudsman Act 1976 in accordance with that Act.

89G Complaints to Ombudsman—report must not contain certain Information

A report under subsection 12(3) or section 15 or 17 of the Ombudsman Act 1976 in relation to an action taken under this Act must not include:

- (a) exempt matter; or information of the kind referred to in subsection 25(1).

89H Complaints to Ombudsman—certain rights not affected by certificates

(1) This section applies if:

- (a) the Ombudsman has commenced an investigation of a decision made under this Act not to grant a request for access to a document; and
- (b) the Attorney-General furnishes a certificate to the Ombudsman under paragraph 9(3)(a), (c) or (d) of the Ombudsman Act 1976 in relation to that investigation.

(2) The certificate does not affect the Ombudsman's right to:

- (a) seek from any person the reasons for a decision made under this Act not to give access to an exempt document; or
- (b) require any person to give any information or to answer any questions concerning the decision.

89J Complaints to Ombudsman—limitation on amending records in reports under the Ombudsman Act 1976

(1) The Ombudsman may, in a report under section 15 of the Ombudsman Act 1976, recommend that an amendment be made to a record that relates to a record of an opinion only if he or she is satisfied of either (or both) of the following:

(a) the opinion was based on a mistake of fact;

(b) the author of the opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion.

(2) The Ombudsman must not, in a report under section 15 of the Ombudsman Act 1976, recommend that an amendment be made to a record if he or she is satisfied of either of the following:

(a) the record is a record of a decision, under an enactment, by court, tribunal, authority or person;

(b) the decision whether to amend the record involves determination of a question that the person seeking amendment of the record is, or has been, entitled to have determined by the agency (on internal review), the Information Commissioner, a court or tribunal.

PART VIII—MISCELLANEOUS

DIVISION 1—VEXATIOUS APPLICANTS

89 K Vexatious applicants—declaration

- (1) The Information Commissioner may, by written instrument (a vexatious applicant declaration), declare a person to be a vexatious applicant.
- (2) The Information Commissioner may make a declaration:
 - (a) on the application of an agency or Minister; or
 - (b) on the Information Commissioner's initiative.
- (3) If an agency or Minister has applied for a declaration, the agency or Minister has the onus of establishing that the Information Commissioner should make the declaration.

89L Vexatious applicants—grounds for declaration

- (1) The Information Commissioner may make a vexatious applicant declaration in relation to a person only if the Information Commissioner is satisfied of any of the following:
 - (a) that:
 - (i) the person has repeatedly engaged in access actions; and
 - (ii) the repeated engagement involves an abuse of the process for the access action;
 - (b) a particular access action in which the person engages involves, or would involve, an abuse of the process for that access action;
 - (c) a particular access action in which the person engages would be manifestly unreasonable.
- (2) A person engages in an access action if the person does any of the following:
 - (a) makes a request;
 - (b) makes an application under section 48;
 - (c) makes an application for internal review;
 - (d) makes an IC review application.
- (3) The Information Commissioner must not make a declaration in relation to a person without giving the person an opportunity to make written or oral submissions.
- (4) In this section:

abuse of the process for an access action includes, but is not limited to, the following:

 - (a) harassing or intimidating an individual or an employee of an agency;
 - (b) unreasonably interfering with the operations of an agency;
 - (c) seeking to use the Act for the purpose of circumventing restrictions on access to a document (or documents) imposed by a court.

89M Vexatious applicants—effect of declaration

- (1) A vexatious applicant declaration has effect in accordance with the terms and conditions stated in the declaration.
- (2) Without limiting subsection (1), a vexatious applicant declaration in relation to a person may provide that:
 - (a) an agency or Minister may refuse to consider any of the following if made by the person without the written permission of the Information Commissioner:
 - (i) a request;
 - (ii) an application under section 48 (amendment of records);
 - (iii) an application for internal review; and
 - (b) the Information Commissioner may refuse to consider an IC review application made by the person.

(3) If a decision is made as mentioned in subsection (2), the agency, Minister or the Information Commissioner (as the case requires) must, as soon as practicable, notify the vexatious applicant of the decision.

89K Vexatious applicants—review by Tribunal

An application may be made to the Tribunal for a review of a decision under section 89K of the Information Commissioner to make a vexatious applicant declaration.

DIVISION 2—GENERAL

89P Miscellaneous—staff to hold appropriate security clearance

The Information Commissioner must take all reasonable steps to ensure that a member of the staff of the Office of the Information Commissioner who performs functions or exercises powers for the purposes of this Act is given a security clearance at an appropriate level.

90 Protection against civil liability—general

(1) No action for defamation, breach of confidence or infringement of copyright lies against the Commonwealth, a Minister, an agency or an officer of an agency because the Minister, or an officer of the agency:

(a) publishes a document in good faith, in the belief that the publication is required or permitted under Part II

(information publication scheme) or section 11 C (publication of information in accessed documents); or

(b) gives access to a document in good faith, in the belief that the access is required or permitted to be given in response to a request; or

(c) publishes, or gives access to, a document in good faith, in the belief that the publication or access is required or permitted otherwise than under this Act (whether or not under an express legislative power).

(2) No action for defamation, or breach of confidence, in respect of the publication of a document covered by subsection (3), lies against a person (including the author of the document) because the person supplied the document to a Minister or an agency.

(3) The publication of a document is covered by this subsection if:

(a) it is published as mentioned in paragraph (1)(a) or (c); or

(b) its publication is involved in, or results from, the giving of access to the document (or another document) as mentioned in paragraph (1)(b) or (c).

91 Protection against certain actions

(1A) Section 90 applies in relation to the giving of access to a document even if, in giving access, there has been a failure to comply with section 26A, 27 or 27A.

(1B) No action lies against the Commonwealth, an agency, a Minister or an officer merely because of a failure to comply with section 26A, 27 or 27A in relation to giving access to a document.

(1C) If a document has been shown to a person, or organization for any of the following purposes:

(a) consultation with a State under subsection 26A(2) ;

(b) enabling the person or organisation to make a submission under subsection 27(4);(c) enabling the person or the person's legal personal representative to make a submission under subsection 27A(3); then:

- (d) no action for defamation, breach of confidence or infringement of copyright lies against the Commonwealth, an agency, a Minister or an officer because of the showing of the document; and
- (e) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the showing of the document lies against the author of the document or any other person because of that author or other person having shown the document.
- (2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken to constitute an authorization or approval:
- (a) for the purposes of the law relating to defamation or breach of confidence—of the publication of the document or its contents by the person to whom access is given;
- (b) for the purposes of the law of copyright—of the doing, by the person to whom access is given, of any act comprised within the copyright in:
- (i) any literary, dramatic, musical or artistic work;
- (ii) any sound recording, cinematograph film, television broadcast or sound broadcast; or
- (iii) a published edition of a literary, dramatic, musical or artistic work; contained in the document.
- (2A) If a document has been shown to a person, organisation or proprietor for any of the following purposes:
- (a) consultation with a State under subsection 26A(1);
- (b) enabling the person, organisation or proprietor to make a submission under subsection 27(1);
- (c) enabling the person or the person's legal personal representative to make a submission under subsection 27A(1); the showing of the document is not taken to constitute an authorisation or approval:
- (d) for the purposes of the law relating to defamation or breach of confidence—of the publication of the document or its contents by the person, organisation or proprietor to whom the document is shown; and
- (e) for the purposes of the law of copyright—of the doing, by the person, organisation or proprietor to whom the document is shown, of any act comprised within the copyright in:
- (i) any literary, dramatic, musical or artistic work; or
- (ii) any sound recording, cinematograph film, television broadcast or sound broadcast; or
- (iii) a published edition of a literary, dramatic, musical or artistic work; contained in the document.
- (3) Expressions used in paragraph (2)(b) or (2A)(e) have the same meaning as in the *Copyright Act 1968*.

92 Protection against criminal liability

- (1) A Minister, or an officer of an agency, is not guilty of a criminal offence only because the Minister or officer:
- (a) publishes a document in good faith, in the belief that the publication is required or permitted under Part II (information publication scheme) or section 1 1C (publication of information in accessed documents); or
- (b) gives access to a document in good faith, in the belief that the access is required or permitted to be given in response to a request; or
- (c) publishes, or gives access to, a document in good faith, in the belief that the publication or access is required or permitted otherwise than under this Act (whether or not under an express legislative power).
- (2) A person is not guilty of a criminal offence only because the person shows a document, or is concerned in the showing of document, to another person or organisation for any of the following purposes:
- (a) consultation with a State under subsection 26A(2);

- (b) enabling the other person or the organisation to make a submission under subsection 27(4);
- (c) enabling the other person to make a submission under subsection 27A(3).

93 agencies to provide information to Information Commissioner

- (1) This section applies to:
 - (a) an agency, in relation to documents of the agency; and
 - (b) each Minister, in relation to his or her official documents.
- (2) The agency or Minister must give to the Information Commissioner the information that the Information Commissioner requires to prepare reports under section 33 of the Information Commissioner Act 2009.
- (3) The agency or Minister must comply with any requirements prescribed by the regulations regarding:
 - (a) the giving of the information; and
 - (b) the keeping of records for the purposes of this section.

93A Guidelines

- (1) The Information Commissioner may, by instrument in writing, issue guidelines for the purposes of this Act.
- (2) For the purposes of the performance of a function, or the exercise of a power, under this Act, regard must be had to any guidelines issued by the Information Commissioner under this section including, but not limited to, guidelines issued for the purposes of the following provisions:
 - (a) paragraph 9A(b) (information publication scheme);
 - (b) subsection 1 1B(5) (public interest factors);
 - (c) subsection 1 5(5A) (decisions on requests).
- (3) Guidelines are not legislative instruments.

94 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, making provision for or in relation to:
 - (a) the making of charges of amounts, or at rates, fixed by or in accordance with the regulations in respect of requests for access to documents or in respect of the provision of access to documents (including the provision of copies or transcripts) in accordance with this Act, including requiring deposits on account of such charges; and
 - (b) the officers who may give decisions on behalf of an agency.
- (2) Without limiting the generality of subsection (1), regulations under that subsection making provision for or in relation to the making of charges:
 - (a) shall not be such that the amount or rate of charge varies according to whether the applicant is included in one class of applicant or another class of applicant or according to whether a document is a document of one agency or of an agency included in one class of agency or is a document of another agency or of an agency included in another class of agency;
 - (b) shall, if a charge is made for time that is spent by an agency or a Minister in undertaking any of the following activities:
 - (i) searching for or retrieving a document;

(ii) making, or doing things related to making, a decision on a request for access; provide for the charge in respect of that activity to be calculated at a single hourly rate that shall be applied by the agency or Minister in respect of any request, regardless of the classification or designation of the officer who undertakes the work involved; and

(d) may provide for a charge to be made that takes into account the direct costs incurred by an agency or a Minister in making available an officer to supervise the inspection by a person of any document for which a request for access has been made under this Act.

(3) Where, as a result of a request, access is given to a document in respect of which the applicant would not be entitled to access under this Act, regulations under this Act relating to charges apply as if the applicant had been given access to that document in accordance with an entitlement under this Act.

Schedule 1—Courts and tribunals exempt in respect of non-administrative matters

Australian Industrial Relations Commission
Australian Fair Pay Commission
Industrial Registrar and Deputy Industrial Registrars

Schedule 2

Part I—Exempt agencies

Division 1

Aboriginal Land Councils and Land Trusts
Auditor-General
Australian Government Solicitor
Australian Industry Development Corporation
Australian Secret Intelligence Service
Australian Security Intelligence Organisation
Inspector-General of Intelligence and Security
National Workplace Relations Consultative Council
Office of National Assessments

Division 2

Defence Imagery and Geospatial Organisation
Defence Intelligence Organisation
Defence Signals Directorate

Part II—Agencies exempt in respect of particular documents

Division 1

Albury-Wodonga Development Corporation, in relation to documents in respect of its commercial activities
Attorney-General's Department, in relation to documents in respect of commercial activities it undertakes and in relation to documents in respect of commercial activities undertaken by the Australian Government Solicitor

Australian Communications and Media Authority, in relation to exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to the *Broadcasting Services Act 1992*.

Australian Broadcasting Corporation, in relation to its program material and its datacasting content

Australian Postal Corporation, in relation to documents in respect of its commercial activities

Australian Trade Commission, in relation to documents concerning the carrying out, in whole or in part, of overseas development projects

Australian Transaction Reports and Analysis Centre, in relation to documents concerning information communicated to it under section 16 of the *Financial Transaction Reports Act 1988* or section 41 or 49 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

Classification Board, in relation to exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to the *Broadcasting Services Act 1992*.

Classification Review Board, in relation to exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to the *Broadcasting Services Act 1992*.

Comcare, in relation to documents in respect of its commercial activities

Commonwealth Scientific and Industrial Research Organisation, in relation to documents in respect of its commercial activities

Department of Defence, in relation to documents in respect of: the collection, reporting or analysis of operational intelligence; or special access programs, under which a foreign government provides restricted access to technologies.

Department of the Treasury in relation to documents in respect of activities of the Australian Loan Council and in respect of the commercial activities of the Royal Australian Mint

Export Finance and Insurance Corporation, in relation to documents concerning anything done by it under Part 4 or 5 of the *Export Finance and Insurance Corporation Act 1991*

Indigenous Business Australia, in relation to documents in respect of its commercial activities

Medicare Australia, in relation to documents in respect of its commercial activities

National Health and Medical Research Council, in relation to documents in the possession of members of the Council of the National Health and Medical Research Council who are not persons appointed or engaged under the *Public Service Act 1999*

Office of Film and Literature Classification, in relation to exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to the *Broadcasting Services Act 1992*.

Reserve Bank of Australia, in relation to documents in respect of its banking operations (including individual open market operations and foreign exchange dealings) and in respect of exchange control matters

Special Broadcasting Service Corporation, in relation to its program material and its datacasting content

Division 2

Australian Statistician, in relation to documents containing information collected under the *Census and Statistics Act 1905*

Part III—Legislation relating to agencies exempt in respect of documents in relation to their commercial activities

Australian Wine and Brandy Corporation Act 1980

Dairy Produce Act 1986

Primary Industries and Energy Research and Development Act 1989

Wheat Marketing Act 1989

Schedule 3—Secrecy provisions

Section 38

Aged Care Act 1997, subsection 86-2(1) and sections 86-5, 86-6 and 86-7.

Australian Institute of Health Act 1987, subsections 29(1) and (3)

Australian Security Intelligence Organisation Act 1979, subsections 92(1) and (1A)

Broadcasting Act 1942, paragraph 125(2)(a)

Child Support (Registration and Collection) Act 1988, paragraph 16(2)(b)

Child Support (Assessment) Act 1989, paragraph 150(2)(b)

Civil Aviation Act 1988, subsections 32AP(1) and (2)

Crimes (Taxation Offences) Act 1980, subsections 4(1A), (1) and (1AA)

Designs Act 2003, paragraph 61(1)(a) and sections 108 and 109

Disability Services Act 1986, subsections 28(2) and (6)

Epidemiological Studies (Confidentiality) Act 1981, sections 4 and 6

Fringe Benefits Tax Assessment Act 1986, subsection 5(3)

Gene Technology Act 2000, subsections 187(1) and (2)

Health Insurance Act 1973, subsections 130(1), (4) and (9)

Income Tax Assessment Act 1936, subsections 16(2), (4F), (4FA), (4JB) and (5C)

Inspector-General of Taxation Act 2003, section 37

Intelligence Services Act 2001, subsection 41(1)

Migration Act 1958, section 503A as affected by section 503D of that Act

National Health Act 1953, subsections 135A(1), (4) and (9)

Patents Act 1990, paragraph 56(1)(a) and subsection 173(2)

Petroleum Resource Rent Tax Assessment Act 1987, subsection 17(3)

Private Health Insurance Act 2007, sections 323-1 and 323-40

Taxation Administration Act 1953, section 355-5 in Schedule 1.

Taxation Administration Act 1953, subsections 3C(2), 3G(6) and (9) and 3H(5) and (8), paragraph 8WB(1)(c) and subsection 8XB(1)

Taxation (Interest on Overpayments and Early Payments) Act 1983, subsection 8(2)

Telecommunications (Interception and Access) Act 1979, sections 63 and 133

Transport Safety Investigation Act 2003, subsections 53(1) and (2) and 60(1), (2) and (3)

Defence (Inquiry) Regulations, subregulation 63(2).

Schedule 4—Research institutions

Section 47H

Commonwealth Scientific and Industrial Research
Organisation
The Australian National University.

