

APPENDIX A
FREEDOM OF INFORMATION ACT 1982



FREEDOM OF INFORMATION ACT 1982

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TABLE OF PROVISIONS

PART I—PRELIMINARY

- | Section | |
|---------|--|
| 1. | Short title |
| 2. | Commencement |
| 3. | Object |
| 4. | Interpretation |
| 5. | Act to apply to courts in respect of administrative matters |
| 6. | Act to apply to certain tribunals in respect of administrative matters |
| 7. | Exemption of certain bodies |

PART II—PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION

- | | |
|-----|---|
| 8. | Publication of information concerning functions and documents of agencies |
| 9. | Certain documents to be available for inspection and purchase |
| 10. | Unpublished documents not to prejudice public |

PART III—ACCESS TO DOCUMENTS

- | | |
|------|--|
| 11. | Right of access |
| 12. | Part not to apply to certain documents |
| 13. | Documents in certain institutions |
| 14. | Access to documents apart from Act |
| 15. | Requests for access |
| 16. | Transfer of requests |
| 17. | Requests involving use of computers, & c. |
| 18. | Access to documents to be given on request |
| 19. | Time within which formal requests to be decided |
| 20. | Forms of access |
| 21. | Deferment of access |
| 22. | Deletion of exempt matter |
| 23. | Decisions to be made by authorized persons |
| 24. | Requests may be refused in certain cases |
| 25. | Information as to existence of certain documents |
| 26. | Reasons and other particulars of decisions to be given |
| 26A. | Procedure on request in respect of documents likely to affect Commonwealth-State relations |
| 27. | Procedure on request in respect of document relating to business affairs, & c. |
| 28. | Information Access Offices |
| 29. | Persons to be notified of liability to pay charges |
| 30. | Charge may, in certain circumstances, be remitted in whole or in part |
| 31. | Certain periods to be disregarded for the purposes of section 19 |

PART IV—EXEMPT DOCUMENTS

- | | |
|------|---|
| 32. | Interpretation |
| 33. | Documents affecting national security, defence or international relations |
| 33A. | Documents affecting relations with States |

TABLE OF PROVISIONS - continued

Section	
34.	Cabinet documents
35.	Executive Council documents
36.	Internal working documents
37.	Documents affecting enforcement of the law and protection of public safety
38.	Documents to which secrecy provisions of enactments apply
39.	Documents affecting financial or property interests of the Commonwealth
40.	Documents concerning certain operations of agencies
41.	Documents affecting personal privacy
42.	Documents subject to legal professional privilege
43.	Documents relating to business affairs, &c.
44.	Documents affecting national economy
45.	Documents containing material obtained in confidence
46.	Documents disclosure of which would be contempt of Parliament or contempt of court
47.	Certain documents arising out of companies and securities legislation

PART V--AMENDMENT OF PERSONAL RECORDS

48.	Persons may make application for amendment of record
49.	Form of request for amendment of records
50.	Procedures upon request for amendment of records
51.	Review of requests for amendments
52.	Notation of records supplied before commencement of this Part

PART VA--ROLE OF THE OMBUDSMAN

52A.	Interpretation
52B.	Complaints to Ombudsman
52C.	Ombudsman shall designate a Deputy Ombudsman for freedom of information matters
52D.	Reports made by the Ombudsman
52E.	Documents of agencies claimed to be exempt under section 33, 34, 35 or 36
52F.	Ombudsman may represent persons in proceedings before the Tribunal

PART VI--REVIEW OF DECISIONS

53.	Interpretation
54.	Internal review
55.	Applications to Administrative Appeals Tribunal
56.	Applications to Tribunal where decision delayed
58.	Powers of Tribunal
58A.	Proceedings upon exercise of powers under sub-section 58 (4), (5) or (5A)
58B.	Constitution of Tribunal for purposes of proceedings under sub-section 58 (4), (5) or (5A)
58C.	Hearing of certain proceedings before the Tribunal
58D.	Modification of section 42 of the <i>Administrative Appeals Tribunal Act 1975</i>
58E.	Production to the Tribunal of documents in relation to which a certificate has been issued
58F.	Review of certain decisions in respect of documents relating to the Government of a State
59.	Review of certain decisions in respect of documents relating to business affairs, &c.
60.	Parties
61.	Onus
62.	Application of section 28 of Administrative Appeals Tribunal Act, &c.
63.	Tribunal to ensure non-disclosure of certain matters
64.	Production of exempt documents
65.	Evidence of certificates
66.	Tribunal may make recommendation that costs be available in certain circumstances

PART VIII - MISCELLANEOUS

91.	Protection against certain actions
92.	Protection in respect of offences

TABLE OF PROVISIONS--continued

SCHEDULE 1

Courts and tribunals exempt in respect of non-administrative matters

SCHEDULE 2

Part I--Exempt agencies
Part II--Agencies exempt in respect of particular documents



FREEDOM OF INFORMATION ACT 1982

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Freedom of Information Act 1982*.¹

Commencement

2. The several Parts of this Act shall come into operation on such respective dates as are fixed by Proclamation.¹

Object

3. (1) The object of this Act is to extend as far as possible the right of the Australian community to access to information in the possession of the Government of the Commonwealth by—

- (a) making available to the public information about the operations of departments and public authorities and, in particular, ensuring that rules and practices affecting members of the public in their dealings with departments and public authorities are readily available to persons affected by those rules and practices; and
- (b) creating a general right of access to information in documentary form in the possession of Ministers, departments and public authorities, limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.

(2) It is the intention of the Parliament that the provisions of this Act shall be interpreted so as to further the object set out in sub-section (1) and that any discretions conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

“agency” means a Department or a prescribed authority;

“applicant” means a person who has made a request;

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

“document” includes any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing, but does not include library material maintained for reference purposes;

“document of an agency” or “document of the agency” means a document in the possession of an agency, or in the possession of the agency concerned, as the case requires, whether created in the agency or received in the agency;

“enactment” means—

- (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;

“exempt document” means—

- (a) a document which, by virtue of a provision of Part IV, is an exempt document;
- (b) a document in respect of which, by virtue of section 7, an agency 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 matter” means matter the inclusion of which in a document causes the document to be an exempt document;

“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 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 possession if he is entitled to access to the document and the document is not a document of an agency;

“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;

“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, other than—
 - (i) an incorporated company or association;
 - (ii) a body that, under sub-section (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 sub-section (3), the person holding, or performing the duties of, an office established by an enactment; 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;

“principal officer” means—

- (a) in relation to a Department—the person holding, or performing the duties of, the office of Permanent Head of the Department; and
- (b) in relation to a prescribed authority—
 - (i) if the regulations declare an office to be the principal office in respect of the authority—the person holding, or performing the duties of, that office; or
 - (ii) in any other case—the person who constitutes that authority or, 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 is present;

“responsible Minister” means—

- (a) in relation to a Department—the Minister administering the relevant Department of State;
- (b) in relation to a prescribed authority referred to in paragraph (a) of the definition of “prescribed authority”—the Minister administering the enactment by which, or in accordance with the provisions of which, the prescribed authority is established;
- (c) in relation to a prescribed authority referred to in paragraph (c) of that definition—the Minister administering 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,

or another Minister acting for and on behalf of that Minister;

“State” includes the Northern Territory;

“Tribunal” means the Administrative Appeals Tribunal.

(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 holding—
 - (i) an office of member of the Australian Capital Territory House of Assembly;
 - (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 holding, or performing the duties of—
 - (i) a prescribed office;
 - (ii) an office the duties of which he performs as duties of his 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

(4) For the purposes of this Act, the Department of Defence shall be deemed to include—

- (a) the Defence Force;
- (b) the Australian Cadet Corps;
- (c) the Naval Reserve Cadets; and
- (d) the Air Training Corps.

(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.

Act to apply to courts in respect of administrative matters

5. 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 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.

Act to apply to certain tribunals in respect of administrative matters

6. 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 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.

Exemption of certain bodies

7. (1) The bodies specified in Part I of Schedule 2, and the person holding and performing the duties of the office specified in that Part, are to be deemed not to be prescribed authorities for the purposes of this Act.

(2) The 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.

(2A) An agency is exempt from the operation of this Act in relation to a document that has originated with, or has been received from, the Australian Secret Intelligence Service, the Australian Security Intelligence Organization or the Office of National Assessments, or the Defence Signals Directorate or

(3) In Part II of Schedule 2, "competitive commercial activities" means activities carried on on a commercial basis in competition with persons other than governments or authorities of governments.

(4) In 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—PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION

Publication of information concerning functions and documents of agencies

8. (1) The responsible Minister of an agency shall—

- (a) cause to be published, as soon as practicable after the commencement of this Part but not later than 12 months after that commencement, in a form approved by the Minister administering this Act—
 - (i) a statement setting out particulars of the organization and functions of the agency, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions;
 - (ii) a statement setting out particulars of any arrangements that exist for bodies or persons outside the Commonwealth administration to participate, either through consultative procedures, the making of representations or otherwise, in the formulation of policy by the agency, or in the administration by the agency, of any enactment or scheme;
 - (iii) a statement of the categories of documents that are maintained in the possession of the agency, being a statement that sets out, as separate categories of documents, categories of such documents, if any, as are referred to in paragraph 12 (1) (b) or (c) and categories of documents, if any, not being documents so referred to, as are customarily made available to the public, otherwise than under this Act, free of charge upon request;
 - (iv) a statement of particulars of the facilities, if any, provided by the agency for enabling members of the public to obtain physical access to the documents of the agency; and
 - (v) a statement of any information that needs to be available to the public concerning particular procedures of the agency in relation to Part III, and particulars of the officer or officers to whom, and the place or places at which, initial inquiries concerning access to documents may be directed; and

(b) during the year commencing on 1 January next following the publication, in respect of the agency, of the statement under

published under that sub-paragraph, and during each succeeding year, cause to be published statements bringing up to date the information contained in the previous statement or statements published under that sub-paragraph.

(2) In approving a form under sub-section (1), the Minister shall have regard, amongst other things, to the need to assist members of the public to exercise effectively their rights under this Act.

(3) The information to be published in accordance with this section may be published by including it in the publication known as the Commonwealth Government Directory.

(4) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

(5) Sub-section (1) applies in relation to an agency that comes into existence after the commencement of this Part as if the references in that sub-section to the commencement of this Part were references to the day on which the agency comes into existence.

Certain documents to be available for inspection and purchase

9. (1) This section applies, in respect of an agency, to documents that are provided by the agency for the use of, or are used by, the agency or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the agency, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to which persons are or may be entitled or subject, being—

- (a) manuals or other documents containing interpretations, rules, guidelines, practices or precedents including, but without limiting the generality of the foregoing, precedents in the nature of letters of advice providing information to bodies or persons outside the Commonwealth administration;
- (b) documents containing particulars of such a scheme, not being particulars contained in an enactment as published apart from this Act;
- (c) documents containing statements of the manner, or intended manner, of administration or enforcement of such an enactment or scheme; or
- (d) documents describing the procedures to be followed in investigating breaches or evasions or possible breaches or evasions of such an enactment or of the law relating to such a scheme,

but not including documents that are available to the public as published otherwise than by an agency or as published by

(2) The principal officer of an agency shall—

- (a) cause copies of all documents to which this section applies in respect of the agency that are in use from time to time to be made available for inspection and for purchase by members of the public;
- (b) not later than 12 months after the commencement of this Part, cause to be published in the *Gazette* a statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and
- (c) within 3 months, if practicable, and, in any case, not later than 12 months, after the publication of the last preceding statement published under paragraph (b) or this paragraph, cause to be published in the *Gazette* a statement bringing up to date the information contained in that last preceding statement.

(3) The principal officer is not required to comply fully with paragraph (2) (a) before the expiration of 12 months after the commencement of this Part, but shall, before that time, comply with that paragraph so far as is practicable.

(4) This section does not require a document of the kind referred to in sub-section (1) containing exempt matter to be made available in accordance with sub-section (2), but, if such a document is not so made available, the principal officer of the agency shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with sub-section (2).

(5) The Minister may, by writing under his hand, extend, in respect of the Commissioner of taxation, the time specified in paragraph (2) (b) or sub-section (3) where he is satisfied, after consulting the Minister who is the responsible Minister in relation to the Commissioner of Taxation, that it is reasonable to extend the time by reason of special circumstances applicable to the Commissioner of Taxation.

(6) Where the Minister is satisfied, after consulting the Minister who is the responsible Minister in relation to the Commissioner of Taxation, that the form or nature of the documents to which this section applies in respect of the Commissioner of Taxation that are in existence at the commencement of this Part, or of some of those documents, is such that complete compliance with this section in respect of those documents would impose on the Commissioner of Taxation such a workload as would unreasonably divert his resources from his other operations, the first-mentioned Minister may, by writing under his hand, direct that the application of this section in respect of the Commissioner of Taxation is to be subject to such modifications as he specifies, being modifications that, in his opinion, are reasonably required by reason of the

(7) The report of the Minister under section 93 in respect of a year shall include—

- (a) particulars of any extensions of time made, or directions given, under this section by the Minister during that year; and
- (b) a statement concerning compliance by agencies with the requirements of this section during that year.

(8) Where a person makes a request to inspect or to purchase a document of an agency concerning a particular enactment or scheme, being a document of a kind to which this section applies, the principal officer of the agency shall take all reasonable steps to ensure that the attention of that person is drawn to any document of the agency concerning that enactment or scheme that is relevant to the request and has become a document to which this section applies since the last occasion on which a statement in respect of documents of the agency was published in the *Gazette* in pursuance of sub-section (2).

(9) Sub-sections (2) and (3) apply in relation to an agency that comes into existence after the commencement of this Part as if the references in those sub-sections to the commencement of this Part were references to the day on which the agency comes into existence.

Unpublished documents not to prejudice public

10. (1) If a document required to be made available in accordance with section 9, being a document containing a rule, guideline or practice relating to a function of an agency, was not made available, or was not included in a statement in the *Gazette*, as referred to in that section, before the time at which a person did, or omitted to do, any act or thing relevant to the performance of that function in relation to him (whether or not the time allowed for publication of a statement in respect of the document had expired before that time), that person, if he was not aware of that rule, guideline or practice at that time, shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice.

(2) The reference in sub-section (1) to the time at which a person did, or omitted to do, any act or thing relevant to the performance in relation to him of a function of an agency does not include a reference to a time earlier than—

- (a) the expiration of the period of 12 months referred to in paragraph 9 (2) (b) or, if the agency is the Commissioner of Taxation and that period has been extended in respect of the agency under sub-section 9 (5), the expiration of the period as extended; or
- (b) the expiration of the period of 12 months after the day on which the agency came into existence,

whichever is the later.

PART III—ACCESS TO DOCUMENTS

Right of access

11. 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.

Part not to apply to certain documents

12. (1) 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 information relating to the personal affairs of a person (including a deceased person);
- (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
- (c) a document that is available for purchase by the public in accordance with arrangements made by an agency.

(2) A person is not entitled to obtain access under this Part to a document or a part of a document that became a document of an agency or an official document of a Minister more than 5 years before the date of commencement of this part unless—

- (a) the document or that part of the document contains information relating to the personal affairs of that person; or
- (b) the document or that part of the document is a document or a part of a document access to which is reasonably necessary to enable a proper understanding of a document of an agency or an official document of a Minister to which that person has lawfully had access.

(3) Regulations may be made for the modification of sub-section (2) so as to enable a person to obtain access under this Part to documents to which, but for the making of those regulations, he would not be entitled to access under this part by reason of that sub-section.

(4) References in sub-section (3) to sub-section (2) shall be construed as including references to sub-section (2) as previously modified in pursuance of regulations made under sub-section (3).

Documents in certain institutions

13. (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 sub-section (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 sub-sections (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*.

Access to documents apart from Act

14. Nothing in this Act is intended to prevent or discourage Ministers and agencies from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

Requests for access

15. (1) A person who wishes to obtain access to a document of an agency or an official document of a Minister may make a request in writing to the agency or Minister for access to the document.

(2) A request shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, as the case may be, to identify the document.

(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.

Transfer of requests

16. (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 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.

(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; 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.

(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, it shall be deemed to be a request made to that agency and received at the time at which it was originally received.

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

Requests involving use of computers, &c.

17. (1) Where—

- (a) a request (including a request of the kind described in sub-section 24 (1)) is made in writing and in accordance with the requirements of sub-section 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 documents of the agency; 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 sub-section (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

Access to documents to be given on request

18. (1) Subject to this Act, where—

- (a) a request is made in writing and in accordance with the requirements of sub-section 15 (2) by a person to an agency or Minister for access to a document of the agency or an official document of the Minister; and
- (b) any charge that, under the regulations, is required to be paid before access is granted has been paid,

the person shall be given access to the document in accordance with this Act.

(2) An agency or Minister is not required by this Act to give access to a document at a time when the document is an exempt document.

Time within which formal requests to be decided

19. (1) If a request for access to a document that is made to an agency or Minister—

- (a) is made in writing and is expressed to be made in pursuance of this Act;
- (b) specifies an address in Australia at which notices under this Act may be sent to the person making the request; and
- (c) is 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 appropriate address in relation to the agency or the Minister,

the agency or Minister shall take all reasonable steps to enable the applicant to be notified that the request has been received, 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, and of a decision on the request (including a decision under section 21 to defer the provision of access to a document) as soon as practicable but in any case not later than the expiration of the relevant

period after the day on which the request is received by or on behalf of the agency or Minister.

(2) In sub-section (1), "the appropriate address", in relation to an agency or to a Minister, means an address of that agency or of that Minister that is—

- (a) specified in a notice (being a notice that is in force at the time of the request) published in the *Gazette* by the responsible Minister of the agency or by the Minister, as the case may be, as an address to which requests made in pursuance of this Act may be sent or delivered in accordance with this section; or
- (b) if, in respect of the agency or Minister, there is no notice in force specifying such an address—
 - (i) in the case of an agency—the address of the office or principal office of the agency that was last specified in the Commonwealth Government Directory; and
 - (ii) in the case of a Minister—the address of the office or principal office of the Department of State administered by the Minister that was last specified in the Commonwealth Government Directory.

(3) In sub-section (1), "the relevant period", in relation to a request made to an agency or to a Minister for access to a document, means, subject to sub-section (4)—

- (a) in a case where the request is received before 1 December 1984—60 days;
- (b) in a case where a request is received on or after 1 December 1984 but before 1 December 1986—45 days; and
- (c) in any other case—30 days.

(4) Where a request has been made to an agency or to a Minister for access to a document, being a request in relation to which, but for this sub-section, the relevant period for the purposes of sub-section (1) would be the period specified in paragraph (3) (b) or (c), and that agency or that Minister, as the case requires, determines in writing that the requirements of section 26A or 27 make it appropriate to extend that relevant period, the relevant period in relation to that request shall be taken, by force of this sub-section, to be extended by a period of 15 days.

(5) Where an agency or a Minister makes a determination in writing under sub-section (4), in relation to a request, that agency or Minister shall forthwith inform the applicant that the relevant period in relation to that request has been extended, in pursuance of that sub-section, by a period of 15 days.

Forms of access

20. (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 sub-section (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 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 sub-section 17 (1), where a person requests access to a document in a particular form and, for a reason specified in sub-section (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 would have been required to pay if access had been given in the form requested.

Deferment of access

21. (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 sub-section (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.

(3) Sub-section 55 (1) does not apply in relation to a deferment under paragraph (1) (d) of this section.

Deletion of exempt matter

22. (1) Where—

- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;
- (b) it is possible for the agency or Minister to make a copy of the document with such deletions that the copy would not be an exempt document and would not, by reason of the deletions, be misleading; and
- (c) it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy,

the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.

(2) Where access is granted to a copy of a document in accordance with sub-section (1)—

- (a) the applicant shall be informed that it is such a copy and also informed of the provision of this Act by virtue of which any matter deleted is exempt matter; and
- (b) section 26 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the agency or Minister to furnish to him a notice in writing in accordance with that section.

Decisions to be made by authorized persons

23. (1) Subject to sub-section (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 conferred on him by the

s. 23

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 in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

Requests may be refused in certain cases

24. (1) Where—

- (a) a request is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject-matter; and
- (b) the agency or Minister dealing with the request is satisfied that, apart from this sub-section, the work involved in giving access to all the documents to which the request relates would substantially and unreasonably divert the resources of the agency from its other operations or would interfere substantially and unreasonably with the performance by the Minister of his functions, as the case may be, having regard to the number and volume of the documents and to any difficulty that would exist in identifying, locating or collating the documents within the filing system of the agency or of the office of the Minister,

the agency or Minister may refuse to grant access to the documents in accordance with the request without having caused those processes to be undertaken.

(2) Where, in respect of a request of a kind referred to in paragraph (1) (a), it is apparent from the nature of the documents as described in the request that all of the documents to which the request is expressed to relate are exempt documents and that no obligation would arise under section 22 in relation to any of those documents to grant access to a copy of the document with such deletions as are referred to in that section, the agency or Minister may refuse to grant access to the documents in accordance with the request without having identified any or all of the documents to which the request relates and without specifying, in respect of each document, the provision or provisions of this Act under which that document is claimed to be an exempt document.

(3) An agency or Minister shall not refuse to grant access to a document in accordance with a request—

- (a) on the ground that the request does not comply with sub-section 15 (2); or

(b) on the ground that the request does not comply with sub-section (1).

s. 24

without first giving the applicant a reasonable opportunity of consultation with a view to the making of the request in a form that would remove the ground for refusal.

Information as to existence of certain documents

25. (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 33A or sub-section 37 (1).

(2) Where a request relates to a document that is, or if it existed would be, of a kind referred to in sub-section (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 33A or sub-section 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 33A or sub-section 37 (1), as the case may be.

Reasons and other particulars of decisions to be given

26. (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;
- (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 rights with respect to review of the decision;
 - (ii) his rights to make a complaint to the Ombudsman in relation to the decision; and
 - (iii) the procedure for the exercise of the rights referred to in sub-paragraphs (i) and (ii),

including (where applicable) particulars of the manner in which an application for review under section 54 may be made.

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

Procedure on request in respect of documents likely to affect Commonwealth-State relations

26A. (1) Where arrangements have been entered into between the Commonwealth and a State with regard to consultation under this section, and it appears that—

- (a) a document that is the subject of a request originated with, or was received from, or contains information that originated with, or was received from, the State or an authority of the State; and
- (b) the State may reasonably wish to contend that the document is an exempt document under section 33A,

a decision to grant access to the document shall not be made by the agency or Minister concerned unless consultation has taken place between the Commonwealth and the State in accordance with those arrangements.

(2) Where, after consultation between the Commonwealth and a State in pursuance of sub-section (1) has taken place in relation to a document, a decision is made that the document is not an exempt document under section 33A or under any other provision of this Act—

- (a) the agency or Minister making the decision shall, in accordance with the arrangements, cause notice in writing of the decision to be given to the State as well as to the person who made the request; and
- (b) access shall not be given to the document or, in the case of a document that contains information that originated with or was received from the State or an authority of the State, to the document so far as it contains that information, unless—
 - (i) the time for an application to the Tribunal by the State in accordance with section 58F for review of the decision that the document is not an exempt document under section 33A has expired and such an application has not been made; or
 - (ii) such an application has been made and the Tribunal has confirmed the decision that the document is not an exempt document under that section.

Procedure on request in respect of document relating to business affairs, &c.

27. (1) Where—

- (a) a request is received by an agency or Minister in respect of a document containing information concerning a person in respect of his business or professional affairs or concerning the business, commercial or financial affairs of an organization or undertaking, and

- (b) it appears to the officer or Minister dealing with the request, or to a person reviewing under section 54 a decision refusing the request, that the person or organization, or the proprietor of the undertaking, referred to in paragraph (a) might reasonably wish to contend that the document is an exempt document under section 43,

a decision to grant access under this Act to the document, so far as it contains the information referred to in paragraph (a), shall not be made unless, where it is reasonably practicable to do so having regard to all the circumstances, including the application of section 19—

- (c) the agency or Minister has given to that person or organization or the proprietor of that undertaking a reasonable opportunity of making submissions in support of a contention that the document is an exempt document under section 43; and
- (d) the person making the decision has had regard to any submissions so made.

(2) Where, after any submissions have been made in accordance with sub-section (1), a decision is made that the document, so far as it contains the information referred to in paragraph (1) (a), is not an exempt document under section 43—

- (a) the agency or Minister shall cause notice in writing of the decision to be given to the person who made the submissions, as well as to the person who made the request; and
- (b) access shall not be given to the document, so far as it contains the information referred to in paragraph (1) (a), unless—
 - (i) the time for an application to the Tribunal by that person in accordance with section 59 has expired and such an application has not been made; or
 - (ii) such an application has been made and the Tribunal has confirmed the decision.

Information Access Offices

28. (1) The Minister administering this Act shall cause to be published, as soon as practicable after the date of commencement of this Part, but not later than 12 months after that date, a statement setting out the addresses of such offices of the Government of the Commonwealth, throughout Australia, as are to be Information Access Offices for the purposes of this section.

(2) A person who is entitled to obtain access to a document of an agency or to an official document of a Minister shall have that access provided, if the person so requests, at the Information Access Office having appropriate facilities to provide access in the form requested that is closest to his normal place of residence.

(3) Nothing in this section shall be taken to prevent an agency to which, or a Minister to whom, a request has been made for access to a document in a

particular form from giving access to that document, in accordance with sub-section 20 (3), in a form other than the form requested.

(4) A person who is provided with access to a document at an Information Access Office shall not, by reason of the fact that the provision of access at that office has necessitated the incurring of costs by an agency or a Minister that would not have been incurred had access been provided at another place, be required to pay any charge additional to the charge that he would have been required to pay had he been provided with access at that other place.

Persons to be notified of liability to pay charges

29. Where, in accordance with the regulations, an agency or Minister makes a decision that an applicant is liable to pay a charge in respect of a request for access to a document or in respect of the provision of access to a document, the agency or Minister shall notify the applicant, in writing, accordingly, and shall forward to the applicant, together with that notification, a statement setting out the basis on which the amount of that charge is calculated.

Charge may, in certain circumstances, be remitted in whole or in part

30. (1) An applicant may make application, in writing, to the agency to which or the Minister to whom he made a request seeking the total or partial remission of any charge paid by him, or notified to him as being a charge that he is liable to pay, in respect of that request or in respect of the provision of access to a document to which the request relates.

(2) Where application is made to an agency or the Minister under sub-section (1), the agency or Minister—

- (a) may remit the charge to which the application relates in whole or in part; and
- (b) shall 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 28 days after the day on which the application was received by or on behalf of the agency or Minister.

(3) Without limiting the matters which the agency or Minister may take into account for the purpose of determining whether or not to remit a charge under sub-section (2), the agency or Minister shall take into account—

- (a) whether the payment of the charge or of any part of the charge would cause financial hardship to the applicant;
- (b) whether the document to which the applicant seeks access relates to the personal affairs of the applicant; and
- (c) whether the giving of access is in the general public interest or in the interest of a substantial section of the public.

(4) Where—

- (a) an application has been made to an agency or Minister under sub-section (1);

- (b) the period of 28 days has elapsed since the day on which 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,

the principal officer of the agency, or the Minister, as the case requires, shall, for all purposes of this Act, be deemed to have made, on the last day of that period, a decision refusing to make the total or partial remission of the charge to which the application relates that was sought in that application.

(5) In this section, “charge” means a charge that the applicant is notified under section 29 that he is liable to pay in respect of a request for access to a document or in respect of the provision of access to a document.

Certain periods to be disregarded for the purposes of section 19

31. (1) Where an applicant receives a notification under section 29 before the day on which the period that is, for the purposes of section 19, the relevant period in relation to the request made by him expires or, but for the operation of this sub-section, would expire, being a notification to the effect that the applicant is liable to pay a specified charge in respect of that request, there shall be disregarded, in the computation of that relevant period, each day occurring during the period commencing on the day on which that notification is received by the applicant and ending on the day that is, under sub-section (3), the relevant day in relation to that request.

(3) For the purposes of sub-section (1), “relevant day”, in relation to a request made by an applicant to whom a notification has been given under section 29 setting out the applicant’s liability to pay a specified charge, is—

- (a) in a case where the applicant pays the charge or such deposit on account of the charge as he is required to pay under the regulations (whether or not he first seeks a remission of the charge under section 30 or a review of the decision in respect of the charge under section 55)—the day on which that charge or that deposit is so paid;
- (b) in a case where the applicant, having not paid the charge or deposit referred to in paragraph (a), makes application under section 30 for the total or partial remission of the charge—
 - (i) if a decision is made upon that application wholly to remit the charge—the day on which the applicant is notified, in pursuance of that section, of that decision; or
 - (ii) if a decision is made upon that application partially to remit the charge—the day on which the applicant pays the charge as so remitted or such deposit on account of the charge as so remitted as he is required to pay under the regulations; or

- (c) in a case where the applicant, having not paid the charge or deposit referred to in paragraph (a), makes application to the Tribunal under section 55 for a review of the decision referred to in section 29—
- (i) if a decision is made by the Tribunal setting aside the decision referred to in section 29—the day on which the applicant is notified by the Tribunal of that decision; or
 - (ii) if a decision is made by the Tribunal setting aside the decision referred to in section 29 and making another decision in substitution for that decision—the day on which the applicant pays the charge specified in the substituted decision or such deposit on account of that charge as he is required to pay under the regulations,

whichever day first occurs.

PART IV—EXEMPT DOCUMENTS

Interpretation

32. A provision of this Part by virtue of which documents referred to in the provision are exempt documents—

- (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; 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.

Documents affecting national security, defence or international relations

33. (1) A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure—

- (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.

(2) Where a Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in sub-section (1), he may sign a certificate to that effect (specifying that reason) and, subject to the operation of Part VI, such a certificate, so long as it remains

in force, establishes conclusively that the document is an exempt document referred to in sub-section (1).

(3) Where a Minister is satisfied as mentioned in sub-section (2) by reason only of matter contained in a particular part or particular parts of a document, a certificate under that sub-section in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(4) Where a Minister is satisfied that information as to the existence or non-existence of a document as described in a request would, if contained in a document of an agency, cause the disclosure under this Act of the last-mentioned document to be contrary to the public interest for a reason referred to in sub-section (1), he may sign a certificate to that effect (specifying that reason).

(5) The responsible Minister of an agency may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the principal officer of the agency his powers under this section in respect of documents of the agency.

(6) A power delegated under sub-section (5), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the responsible Minister.

(7) A delegation under sub-section (5) does not prevent the exercise of a power by the responsible Minister.

Documents affecting relations with States

33A. (1) Subject to sub-section (5), 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 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.

(2) Where a Minister is satisfied that a document is an exempt document for a reason referred to in sub-section (1), he may sign a certificate to that effect (specifying that reason) and, subject to the operation of Part VI, such a certificate, so long as it remains in force, establishes conclusively that the document is an exempt document referred to in sub-section (1).

(3) Where a Minister is satisfied as mentioned in sub-section (2) by reason only of matter contained in a particular part or particular parts of a document, a certificate under that sub-section in respect of the document shall identify that part or those parts of the document as containing the matter by reason of

(4) Where a Minister is satisfied that information as to the existence or non-existence of a document as described in a request would, if contained in a document of an agency, cause the last-mentioned document to be an exempt document under this section for a reason referred to in sub-section (1), he may sign a certificate to that effect (specifying that reason).

(5) This section does not apply to a document in respect of matter in the document the disclosure of which under this Act would, on balance, be in the public interest.

(6) The responsible Minister of an agency may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the principal officer of the agency his powers under this section in respect of documents of the agency.

(7) A power delegated under sub-section (6), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the responsible Minister.

(8) A delegation under sub-section (6) does not prevent the exercise of a power by the responsible Minister.

Cabinet documents

34. (1) A document is an exempt document if it is—

- (a) a document that has been submitted to the Cabinet for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Cabinet;
- (b) an official record of the Cabinet;
- (c) a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or
- (d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.

(1A) This section does not apply to a document (in this sub-section referred to as a "relevant document") that is referred to in paragraph (1) (a), or that is referred to in paragraph (1) (b) or (c) and is a copy of, or of part of, or contains an extract from, a document that is referred to in paragraph (1) (a), to the extent that the relevant document contains purely factual material unless—

- (a) the disclosure under this Act of that document would involve the disclosure of any deliberation or decision of the Cabinet; and
- (b) the fact of that deliberation or decision has not been officially published.

(2) For the purposes of this Act, a certificate signed by the Secretary to the Department of the Prime Minister and Cabinet certifying that a document is one of a kind referred to in a paragraph of sub-section (1) establishes

conclusively, subject to the operation of Part VI, that it is an exempt document of that kind.

(3) Where a document is a document referred to in paragraph (1) (c) or (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under sub-section (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(4) For the purposes of this Act, a certificate signed by the Secretary to the Department of the Prime Minister and Cabinet certifying that a document as described in a request would, if it existed, be one of a kind referred to in a paragraph of sub-section (1) establishes conclusively, subject to the operation of Part VI, that, if such a document exists, it is an exempt document of that kind.

(5) Where a certificate in accordance with sub-section (4) has been signed in respect of a document as described in a request, the decision on the request may be a decision that access to a document as described in the request is refused on the ground that, if such a document existed, it would be an exempt document referred to in the paragraph of sub-section (1) that is specified in the certificate.

(6) A reference in this section to the Cabinet shall be read as including a reference to a committee of the Cabinet.

Executive Council documents

35. (1) A document is an exempt document if it is—

- (a) a document that has been submitted to the Executive Council for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Executive Council;
- (b) an official record of the Executive Council;
- (c) a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or
- (d) a document the disclosure of which would involve the disclosure of any deliberation or advice of the Executive Council, other than a document by which an act of the Governor-General, acting with the advice of the Executive Council, was officially published.

(1A) This section does not apply to a document (in this sub-section referred to as a "relevant document") that is referred to in paragraph (1) (a), or that is referred to in paragraph (1) (b) or (c) and is a copy of, or of part of, or contains an extract from, a document that is referred to in paragraph (1) (a), to the extent that the relevant document contains purely factual material unless—

- (a) the disclosure under this Act of that document would involve the disclosure of any deliberation or advice of the Executive Council; and

(b) the fact of that deliberation or advice has not been officially published.

(2) For the purposes of this Act, a certificate signed by the Secretary to the Executive Council, or a person performing the duties of the Secretary, certifying that a document is one of a kind referred to in a paragraph of sub-section (1) establishes conclusively, subject to the operation of Part VI, that it is an exempt document of that kind.

(3) Where a document is a document referred to in paragraph (1) (c) or (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under sub-section (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(4) For the purposes of this Act, a certificate signed by the Secretary to the Executive Council, or a person performing the duties of the Secretary, certifying that a document as described in a request would, if it existed, be one of a kind referred to in a paragraph of sub-section (1) establishes conclusively, subject to the operation of Part VI, that, if such a document exists, it is an exempt document of that kind.

(5) Where a certificate in accordance with sub-section (4) has been signed in respect of a document as described in a request, the decision on the request may be a decision that access to a document as described in the request is refused on the ground that, if such a document existed, it would be an exempt document referred to in the paragraph of sub-section (1) that is specified in the certificate.

Internal working documents

36. (1) Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act—

- (a) would disclose 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; and
- (b) would be contrary to the public interest.

(2) In the case of a document of the kind referred to in sub-section 9 (1), the matter referred to in paragraph (1) (a) of this section does not include matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in sub-section 9 (1).

(3) Where a Minister is satisfied, in relation to a document to which paragraph (1) (a) applies, that the disclosure of the document would be contrary to the public interest, he may sign a certificate to that effect (specifying the ground of public interest in relation to which the certificate is given) and, subject to the operation of Part VI, such a certificate, so long as it

remains in force, establishes conclusively that the disclosure of that document would be contrary to the public interest.

(4) Where a Minister is satisfied as mentioned in sub-section (3) by reason only of matter contained in a particular part or particular parts of a document, a certificate under that sub-section in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(5) This section does not apply to a document by reason only of purely factual material contained in the document.

(6) This section does not apply to—

- (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 prescribed body or organization established within an agency; or
- (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.

(7) Where a decision is made under Part III that an applicant is not entitled to access to a document by reason of the application of this section, the notice under section 26 shall state the ground of public interest on which the decision is based.

(8) The responsible Minister of an agency may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the principal officer of the agency his powers under this section in respect of documents of the agency.

(9) A power delegated under sub-section (8), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the responsible Minister.

(10) A delegation under sub-section (8) does not prevent the exercise of a power by the responsible Minister.

Documents affecting enforcement of the law and protection of public safety

37. (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 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.

(3) In sub-sections (1) and (2), “law” means law of the Commonwealth or of a State or Territory.

Documents to which secrecy provisions of enactments apply

38. A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

Documents affecting financial or property interests of the Commonwealth

39. (1) Subject to sub-section (2), a document is an exempt document 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.

(2) This section does not apply to a document in respect of matter in the document the disclosure of which under this Act would, on balance, be in the public interest.

Documents concerning certain operations of agencies

40. (1) Subject to sub-section (2), a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—

- (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; or
- (e) have a substantial adverse effect on the conduct by or on behalf of the Commonwealth or an agency of industrial relations.

(2) This section does not apply to a document in respect of matter in the document the disclosure of which under this Act would, on balance, be in the public interest.

Documents affecting personal privacy

41. (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).

(2) Subject to sub-section (3), the provisions of sub-section (1) do 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.

(3) Where 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 of a medical or psychiatric nature concerning the person making the request and 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 that person might be prejudicial to the physical or mental health or well-being of that person, the principal officer or Minister may direct that access to the document, so far as it contains that information, that would otherwise be given to that person is not to be given to him but is to be given instead to a medical practitioner to be nominated by him.

Documents subject to legal professional privilege

42. (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 sub-section 9 (1) is not an exempt document by virtue of sub-section (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 sub-section 9 (1).

Documents relating to business affairs, &c.

43. (1) A document is an exempt document if its disclosure under this Act would disclose—

- (a) trade secrets;
- (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 business or professional affairs or concerning the business, commercial or financial affairs of an organization or undertaking, being information

- (i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his lawful business or professional affairs or that organization or undertaking in respect of its lawful business, commercial or financial affairs; or
- (ii) the disclosure of which under this Act 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) The provisions of sub-section (1) do 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 business or professional affairs;
- (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 organization where the person making the request is the organization or a person acting on behalf of the organization.

(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.

Documents affecting national economy

44. (1) A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it—

- (a) would, or could reasonably be expected to, have a substantial adverse effect on the ability of the Government of the Commonwealth to manage the economy of Australia; or
- (b) could reasonably be expected to result in an undue disturbance of the ordinary course of business in the community, or an undue benefit or detriment to any person or class of persons, by reason of giving premature knowledge of or concerning proposed or possible action or inaction of the Government or Parliament of the Commonwealth.

(2) The kinds of documents to which sub-section (1) may apply include, but are not limited to, documents containing matter relating to

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

Documents containing material obtained in confidence

45. (1) A document is an exempt document if its disclosure under this Act would constitute a breach of confidence.

(2) Sub-section (1) does not apply to any document to the disclosure of which paragraph 36 (1) (a) applies or would apply, but for the operation of sub-section 36 (2), (5) or (6), being a document 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 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.

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

46. 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.

Certain documents arising out of companies and securities legislation

47. (1) A document is an exempt document if it is, or is a copy of or of a part of, or contains an extract from—

- (a) a document for the purposes of the Ministerial Council for Companies and Securities prepared by, or received by an agency or Minister from, a State or an authority of a State;
- (b) a document the disclosure of which would disclose the deliberations or decisions of the Ministerial Council for Companies and Securities, other than a document by which a decision of that Council was officially published;
- (c) a document furnished to the National Companies and Securities Commission by a State or an authority of a State and relating solely to the functions of the Commission in relation to the law of a State or the laws of 2 or more States; or

- (d) a document, other than a document referred to in paragraph (c), that is in the possession of the National Companies and Securities Commission and relates solely to the exercise of the functions of that Commission under a law of a State or the laws of 2 or more States.

PART V—AMENDMENT OF PERSONAL RECORDS

Persons may make application for amendment of record

48. Where a person (in this section referred to as the “claimant”) who is an Australian citizen, or whose continued presence in Australia is not subject to any limitation as to time imposed by law, claims that a document of an agency or an official document of a Minister to which access has been provided to the claimant under this Act contains information relating to his personal affairs—

- (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,

he may request the agency or Minister to amend the record of that information kept by the agency or Minister.

Form of request for amendment of records

49. (1) A request under section 48—

- (a) shall be in writing and be expressed to be made in pursuance of this section;
- (b) shall specify an address in Australia to which a notice under this Part may be sent to the claimant; and
- (c) shall 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 an address of the agency or of the Minister, as the case may be, that is determined in accordance with section 19.

(2) A request under section 48 shall give particulars of the matters in respect of which the claimant believes the record of information kept by the agency or Minister is incomplete, incorrect, out of date or misleading and shall specify the amendments that the claimant wishes to be made.

Procedures upon request for amendment of records

50. (1) Where an agency to which or Minister to whom a request is made under section 48 decides to amend the record of information to which the request relates, the agency or Minister may, in its or his discretion, make the amendment either by altering the record or by adding an appropriate notation to the record.

(2) Where an agency or Minister amends a record by adding a notation to the record, the notation shall—

- (a) specify the respects in which the information is incomplete, incorrect, out of date or misleading; and

- (b) in a case where the information is claimed to be out of date—set out such information as is required to bring the information up to date.

(3) Where a request is made to an agency or Minister under section 48, the agency or Minister shall take all reasonable steps to enable the claimant to be notified of a decision on the request 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.

(4) Section 23 applies in relation to a decision in respect of a request made under section 48.

(5) Section 26 applies in relation to a decision made under this Part refusing to amend a record in like manner as it applies in relation to a decision made under Part III refusing to grant access to a document in accordance with a request made in accordance with sub-section 15 (1).

Review of requests for amendments

51. (1) A reference in Part VI to a request shall be construed as including a request under section 48 but, for the purposes of the application of that Part to or in relation to a request made under that section—

- (aa) section 54 has effect as if all the words in sub-section (1) of that section after “agency” (second occurring) and before “the applicant” (second occurring) were omitted;
- (a) the reference in paragraph 55 (1) (a) to a decision refusing to grant access to a document shall be read as a reference to a decision made under this Part refusing to amend a record;
- (b) paragraph 56 (1) (a) has effect as if “in accordance with section 19” were omitted;
- (c) paragraph 56 (1) (b) has effect as if “relevant period, in relation to that request, for the purposes of section 19” were omitted and “period of 30 days” were substituted;
- (d) the reference in sub-section 56 (1) to a decision refusing to grant access to a document shall be read as a reference to a decision refusing to amend a record;
- (e) the reference in sub-section 56 (3) to a decision refusing to grant access to a document shall be read as a reference to a decision refusing to amend a record; and
- (f) the reference in sub-section 56 (5) to a decision to grant, without deferment, access to a document shall be read as a reference to a decision to amend a record.

(2) Where—

- (a) an agency or Minister refuses to amend a record pursuant to a request under section 48;
- (b) the claimant makes an application to the Administrative Appeals

- (c) the Tribunal affirms the decision, the claimant may, by notice in writing, require the agency or Minister to add to the record a notation—
 - (d) specifying the respects in which the information is claimed by him to be incomplete, incorrect, out of date or misleading; and
 - (e) in a case where the information is claimed by him to be out of date— setting out such information as is claimed to be required to bring up to date or complete the information.
- (3) Paragraph 49 (1) (c) applies to a notice under sub-section (2) in like manner as it applies in relation to a request under section 48.
- (4) Where a notice is given to an agency or Minister under sub-section (2)—
 - (a) the agency or Minister shall ensure that a notation as required by the notice is added to the record; and
 - (b) if any information in the part of the record to which the notation relates is disclosed to a person (including another agency or Minister) by the agency or Minister, the agency or Minister shall ensure that there is also furnished to that person, with the document containing the information, a statement—
 - (i) stating that the person to whom the information relates claims that the information is incomplete, incorrect, out of date or misleading, as the case may be; and
 - (ii) giving particulars of the notation,
 and may, if the agency or Minister considers it appropriate to do so, include in the statement the reasons of the agency or Minister for not amending the part of the record from which the information is taken.

Notation of records supplied before commencement of this Part

52. Nothing in this Part is intended to prevent or discourage agencies or Ministers from giving particulars of a notation added to a record in accordance with paragraph 51 (4) (a) to a person (including any agency or Minister) to whom information contained in the record to which the notation relates was furnished before the commencement of this Part.

PART VA—ROLE OF THE OMBUDSMAN

Interpretation

52A. In this Part—

- (a) a reference to the taking of action has the same meaning as it has for the purposes of the *Ombudsman Act 1976*; and
- (b) action shall be deemed to have been taken by an agency in the circumstances in which it would be deemed to be so taken for the purposes of the *Ombudsman Act 1976*.

Complaints to Ombudsman

52B. (1) Subject to this Act, a person may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under this Act.

(2) Notwithstanding anything contained in this Act or in sub-section 6 (3) of the *Ombudsman Act 1976* but subject to sub-section 6 (2) of that Act, the exercise of the powers of the Ombudsman under the *Ombudsman Act 1976* in respect of matters arising under this Act is not precluded or restricted by reason of the rights conferred on persons by this Act to make applications to the Tribunal.

(3) Where a complaint is made to the Ombudsman under the *Ombudsman Act 1976* concerning action taken by an agency in the exercise of powers or the performance of functions under this Act, an application to the Tribunal for a review of the decision shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 12 of the *Ombudsman Act 1976*.

(4) Notwithstanding anything contained in the *Ombudsman Act 1976*, a report under that Act to a complainant in respect of a complaint arising out of a request under this Act shall not contain information of the kind referred to in sub-section 25 (1) of this Act.

Ombudsman shall designate a Deputy Ombudsman for freedom of information matters

52C. (1) The Ombudsman shall, by notice published in the *Gazette*, designate a Deputy Ombudsman as the Deputy Ombudsman for freedom of information matters.

(2) In relation to any action taken by an agency in the exercise of any power or the performance of any function conferred by this Act, the Deputy Ombudsman for freedom of information matters has all the powers, and may exercise all the functions, of the Commonwealth Ombudsman under the *Ombudsman Act 1976*, other than the power of the Commonwealth Ombudsman to report to the Parliament under section 17 or 19 of that Act.

(3) Nothing in this section prevents the exercise of a power or the performance of a function by the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to action of the kind referred to in sub-section (2).

(4) In this section, a reference to the *Ombudsman Act 1976* shall be construed as a reference to that Act as modified in the manner provided in sections 52A and 52B of this Act.

Reports made by the Ombudsman

52D. (1) Where, in the course of an investigation by the Ombudsman in relation to action taken by an agency in the exercise of powers or the

s. 52D

- (a) the Ombudsman has referred evidence concerning an officer to a Minister or to a principal officer under sub-section 8 (10) of the *Ombudsman Act 1976*; and
- (b) that officer is employed under the *Public Service Act 1922*,

the Ombudsman shall furnish a copy of that evidence to the Public Service Board.

(2) Where, after an investigation by the Ombudsman in relation to action taken by a Department in the exercise of powers or the performance of functions under this Act, a report is made to the Department by the Ombudsman under sub-section 15 (2) of the *Ombudsman Act 1976*, the Ombudsman shall furnish a copy of the report to the Public Service Board.

(3) Each annual report required to be submitted to the Minister by the Ombudsman under paragraph 19 (1) (a) of the *Ombudsman Act 1976*, and each additional report submitted to the Minister by the Ombudsman under sub-section 19 (2) of that Act—

- (a) shall include a report on the operations of the Ombudsman during the year, or the part of a year, to which the report relates with respect to complaints made to the Ombudsman or investigations commenced or completed by the Ombudsman concerning action taken by agencies in the exercise of powers or the performance of functions conferred by this Act; and
- (b) may include—
 - (i) such observations as the Ombudsman sees fit to make concerning the operation of this Act during the year, or the part of a year, to which the report relates; and
 - (ii) such recommendations as the Ombudsman sees fit to make concerning ways in which public access to documents of agencies or to official documents of Ministers might be better secured.

Documents of agencies claimed to be exempt under section 33, 34, 35 or 36

52E. Where—

- (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) a certificate is furnished to the Ombudsman under paragraph 9 (3) (a), (c) or (d) of the *Ombudsman Act 1976* in relation to that investigation,

the certificate shall not be taken to affect the right of the Ombudsman to seek from any person the reasons for any decision made under this Act that the document is an exempt document or to require any person to furnish any information or to answer any questions concerning that decision.

s. 52F

Ombudsman may represent persons in proceedings before the Tribunal

52F. (1) The Ombudsman may represent, or arrange for another person to represent, any person who makes application to the Tribunal, under section 55 of this Act, for review of a decision (not being a decision made by a Minister) in the proceedings before the Tribunal pursuant to that application, if the Ombudsman is of the opinion, in all the circumstances of the case, that it is reasonable for him to do so.

(2) Without limiting the generality of the matters to which the Ombudsman may have regard in deciding whether to represent an applicant in proceedings before the Tribunal under section 55, the Ombudsman shall have regard to—

- (a) the importance of the principle involved in the matter under review;
- (b) the likelihood that the proceedings will establish a precedent in future proceedings;
- (c) the financial means of the applicant;
- (d) the applicant's prospect of success; and
- (e) the reasonableness of the decision under review.

(3) Notwithstanding anything in this Part, the reference in sub-section (1) to a decision made by a Minister shall not be taken to include a reference to a decision made by a person in the exercise of a power delegated by a Minister.

PART VI—REVIEW OF DECISIONS

Interpretation

53. For the purposes of this Part, unless the contrary intention appears—

- (a) a certificate given under sub-section 33 (4), 33A (4), 34 (4) or 35 (4) in respect of a document as described in a request shall be deemed to be a certificate given in respect of the document so described notwithstanding that the certificate does not acknowledge the existence or non-existence of the document so described; and
- (b) a claim that a document would, if it exists, be an exempt document under section 33, 33A, 34 or 35 shall be deemed to be a claim that the document is an exempt document under that section notwithstanding that the existence or non-existence of the document is not acknowledged.

Internal review

54. (1) Where a decision has been made, in relation to a request to an agency, otherwise than by the responsible Minister or principal officer of the agency, being—

- (a) a decision refusing to grant access to a document in accordance with a request or deferring the provision of access to a document; or

- (b) a decision that the applicant is liable to pay a charge in respect of the request for access to a document or in respect of the provision of access to a document to which the request relates,

the applicant may, within 28 days after the day on which that decision is notified to him or within such further period as the principal officer of the agency allows, apply in writing to the principal officer of the agency for a review of the decision in accordance with this section.

(2) Subject to sub-section (3), where an application for a review of a decision is made to the principal officer in accordance with sub-section (1), he shall forthwith arrange for himself or a person (not being the person who made the decision) authorized by him to conduct such reviews to review the decision and make a fresh decision.

(3) Sub-section (1) does not apply in relation to—

- (a) a decision made on a review under this section; or
 (b) a decision in relation to the provision of access to a document upon a request that is, under sub-section 56 (1) or (3), to be deemed to have been given.

(4) The provisions of section 26 extend to a decision made under this section.

Applications to Administrative Appeals Tribunal

55. (1) Subject to this section, an application may be made to the Administrative Appeals Tribunal for review of—

- (a) a decision refusing to grant access to a document in accordance with a request or deferring the provision of access to a document;
 (b) a decision refusing to allow a further period for making an application under sub-section 54 (1) for a review of a decision; or
 (c) a decision referred to in section 29.

(2) Subject to sub-section (3), where, in relation to a decision referred to in paragraph (1) (a) or (c), a person is or has been entitled to apply under section 54 for a review of the decision, that person is not entitled to make an application under sub-section (1) in relation to that decision, but may make such an application in respect of the decision made on such a review.

(3) Sub-section (2) does not prevent an application to the Tribunal in respect of a decision where—

- (a) the person concerned has applied under section 54 for a review of the decision;
 (b) a period of 14 days has elapsed since the day on which that application was received by or on behalf of the agency concerned; and
 (c) he has not been informed of the result of the review,

and such an application to the Tribunal may be treated by the Tribunal as having been made within the time allowed by sub-section (4) if it appears to the

Tribunal that there was no unreasonable delay in making the application to the Tribunal.

(4) Notwithstanding section 29 of the *Administrative Appeals Tribunal Act 1975*, the period within which (subject to any extension granted by the Tribunal) an application under sub-section (1) of this section is to be made in respect of a decision is—

- (a) except where paragraph (b) or (c) applies—the period commencing on the day on which notice of the decision was given to the applicant in accordance with section 26 and ending on the sixtieth day after that day;
 (b) where the decision is a decision that is to be deemed by sub-section 56 (1) or (3) to have been made—the period commencing on the day on which the decision is to be deemed to have been made and ending on the sixtieth day after that day; or
 (c) where sub-section 52B (3) is applicable—the period commencing on the day on which the Ombudsman has informed the applicant as referred to in that sub-section and ending on the sixtieth day after that day.

Application to Tribunal where decision delayed

56. (1) Subject to this section, where—

- (a) a request has been made to an agency or Minister in accordance with section 19;
 (b) the relevant period, in relation to that request, for the purposes of section 19, has expired since the day on which 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,

the principal officer of the agency or the Minister shall, for the purpose of enabling an application to be made to the Tribunal under section 55, be deemed to have made, on the last day of that period, a decision refusing to grant access to the document.

(2) Where a complaint is made to the Ombudsman under the *Ombudsman Act 1976* concerning failure to make and notify to the applicant a decision on a request (whether the complaint was made before or after the expiration of the period referred to in sub-section (1)), an application to the Tribunal under section 55 of this Act by virtue of this section shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 12 of the *Ombudsman Act 1976*.

(3) Where such a complaint is made before the expiration of the period referred to in sub-section (1), the Ombudsman, after having investigated the complaint, may, if he is of the opinion that there has been unreasonable delay by an agency in connection with the request, grant to the applicant a certificate certifying that he is of that opinion, and, if the Ombudsman does so, the

principal officer of the agency or the Minister, as the case requires, shall, for the purpose of enabling application to be made to the Tribunal under section 55, be deemed to have made, on the day on which the certificate is granted, a decision refusing to grant access to the document.

(4) The Ombudsman shall not grant a certificate under sub-section (3) where the request to which the complaint relates was made to, or has been referred to, a Minister and is awaiting decision by him.

(5) Where, after an application has been made to the Tribunal by virtue of this section but before the Tribunal has finally dealt with the application, a decision, other than a decision to grant, without deferment, access to the document in accordance with the request, is given, the Tribunal may, at the request of the applicant, treat the proceedings as extending to a review of that decision in accordance with this Part.

(6) Before dealing further with an application made by virtue of this section, the Tribunal may, on the application of the agency or Minister concerned, allow further time to the agency or Minister to deal with the request.

Powers of Tribunal

58. (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 sub-sections (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 sub-section (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 sub-section 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 sub-section 33 (4)—cause the disclosure under this Act of that document of an agency to be contrary to the public interest for a reason specified in sub-section 33 (1); or
- (b) in a case where the certificate was given under sub-section 33A (4)—cause that document of an agency to be an exempt document under section 33A.

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

(7) Where—

- (a) application is or has been made to the Administrative Appeals Tribunal for review of a decision refusing to grant a person access to a document in accordance with a request; and
- (b) the agency to which or the Minister to whom the request was made—
 - (i) has given to the applicant a notice under this Act of the decision, being a notice that does not include a statement (in whatever terms expressed) to the effect that access to the document is being refused for the reason that, by virtue of the operation of sub-section 12 (2) or of that sub-section as modified by regulations in pursuance of sub-section 12 (3), the applicant is not entitled to access to that document; or
 - (ii) informs or has informed the Tribunal, either before or in the course of the proceeding for the review of the decision, that the agency or the Minister, as the case requires, does not intend, or does not any longer intend, to refuse access to the document for the reason referred to in sub-paragraph (i),

then, for the purposes of the review by the Tribunal of that decision, this Act has effect as if sub-section 12 (2), or that sub-section as so modified, as the case requires, had not been enacted.

Proceedings upon exercise of powers under sub-section 58 (4), (5) or (5A)

58A. (1) Where, in considering a question referred to in sub-section 58 (4), (5) or (5A) in relation to a document in respect of which a certificate has been given, the Tribunal determines that there do not exist reasonable grounds for the claim to which the question relates, the appropriate Minister shall, not later than 28 days after the determination of the Tribunal is communicated to him, make a decision—

- (a) to revoke the certificate; or
- (b) not to revoke the certificate.

(2) Where a Minister makes a decision under sub-section (1) to revoke a certificate—

- (a) in a case where the certificate was given under sub-section 33 (2), 33A (2), 34 (2) or (4) or 35 (2) or (4)—the claim that the document to which the certificate relates is an exempt document shall be taken, for the purposes of this Act, to have been withdrawn; and
- (b) in a case where the certificate was given under sub-section 33 (4) or 33A (4)—the Minister shall, forthwith upon the revocation of the certificate, inform the applicant of the existence or non-existence of the document to which the certificate relates.

(3) Where a Minister makes a decision under sub-section (1) not to revoke a certificate, he shall—

- (a) cause notice in writing of the decision to be furnished to the applicant forthwith; and
- (b) cause a copy of the notice to be laid before each House of the Parliament within 5 sitting days of that House after the notice is so furnished.

(4) A notice under sub-section (3) shall state the findings of the Minister giving the notice on any material question of fact, the material on which those findings were based, and the reasons for the decision.

(5) A Minister is not required to include in a notice under sub-section (3) 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 under section 33, 33A, 34, 35 or 36.

(6) A Minister is not required to include in a notice under sub-section (3) information as to the existence or non-existence of a document or the existence or non-existence of a state of fact if that information would, if included in a document of an agency, cause that last-mentioned document to be an exempt document under section 33, 33A, 34 or 35.

(7) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision of a Minister under this section.

(8) Nothing in this section shall be taken to imply that a certificate under sub-section 33, 33A, 34, 35 or 36 may not be revoked otherwise than in pursuance of a decision under sub-section (1).

(9) For the purposes of this section, “appropriate Minister” means—

- (a) in relation to a document in respect of which there is a certificate in force under section 33, 33A or 36—the Minister who gave, or whose delegate gave, that certificate; or
- (b) in relation to a document in respect of which there is a certificate in force under section 34 or 35—the Prime Minister.

Constitution of Tribunal for purposes of proceedings under sub-section 58 (4), (5) or (5A)

58B. (1) Where a request is made to the Tribunal in accordance with sub-section 58 (4), (5) or (5A), the Tribunal shall be constituted in accordance with sub-section (2) for the purposes of any proceeding for the determination of the question to which the request relates.

(2) For the purposes of a proceeding referred to in sub-section (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 sub-section (1), section 21A of the *Administrative Appeals Tribunal Act 1975* applies as if—

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

“(1) At any time during the hearing of a proceeding before the Tribunal constituted in accordance with sub-section 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) sub-section (3) of that section were omitted and the following sub-section substituted:

“(3) The President may, after taking the submissions into account, if he considers that the matters to which the proceeding relates are of such public importance as to justify him 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 sub-section (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;”.

Hearing of certain proceedings before the Tribunal

58C. (1) This section has effect notwithstanding anything contained in the *Administrative Appeals Tribunal Act 1975*.

(2) At the hearing of a proceeding referred to in sub-section 58B (1), the Tribunal—

(a) shall hold in private the hearing of any part of the proceeding during which evidence or information is given, or a document is produced, to the Tribunal by—

- (i) an agency or an officer of an agency;
- (ii) a Minister or a member of the staff of a Minister; or
- (iii) a member, an officer, or a member of the staff, of a body referred to in sub-section 7 (1) or the person referred to in that sub-section,

or during which a submission is made to the Tribunal by or on behalf of an agency or Minister, being a submission in relation to the claim—

- (iv) in the case of a document in respect of which there is in force a certificate under sub-section 33 (2) or 33A (2) or section 34 or 35—that the document is an exempt document;
- (v) in the case of a document in respect of which there is in force a certificate under section 36—that the disclosure of the document would be contrary to the public interest; or
- (vi) in the case where a certificate is in force under sub-section 33 (4) or 33A (4)—that information as to the existence or non-existence of a document as described in a request would, if contained in a document of an agency—
 - (A) in a case where the certificate was given under sub-section 33 (4)—cause the disclosure under this Act of that document of an agency to be contrary to the public interest for a reason specified in sub-section 33 (1); or
 - (B) in a case where the certificate was given under sub-section 33A (4)—cause that document of an agency to be an exempt document under section 33A; and

(b) subject to sub-section (4), shall hold the hearing of any other part of the proceeding in public.

(3) Where the hearing of any part of a proceeding is held in private in accordance with sub-section (2), the Tribunal—

- (a) may, by order, give directions as to the persons who may be present at that hearing; and
- (b) shall give directions prohibiting the publication of—
 - (i) any evidence or information given to the Tribunal;
 - (ii) the contents of any documents lodged with, or received in evidence by, the Tribunal; and
 - (iii) any submission made to the Tribunal, at that hearing.

(4) Where, in relation to a proceeding referred to in sub-section 58B (1), the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence, information or matter or for any other reason, the Tribunal may, by order—

- (a) direct that the hearing of a part of the proceeding that, but for this sub-section, would be held in public shall take place in private and give directions as to the persons who may be present at that hearing;
- (b) give directions prohibiting or restricting the publication of—
 - (i) the contents of any document lodged with the Tribunal in relation to the proceeding; or
 - (ii) any evidence or information given to the Tribunal, the contents of any document received in evidence by the Tribunal, or any submission made to the Tribunal, in relation to the proceeding otherwise than at a hearing held in private in accordance with sub-section (2); or
- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to the proceeding of evidence given before the Tribunal, or the contents of a document lodged with, or received in evidence by, the Tribunal, in relation to the proceeding.

(5) A direction given by the Tribunal under paragraph (3) (b) or (4) (b), does not prevent a person referred to in sub-paragraph (2) (a) (i), (ii) or (iii) from disclosing, in the course of the performance of his duties, any matter to any other person.

Modification of section 42 of the *Administrative Appeals Tribunal Act 1975*

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

“(1) A question of law (including the question whether a particular question is one of law) arising in a proceeding before the Tribunal constituted

in accordance with sub-section 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.”.

Production to the Tribunal of documents in relation to which a certificate has been issued

58E. (1) In any proceedings before the Tribunal under this Act in relation to a document in respect of which there is in force a certificate under section 33, 33A, 34, 35 or 36, the Tribunal is entitled to require the production of the document in accordance with this section and not otherwise.

(2) Where, in considering a question referred to in sub-section 58 (4), (5) or (5A) in relation to a document, the Tribunal is not satisfied, by evidence on affidavit or otherwise, that there exist reasonable grounds for the claim to which the question relates, the Tribunal may require the document to be produced for inspection by the Tribunal as constituted for the purposes of the proceeding.

(3) After an inspection of a document under this section the Tribunal shall return the document to the person by whom it was produced without permitting any person who is not a member of the Tribunal as constituted for the purposes of the proceeding, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person.

Review of certain decisions in respect of documents relating to the Government of a State

58F. (1) Where notice of a decision that a document is not an exempt document under section 33A or under any other provision of this Act has been given in accordance with sub-section 26A (2) to a State, the State may apply to the Tribunal for a review of the decision that the document is not an exempt document under section 33A.

- (2) Where an application is made in accordance with sub-section (1)—
 - (a) the provisions of this Part (other than sections 55 and 61) apply in like manner as they apply in relation to an application for review of a decision refusing to grant access to a document; and
 - (b) the agency or Minister concerned shall forthwith inform the person who made the request of the application.

(3) Where—

- (a) after consultation between the Commonwealth and a State in accordance with arrangements of the kind referred to in section 26A, a decision is made not to grant access to the document to which the consultation relates; and

(b) an application is made to the Tribunal for a review of the decision, the agency or Minister concerned shall forthwith inform the State in accordance with those arrangements of the application.

Review of certain decisions in respect of documents relating to business affairs, &c.

59. (1) Where notice of a decision that a document, so far as it contains certain information, is not an exempt document under section 43 has been given, in accordance with sub-section 27 (2), to a person who made submissions in accordance with that section, that person may apply to the Tribunal for a review of that decision.

(2) Where an application is made in accordance with sub-section (1)—

- (a) the provisions of this Part (other than sections 55 and 61) apply in like manner as they apply in relation to an application for review of a decision refusing to grant access to a document; and
- (b) the agency or Minister concerned shall forthwith inform the person who made the request of the application.

(3) Where—

- (a) upon a request referred to in sub-section 27 (1), a decision is made, after the making of submissions by a person in accordance with that sub-section, not to grant access to the document to which the request relates, so far as it contains the information referred to in paragraph 27 (1) (a); and

(b) an application is made to the Tribunal for a review of the decision, the agency or Minister concerned shall forthwith inform the person who made the submissions of the application.

Parties

60. For the purposes of this Part and of the application of the *Administrative Appeals Tribunal Act 1975* in respect of proceedings under this Part—

- (a) a decision given by a person on behalf of an agency shall be deemed to have been given by the agency;
- (b) in proceedings by virtue of section 56, the agency or Minister to which or to whom the request was made shall be a party to the proceedings; and
- (c) in proceedings for the determination of a question referred to in sub-section 58 (4), (5) or (5A) in relation to a document, the Minister who is the appropriate Minister for the purposes of section 58A in respect of that document shall, upon application to the Tribunal, be

Onus

61. 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.

Application of section 28 of Administrative Appeals Tribunal Act, &c.

62. (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 sub-section made to it by a person to whom a notice has been furnished in pursuance of sub-section 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.

Tribunal to ensure non-disclosure of certain matters

63. (1) In proceedings under this Part, the Tribunal shall make such order or orders under sub-section 35 (2) of the *Administrative Appeals Tribunal Act 1975* as it thinks necessary having regard to the nature of the proceedings and, in particular, to the necessity of avoiding the disclosure to the applicant of—

- (a) exempt matter contained in a document to which the proceedings relate; or
- (b) information of the kind referred to in sub-section 25 (1).

(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 sub-section (1); and
- (b) the Tribunal may receive evidence, or hear argument, in the absence of the applicant or his 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 sub-section (1).

Production of exempt documents

64. (1) Where there are proceedings before the Tribunal under this Act in relation to a document that is claimed to be an exempt document, section 37 of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to

the document but if the Tribunal is not satisfied, by evidence on affidavit or otherwise, that the document is an exempt document it may require the document to be produced for inspection by members of the Tribunal only and if, upon the inspection, the Tribunal is satisfied that the document is an exempt document, the Tribunal shall return the document to the person by whom it was produced without permitting any person other than a member of the Tribunal as constituted for the purposes of the proceeding, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person.

(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 any person other than such a member of the Tribunal, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person.

(3) Notwithstanding sub-sections (1) and (2), but subject to sub-section (4), the Tribunal is not empowered, in any proceedings other than proceedings to determine a question referred to in sub-section 58 (4), (5) or (5A), to require—

- (a) the production of a document in respect of which there is in force a certificate under section 33, 33A, 34, 35 or 36; or
- (b) the giving of information in respect of which a certificate is in force under sub-section 33 (4) or 33A (4).

(4) Where a certificate of a kind referred to in paragraph (3) (a) identifies a part or parts of the document concerned in the manner provided in sub-section 33 (3), 34 (3), 35 (3) or 36 (4), sub-section (3) does not prevent the Tribunal from requiring the production, in any proceedings before the Tribunal under this Act in relation to the document, of a copy of so much of the document as is not included in the part or parts so identified.

(5) Sub-sections (1) 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 sub-sections 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) Sub-section (1) or (2) does not operate so as to prevent the Tribunal from causing a document produced in accordance with that sub-section 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 duties as a member of that staff.

Evidence of certificates

65. In proceedings before the Tribunal under this Part, evidence of a certificate under section 33, 33A, 34, 35 or 36, including evidence of the identity or nature of a document to which the certificate relates, may be given by affidavit or otherwise and such evidence is admissible without production of the certificate or of a document to which it relates.

Tribunal may make recommendation that costs be available in certain circumstances

66. (1) Where—

- (a) a person makes application to the Tribunal under section 55 for review of a decision constituting the action to which the complaint relates; and
- (b) the person is successful, or substantially successful, in his application for review,

the Tribunal may, in its discretion, recommend to the Attorney-General 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 sub-section (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 Attorney-General may, pursuant to a recommendation of the Tribunal under sub-section (1), authorize the payment of costs to an applicant.

PART VIII—MISCELLANEOUS

Protection against certain actions

91. (1) Where access has been given to a document and

- (a) the access was required by this Act to be given or would, but for the operation of sub-section 12 (2) or of that sub-section as modified by

regulations made in pursuance of sub-section 12 (3), have been so required to be given; or

- (b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 23 or 54, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

no action for defamation, breach of confidence or infringement of copyright lies against the Commonwealth, an agency, a Minister or an officer by reason of the authorizing or giving of the access, and no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of the access lies against the author of the document or any other person by reason of that author or other person having supplied the document to an agency or Minister.

(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.

(3) Expressions used in paragraph (2) (b) have the same meaning as in the *Copyright Act 1968*.

Protection in respect of offences

92. Where access has been given to a document and—

- (a) the access was required by this Act to be given or would, but for the operation of sub-section 12 (2) or of that sub-section as modified by regulations made in pursuance of sub-section 12 (3), have been so required to be given; or
- (b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 23 or 54, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

neither the person authorizing the access nor any person concerned in the giving of the access is guilty of a criminal offence by reason only of the

Reports to Parliament

93. (1) The Minister shall—

- (a) as soon as practicable after 30 June in each year (but, in respect of 30 June 1985 or any subsequent 30 June, not later than 31 October next following that 30 June) prepare a report on the operation of this Act during the year that ended on that 30 June; and
- (b) cause that report to be laid before each House of the Parliament within 15 sitting days of that House after the preparation of that report is completed.

(2) Each agency shall, in relation to the agency, and each Minister shall, in relation to his official documents, furnish to the Minister administering this Act such information as he requires for the purposes of the preparation of reports under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.

(3) Without limiting the generality of sub-section (1) or the kinds of information which an agency or a Minister might be required, in pursuance of sub-section (2), to furnish to the Minister administering this Act, a report of the Minister administering this Act shall set out—

- (a) particulars of the operations of each agency and Minister under this Act during the year to which the report relates, including, in relation to each agency and Minister—
 - (i) the number of requests under section 19 for access to documents received during the year;
 - (ii) the number of decisions made during the year (other than decisions made under section 54) refusing to grant access to documents in relation to which requests have, at any time, been received;
 - (iii) the number of decisions made during the year (other than decisions made under section 54) deferring the provision of access to documents in relation to which requests have, at any time, been received;
 - (iv) in respect of sections 11, 12, 13, 15, 17, 18, 20, 22, 24 and each section in Part IV, the number of decisions made under each section during the year refusing to grant access to documents relating to which requests have, at any time, been received;
 - (v) particulars of the classification and designation of officers authorized by a responsible Minister or a principal officer in accordance with section 23 to make decisions in respect of requests;
 - (vi) the number of applications made during the year for the review of decisions under section 54 and particulars of the results of

- (vii) the number of applications made during the year to the Tribunal for the review of decisions and particulars of the results of such reviews;
- (ix) particulars of the total charges collected during the year in dealing with requests, whenever received;
- (x) particulars of changes in administrative procedures occasioned by the need to comply with the obligations imposed by this Act;
- (b) an identification of the guidelines, if any, issued during the year to which the report relates by the Minister administering this Act, or by the Department administered by that Minister, in relation to the manner in which agencies should comply with their obligations under this Act; and
- (c) a description of any other efforts by the Department referred to in paragraph (b) to assist agencies to comply with their obligations under this Act.

(4) The first report by the Minister under sub-section (1) shall include particulars of the extent to which the responsible Minister of each agency, and each agency, has, respectively, complied with sections 8 and 9 of this Act.

Regulations

94. (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 sub-section (1), regulations under that sub-section 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 not be such that a charge is made for time that is spent by an agency or Minister in examining a document to which a request for access has been made with a view to deciding whether that document contains exempt matter;

- (c) shall, if a charge is made for time that is spent by an agency or a Minister in searching for or retrieving a document, provide for that charge to be calculated at a single hourly rate that shall be applied by an agency or a Minister in respect of any request, regardless of the classification or designation of the officer who searches for or retrieves the document; 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

Section 6

Courts and tribunals exempt in respect of non-administrative matters

Australian Conciliation and Arbitration Commission
 Industrial Registrar and Deputy Industrial Registrars
 Flight Crew Officers Industrial Tribunal
 Public Service Arbitrators and Deputy Public Service Arbitrators
 Coal Industry Tribunal or any other Tribunal, authority or body appointed in accordance with Part V of the *Coal Industry Act 1946*.

SCHEDULE 2

Section 7

PART I

Exempt agencies

Aboriginal Land Councils and Land Trusts
 Auditor-General
 Australian Industry Development Corporation
 Australian National Airlines Commission
 Australian National Railways Commission
 Australian Overseas Projects Corporation
 Australian Secret Intelligence Service
 Australian Security Intelligence Organization
 Australian Shipping Commission
 Canberra Commercial Development Authority
 Commonwealth Banking Corporation; Commonwealth Trading Bank; Commonwealth Savings Bank;
 Commonwealth Development Bank
 Commonwealth Serum Laboratories Commission
 Export Finance and Insurance Corporation
 Health Insurance Commission
 Housing Loans Insurance Corporation
 National Debt Commission

SCHEDULE 2—continued

Office of National Assessments
 Pipeline Authority
 Snowy Mountains Engineering Corporation
 Superannuation Fund Investment Trust

PART II

Agencies exempt in respect of particular documents

Albury-Wodonga Development Corporation, in relation to documents in respect of its competitive commercial activities
 Australian Apple and Pear Corporation, in relation to documents in respect of its competitive commercial activities
 Australian Broadcasting Corporation, in relation to its program material
 Australian Canned Fruits Corporation, in relation to documents in respect of its competitive commercial activities
 Australian Dairy Corporation, in relation to documents in respect of its competitive commercial activities
 Australian Dried Fruits Corporation, in relation to documents in respect of its competitive commercial activities
 Australian Egg Board, in relation to documents in respect of its competitive commercial activities
 Australian Honey Board, in relation to documents in respect of its competitive commercial activities
 Australian Meat and Live-stock Corporation, in relation to documents in respect of its competitive commercial activities
 Australian Postal Commission, in relation to documents in respect of its competitive commercial activities
 Australian Telecommunications Commission, in relation to documents in respect of its competitive commercial activities
 Australian Wheat Board, in relation to documents in respect of its competitive commercial activities
 Australian Wine and Brandy Corporation, in relation to documents in respect of its competitive commercial activities
 Australian Wool Corporation, in relation to documents in respect of its competitive commercial activities
 Department of Defence, in relation to documents in respect of activities of the Defence Signals Directorate and the Joint Intelligence Organization
 Department of the Treasury in relation to documents in respect of activities of the Australian Loan Council and in respect of the competitive commercial activities of the Royal Australian Mint
 Overseas Telecommunications Commission, in relation to documents in respect of its competitive commercial activities
 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, in relation to its program material

NOTE

1. The *Freedom of Information Act 1982* as shown in this reprint comprises Act No. 3, 1982 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Freedom of Information Act 1982</i>	3, 1982	9 Mar 1982	1 Dec 1982 (<i>see Gazette</i> 1982, No. G48, p. 2)	
<i>Australian Broadcasting Corporation (Transitional Provisions and Consequential Amendments) Act 1983</i>	7, 1983	1 June 1983	Part V (ss. 65 and 66); 1 July 1983 (<i>see Gazette</i> 1983, No. S124, p. 1) (a)	—
<i>Freedom of Information Amendment Act 1983</i>	81, 1983	3 Nov 1983	1 Jan 1984 (<i>see Gazette</i> 1983, No. S344, p. 1)	S. 46

- (a) The *Freedom of Information Act 1982* was amended by Part V (sections 65 and 66) only of the *Australian Broadcasting Corporation (Transitional Provisions and Consequential Amendments) Act 1983*, sub-section 2 (2) of which provides that Part V shall come into operation on the day on which the *Australian Broadcasting Corporation Act 1983* comes into operation.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 4	am. No. 81, 1983
S. 7	am. No. 81, 1983
Ss. 9, 10	am. No. 81, 1983
Ss. 12, 13	am. No. 81, 1983
S. 16	am. No. 81, 1983
S. 19	am. No. 81, 1983
S. 23	am. No. 81, 1983
Ss. 25, 26	am. No. 81, 1983
S. 26A	ad. No. 81, 1983
S. 31	am. No. 81, 1983
S. 33	am. No. 81, 1983
S. 33A	ad. No. 81, 1983
Ss. 34, 35	am. No. 81, 1983
S. 37	am. No. 81, 1983
Ss. 39, 40	rs. No. 81, 1983
S. 43	am. No. 81, 1983
S. 45	am. No. 81, 1983
S. 47	am. No. 81, 1983
S. 49	am. No. 81, 1983
S. 51	am. No. 81, 1983
Part VA (ss. 52A-52F)	ad. No. 81, 1983
Ss. 52A-52F	ad. No. 81, 1983
Ss. 53-56	am. No. 81, 1983
S. 57	rep. No. 81, 1983
S. 58	am. No. 81, 1983

NOTE—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 58A-58F	ad. No. 81, 1983
S. 60	am. No. 81, 1983
Ss. 62-65	am. No. 81, 1983
S. 66	rs. No. 81, 1983
Ss. 67-69	rep. No. 81, 1983
Part VII (ss. 70-90)	rep. No. 81, 1983
Ss. 70-90	rep. No. 81, 1983
Ss. 91-94	am. No. 81, 1983
Schedule 2	am. No. 7, 1983

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APPENDIX B

PROCEDURAL ASPECTS OF FOI ACT

(Extract from Public Service Board's
Machinery for the Review of
Administrative Decisions,
3rd edition, 1984, pp.12-19)

- . a request for access is to be made in writing s.19
- . requests are to provide such information concerning s.15(2)
the document as is reasonably necessary to enable
it to be identified
- . a request for classes of documents (e.g. by refer- s.24(1)(b)
ence to subject matter) can be refused if compliance s.17(2)
would interfere unreasonably with, or divert the
resources of, the agency
- . there is provision for the transfer of requests to s.16
a more appropriate agency
- . requests for information stored on sound recordings, s.17
microfilm etc, are to be treated as requests for any
written document that could be produced from the
stored material
- . 'access' may include provision of a copy of the s.20
document, a reasonable opportunity to inspect (or
hear, view) etc., and an agency may vary the form of
access sought by the applicant, although such var-
iance is considered to be a refusal
- . access can be deferred until the occurrence of a s.21
particular event, or the expiration of a partic-
ular period of time, where it is in the public
interest
- . provision is made for amendment of a document to ss.48-51
which access has been granted under the Act and
which contains information concerning an applicant's
personal affairs, and
- . reasons are to be given for decisions under the Act s.26
(the reasons entitlement is expressed in similar
language to the provision in the AD(JR) Act), and
must be provided to the applicant whenever an
exemption is claimed
- . the notice must inform the applicant of his right
to complain to the Ombudsman about the decision,
where appropriate

- where a person receiving the notice under s.26 considers it is not adequate s.62(2) enables that person to apply to the AAT for a declaration that such a notice is inadequate. Where the Tribunal makes such a declaration the person who gave the notice must furnish to the applicant as soon as practicable but in any case within 28 days an additional notice containing further and better particulars

Publication of organisational and functional arrangements

The Act requires a Minister responsible for a department or authority to publish (and maintain in an up-to-date form) a statement setting out particulars of the organisation and functions of the department or authority, including an indication of any decision-making powers and other powers affecting members of the public. s.8
s.9

Agencies must also publish a statement of the categories of documents that are maintained in their possession and a description of their freedom of information procedures.

In general, documents (including rule books, procedures manuals, indexes of precedents, etc.) used by officers to make decisions or recommendations, or to give advice with respect to rights, benefits, penalties or obligations, must be made available for inspection and purchase by the public.

An index of such documents must be published in the Commonwealth Government Gazette specifying the documents that are available and where copies may be purchased. This statement must be updated quarterly where practicable and in any case annually. Documents available for purchase may not be made the subject of an FOI request. s.12
s.4

A person who asks to inspect or purchase a manual or other document listed in compliance with section 9 must be informed of any other such manual or like documents which have come into existence since the last section 9 statement was published and which relate to the same subject as the manual which is the subject of his inquiry.

The Act contains special definitions of many important terms ('document', 'document of an agency', 'exempt document', 'official document', 'responsible Minister') careful reading of which is essential to an understanding of the provisions of the Act.

Section 3(d) makes it clear that the term 'official document of a Minister' applies only to documents which a Minister has in his possession in his capacity as Minister. s.3(d)

Access to prior documents

Section 12(2) provides:

- . a general right of access to documents which were in the possession of an agency or Minister on or after 1 December 1977
- . a general right of access without any time limit to documents relating to the personal affairs of a person [sic]

These extended rights of access do, of course, remain subject to the exemption provisions of the FOI Act.

Exempt Documents and Material

The legal protection provided by sections 91 and 92 of the FOI Act extends to the disclosure of prior documents not within the right of access under the Act. The intention is to encourage agencies to give access to prior documents even though the applicant has no legally enforceable right of access to them.

Certain classes of documents are specifically exempted from access under FOI. A summary of these classes follows. Particular attention is drawn to the relevant sections of the Act which, in most instances, are quite complex in both their content and their structural relationship to other provisions of the Act.

"Overriding Public Interest" Test

The scope of exemption provisions relating to documents:

- . affecting relations with States
- . affecting financial or property interests of the Commonwealth or its agencies
- . concerning operation of agencies is restricted by sections 17 and 21 of the Amendment Act which make them subject to an overriding public interest test.

Decisions are made on a document by document basis. A class of documents cannot be defined as exempt.

(a) Commonwealth/State documents

Documents the disclosure of which may cause damage to Commonwealth/State relations or disclose information or matter communicated in confidence by a State Government or authority to the Commonwealth, Commonwealth authority or representative are exempt unless disclosure would be in the public interest.

(b) documents relating to certain operations of agencies or the financial or property interests of the Commonwealth

These exemptions are also subject to the overriding public interest test. Section 40 (certain operations of agencies) makes it clear that:

- . the exemption with respect to staff management interests refers to the management or assessment of personnel by an agency
- . the exemption with respect to the supervision or review of the operation of an agency refers to documents the disclosure of which would have a substantial adverse effect on the proper and efficient conduct of the operation of an agency.

(c) documents affecting national security

Under section 33(1) the range of exempt documents affecting international relations includes documents communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organisation.

Section 7(2A) exempts an agency from the operation of the FOI Act in relation to documents of an agency that have originated with, or been received from, the intelligence agencies specified therein (ASIO, ASIS, ONA, DSD, JIO). The exemption does not extend to documents created from material provided by intelligence agencies.

(d) Cabinet and Executive Council documents

A document is not exempt unless its disclosure would involve the disclosure of a Cabinet deliberation or decision or an Executive Council deliberation or advice and the fact of that deliberation, decision or advice has not been officially published.

(e) internal working documents

Exempt if access would:

s.36(1) (a) "disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained for the purposes of the deliberative processes involved in the functions of an agency or Minister or of the Government; and

(b) would be contrary to the public interest."

A decision that a document falls under paragraph (a) above may be appealed to the AAT.

An important qualification to the description in the Act of "internal working document" is the non-exemption from disclosure of various kinds of reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, and of records of, or formal statements of the reasons for, a final decision given in the exercise of a power or of an adjudicative function. s.36(6)

(f) law enforcement documents

Exempt if disclosure would, on various specified grounds, be prejudicial to a fair trial or would endanger the life or physical safety of any persons engaged in or in connection with law enforcement. s.37

(g) documents to which specific secrecy provisions of other enactments apply s.38

(h) documents affecting personal privacy

Exempt if their disclosure would involve an unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person), other than the applicant. s.41

(There is a provision enabling documents containing information of a medical or psychiatric nature about the applicant to be made available to a medical practitioner nominated by the applicant.)

(i) documents subject to legal professional privilege s.42

(j) documents relating to trade secrets

Exempt if their disclosure would disclose information about a person's business or professional affairs, or concerning a business, commercial or financial undertaking, and s.43

- (a) the information relates to trade secrets or to other matter the disclosure of which would be reasonably likely to expose the person or undertaking unreasonably to disadvantage; or
- (b) the disclosure would be contrary to the public interest because it would be reasonably likely to impair the ability of the Commonwealth or an agency to obtain similar information in the future.

An agency is obliged to seek the permission of the person who provided the information. If the person refuses permission, the agency can be a party to an appeal (i.e. reverse FOI procedure).

(k) documents affecting the national economy

Exempt if disclosure would be contrary to the public interest by reason that it would be reasonably likely to have a substantial adverse effect on the national economy. s.44

(l) documents containing material obtained in confidence

Section 45(2) of the FOI Act makes it clear that the exemption does not apply to internal working documents prepared by a Minister or Commonwealth officer. This provision reflects the decision of the Administrative Appeals Tribunal in Re Witheford v Department of Foreign Affairs which gave section 45 a much wider scope than was originally intended. Most referees' reports are affected by Section 45(2). s.45

(m) documents disclosure of which would constitute contempt of Parliament or of court s.46

(n) certain documents relating to Companies and Securities legislation s.47

Review and appeal provisions: internal and via AAT

The Act provides for:

- . internal review by an agency, and, ultimately,
- . application to the AAT for review of a decision refusing access.

Internal Review Procedures

The internal review process is available where the decision to refuse access was made by a person other than the Minister or Principal Officer of an agency. An application to the AAT may not be made unless an application for internal review by the Minister or Principal Officer has first been made. Internal review is also available for a decision on the liability to pay charges, and also for a decision refusing to amend a record. s.54

Under Section 54 an application for internal review of a decision by an agency may be made in respect of decisions refusing access or deferring the provision of access to a document. This means that internal review is available in all cases in which an appeal lies to the Administrative Appeals Tribunal.

Administrative Appeals Tribunal

The Act provides for a general right of appeal to the AAT against decisions refusing access to a document, or where a decision has been delayed. However, there are some exceptions to, and qualifications of, the AAT's powers of review: s.55 s.56

- . the AAT can examine the grounds on which a decision was made to give a certificate establishing conclusively that a document is an exempt document. If the Tribunal considers that the grounds were not reasonable, it may ask the Minister to revoke the certificate. If the Minister decides not to revoke the certificate he must table an explanation in Parliament.
- . the AAT may review matters relating to charges payable in relation to a request for access
- . the AAT can give access to prior documents where the prior document ground for refusing access to a document is not a ground being relied upon
- . an applicant may appeal to the AAT where there has been delay in responding to a request. The agency or Minister to whom a request for access has been made must acknowledge receipt of a request within 14 days. The time within which an agency or a Minister must comply with a formal request is to be reduced from 60 to 45 days as from 1 December 1984 and further reduced to 30 days as from 1 December 1986 s.57

- . the agency or Minister making a decision denying access has the onus of establishing that that decision was justified (because the applicant does not have access to the document).

The Role of the Ombudsman under the FOI Act

Section 52F of the FOI Act empowers the Ombudsman to represent or to arrange representation for an applicant in proceedings before the AAT where, in the Ombudsman's opinion, it is reasonable for him to do so. The Ombudsman is precluded from representation in cases where a decision of a Minister is under review. s.52F

The Ombudsman's powers under the Ombudsman Act 1976 extend to freedom of information matters. The Ombudsman's powers to investigate a complaint arising under the FOI Act are not precluded or restricted by a person's right to make an application to the AAT. However, where such a complaint is made to the Ombudsman a person's right to apply to the AAT for a review of a decision cannot be exercised until the Ombudsman has informed the applicant of the result of his complaint.

Evidence coming to the Ombudsman's attention concerning a breach of duty or misconduct by an officer of the Public Service in relation to a freedom of information matter must be furnished by the Ombudsman to the Public Service Board.

The Ombudsman must also furnish to the Public Service Board a copy of any report he makes to a Department under section 15(2) of the Ombudsman Act 1976 as a result of an investigation of action taken by the Department in relation to a freedom of information matter.

Application of the Act to Agencies

Broadly speaking, the Act applies to all Commonwealth departments, to Commonwealth statutory authorities and to holders of statutory offices. Certain specified offices and agencies are excluded from the legislation by being specified in the Schedules to the Act. The Act does not apply to the Parliamentary Departments, the ACT and NT Legislative Assemblies and Royal Commissions, and nor does it apply to non-administrative matters in respect of Courts, the Conciliation and Arbitration Commission, and some similar bodies. Other agencies, and classes of documents of those agencies, have been exempted by the Schedules to the Act, including business undertakings such as the Commonwealth Banks and the Canberra Commercial Development Authority, the Auditor-General, ASIO and the Office of National Assessments, s.4(1) Schedules 1 & 2

and documents containing competitive commercial information, such as those relating to the functions of, for example, the Australian Meat and Livestock Corporation.

APPENDIX C

ATTACHMENT TO REVISED FOI MEMORANDUM NO. 34 -
EXEMPTION OF CABINET DOCUMENTS

TYPE OF DOCUMENT	APPLICABLE SECTION OF THE FOI ACT		
	s. 34(1) (a)	s. 34(1) (b)	s. 34(1) (d)
<u>1. Cabinet Submissions</u>			
(a) lodged with Cabinet Office	Yes	Yes	To extent previous Cabinet deliberations revealed
(b) approved by Minister but not lodged	Yes	No	" "
(c) in draft	No	No	" "
<u>2. Cabinet Memorandums</u>			
(a) lodged with Cabinet Office	Yes	Yes	" "
(b) approved by Minister but not lodged	Yes	No	" "
<u>3. Letters from Ministers to the Prime Minister proposing a matter be raised 'under-the-line'</u>			
4. Internal Cabinet Office registers, schedules etc	No	Yes	" "
5. Cabinet Business Lists	No	Yes	Yes
6. Cabinet Program Notices	No	Yes	No
7. Cabinet Decisions	No	Yes	Yes
8. Cabinet Notebooks.	No	Yes	Yes
9. Briefing Notes to Ministers	No	No	To extent previous Cabinet deliberations revealed

APPENDIX D

WORKING METHODS IN WHITEHALL

(Extract from the second of three papers
published by The Areopagitica Educational Trust on
Public Access to Official Records - the Practical Issues,
London, 1983, pp.20-25)

Periodic Parliamentary Questions and other requests for publication of papers, and some of the more general proposals for freedom of information, seem to assume that civil servants regularly produce written work in which as a matter of course they record all aspects of the subject under review, set out all options in full, and explore all arguments to their logical conclusions [emphasis supplied].

The reality is rather different. Civil servants may themselves be partly to blame for the view that their work entails - indeed largely consists of - the production of very comprehensive, and readily comprehensible, documents; if asked to describe their role in government, they will often say that their main duty is "to advise Ministers" and "to ensure that the Minister before taking a decision, is aware of all the facts and options", and aware also of all the arguments for and against the course of action under review. This is not a literal description of the normal relationship between Ministers and officials. To 'de-code' it some explanation is needed of the way things work inside Whitehall.

In constitutional theory all acts and decisions of civil servants are the acts and decisions of a Minister, and anything done by a civil servant which leads to a course of action or a decision is, strictly speaking, in the form of advice to his Minister to choose one of a number of options. But in practice some part or sometimes all of this "advice" may well be a somewhat theoretical concept of which little trace could be found by a researcher armed with the rights provided by even the most radical Freedom of Information Act. Much of what goes on inside government is done within an agreed and recognised framework, implicitly or explicitly agreed with Ministers, which may well make detailed explanation unnecessary in a particular case. The pressure of work both on Ministers and on civil servants in the policy divisions of Whitehall makes it impossible for Ministers to be involved in literally everything which is done in their name or for their officials to spell out in detail the reasons for every action proposed or taken, what alternative might have been pursued and just why it, or some particular argument in its favour, has been rejected. For the same reasons, the assumptions which underlie existing policies are as rarely spelled out on paper as they are questioned.

It is unusual therefore for files to contain papers which take nothing for granted and which would by themselves enable the outside reader to take a fully informed part in discussion of the subject at issue. On the contrary, the internal memoranda which civil servants address to each other will often not explore de novo all aspects of the subject in question. Even in detailed submissions to Ministers, civil servants will often take account of such background information as the Minister already has and of earlier discussion of the issues, and will try to avoid unnecessary repetition. Also papers are rarely written

without any preliminary discussion or understanding of any kind. In other words, many policy submissions to Ministers take a great deal as read and include only what is immediately wanted. Some Ministers have insisted that nothing is worth saying which could not be said in half a page of text. Within such limits there can be no detailed explanations or elaborate analysis of alternative opinions.

[On the 'publication of policy papers', the paper continued:]

Recent cases where internal policy documents were publicly discussed have illustrated the misunderstandings which this state of affairs can and does bring about. Thus a paper may be the result of a request from the Minister to explore just one particular course of action and to offer suggestions on how the possible opposition to that course could be overcome. The outside reader may conclude that the facts and arguments in such a paper are all that the Minister will see on that subject. If so, we may criticise the author for failing to produce a balanced and honest appraisal; the Press and public will accuse the author of showing bias. Alternatively, if it is known that the paper was commissioned by Ministers, it may wrongly be assumed that they are committed to that particular course of action and that other options will not be read.

What has been said so far points to two conclusions. One is that if freedom of information provides full access to government files these may not tell outside enquirers all that they need to know. The other is that the reader may be misled because the files are intended for use by people who are familiar with the background and who understand how the material came to be created and its context. These conclusions are not in any sense objections to the case for more freedom of information, but they do indicate certain possible consequences for the process of government. Firstly, there are likely to be pressures for the government to produce fuller and more self-explanatory background material and justification for Ministerial decisions. Secondly, there may be a certain amount of confusion or even, in some cases, unwarranted suspicion. Governments might decide to ignore both pressures and confusion. But they might equally feel it necessary to make concessions to both by providing additional material and by fostering informed debate. There are strong arguments for doing both, but they will certainly involve a price in terms of time and effort. In either case there may be certain second-order dangers in the processes of government and in relationships between Ministers and civil servants. This point is taken up below.

[Regarding 'personal views':]

There is a third strand in the argument which is perhaps better understood than those just described, but which those inside government would always want to emphasise. It concerns the publication of personal views and conclusions. Whether or not it is necessary to include in a submission to a Minister all the facts, arguments and options will, as has been argued above, depend on what has gone before. But it is certain that such a submission should have a conclusion, probably in one of two forms. The author of a paper may argue on his own account that the evidence points to one particular

conclusion and he may say so. Alternatively, he may know that one particular conclusion is likely to commend itself to Ministers and he may do his best to argue towards that end.

What will happen if there is free access to this paper by those outside government? Ministers will expect to defend their particular points of view and will have opportunities to do so. But if present conventions continue to apply, the situation will be different for civil servants. It will be necessary to consider whether the conventions will have to change. Presumably once the Minister has decided on a course of action civil servants will be, as they are now, bound by that decision. If the decision is in line with the advice in their paper, they will be applauded by outsiders who support the decision, and criticised by its opponents. If the Minister's decision is not in line with their advice, they may still be applauded or criticised, including by the Minister's and the government's political opponents.

The question will then arise how far civil servants should be quizzed about the advice to which they have set their name (e.g. by Select Committees); and how far they should be either required or allowed to explain and justify it [emphasis supplied]. Should they be given the chance, for example to explain that the point of view taken in their papers was not necessarily their own? If they have been overruled, can they be allowed to say publicly that they think the Minister is mistaken, and perhaps to explain why? If individual civil servants, justly or unjustly, come to be associated with a particular point of view and perhaps with a particular policy, they may find themselves under close scrutiny if there is a change of Minister or, still more so, of government. A new government may feel that they are unsuitable for their present post - or indeed for other posts to which the same viewpoint is relevant. At the very least, they may find their personal public standing affected by media, Parliamentary and other comment on their attitude.

How might this affect civil servants and the civil service? It is, of course, possible that in many cases the status and behaviour of civil servants will not be affected at all. But several possible developments can be foreseen; they are not mutually exclusive:

- (a) some civil servants may feel inhibited in offering advice, at least on paper, or may express their views more cautiously;
- (b) some, by contrast, may 'play to the gallery' and become public figures in their own right. At the very least, they may demand and take the opportunity to ensure that their position on an issue has been correctly presented to and interpreted by Parliament and the media;
- (c) there will be additional incentive towards 'politicisation' of the civil service in that incoming

Ministers or governments may move and replace individuals in whom they do not have confidence.

[The paper than examined 'timing of publication':]

In discussions of freedom of information a distinction is sometimes drawn between disclosing information before decisions are taken, and allowing access to it at some later stage, though not nearly as long after as is required under the present thirty year rule. It is argued that even if it is not easy to give those outside government the opportunity of joining in the debate leading up to a particular action, they should at least have knowledge soon after of how it came to be taken. But few if any of the problems so far described will be solved if no more than a few months are allowed to elapse before access is given, when the same people are still in the same posts and dealing with the same subjects.

[Hence 'the case for exemption':]

It is because of such considerations as these that most civil servants and some politicians argue that policy documents, and in particular the exchange between Ministers and civil servants, should be exempted from the provisions of any Freedom of Information Act. This is in fact the practice in most countries which have passed such legislation and almost in all those where the system of government follows broadly the pattern of that in [Britain]. ... This is not to say that disclosure would be impossible, particularly if, as already suggested, more policy work were done orally or by means of informal notes, intended only for the reader and not to be retained after reading. It is perhaps just worth mentioning that in this case there would be less material on the files than there is at present and in the long run, e.g. for the historian, the introduction of freedom of information would have produced the opposite result of that intended. Instead the need for better access to public information might be met by the publication of more documents of the nature of the present Green Paper. There would obviously be a financial cost to this, and in some cases a slowing-down of the decision-making process while documents were published and debated though, as has been shown with Finance Bills in recent years, these costs need not be great and arguably would be more than offset by the benefits from improvements in the quality of the final decisions.

[The paper then considered 'some other practical issues':]

which do not involve the relative roles of Ministers and officials but which will need to be thought about. Papers which are written in the process of formulating policies are no doubt the most important of those which need to be looked at in assessing the effects of freedom of information. But there are others arising from the practicalities of the day-to-day work of government departments. By no means all of the work even of the central policy branches of a department does in fact consist of work on the formulation of policy. Indeed, there must be many such branches where this kind of work is in the minority. Practical day-to-day problems have to be solved,

contracts let, wages and salaries determined and services provided and maintained. ([It is expected] that internal personnel matters would be among those exempted from the working of a Freedom of Information Act.) One important routine activity in a wide range of contexts is negotiation; it would create difficulties for Ministers or civil servants if they were obliged to disclose the briefs and other documents which spell out their negotiating position before the negotiation itself has been completed or even begun. To take an obvious example, if the government is involved in negotiations on public service pay, it would be absurd for the Minister to have to answer in the House what he expects to be the final outcome of these negotiations or to disclose what concessions might be acceptable if agreement is difficult to reach. The consequences of such disclosures might be even more spectacular in international negotiations and it is clear that the preparation for negotiations would be severely impaired if any papers produced were liable to have to be disclosed.

This kind of problem is of particular significance because it is not usually included among those classes of information which have been considered for exemption.

Rather similar issues are raised by Ministers' understandable desire to manage publicity. Ministers often wish to observe confidentiality for any material which they intend to use for a particular announcement of a new development, a concession, a new building or some other change which is likely to attract publicity and comment. The impact would often be muffled by greater freedom of information if the preliminaries leading up to that decision are publicly discussed, the impact of good news would be largely lost; on the other hand the impact of bad news may drag on over a much longer period than the Minister would wish. It can hardly be claimed that these changes would damage the national interest, but they would not be welcome to Ministers and might well be resisted by them.

[On the 'volume of work entailed in some of the changes which freedom of information would bring about', the paper stated:]

First, it is recognised that access will require new guides, indexes or other methods of helping the researcher to find his way. Secondly, [reference has already been made] to the incentive to produce special documents to meet the needs of open government. Certainly all other provisions for improved accountability (the work of the Public Accounts Committee, the Ombudsman and ... special exercises ...) have called for new work. More and better access to public information could have the same effect. The amount of new work, and its cost, will depend largely upon how far Ministers and officials feel it is necessary to yield to pressures for further explanation, and themselves fear misinterpretation if they do not explain.

[The paper concluded that:]

A Freedom of Information Act on the lines so far offered by advocates of open government will have a number of consequences for the nature and processes of government and for its cost. These consequences are

not always well understood ... difficulties and problems exist; no one wants to see a change which, after the event, is shown to have produced unexpected results which ought to have been considered beforehand. Freedom of public information is certainly possible, and in many countries it exists to a greater or lesser extent. But it cannot be taken for granted that all the changes it will bring in government and the civil service are necessarily for the better

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