

SOUTH AUSTRALIA

**FREEDOM OF INFORMATION ACT 1991**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 27 August 1998.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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# FREEDOM OF INFORMATION ACT 1991

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Freedom of Information Act 1991 No. 20 of 1991  
[Assented to 18 April 1991]<sup>1</sup>

as amended by

Director of Public Prosecutions Act 1991 No. 49 of 1991 [Assented to 21 November 1991]<sup>2</sup>

Electoral (Miscellaneous) Amendment Act 1997 No. 22 of 1997 [Assented to 27 March 1997]<sup>3</sup>

State Records Act 1997 No. 8 of 1997 [Assented to 20 March 1997]<sup>4</sup>

**Freedom of Information (Public Opinion Polls) Amendment Act 1998 No. 42 of 1998 [Assented to 27 August 1998]**

<sup>1</sup> Came into operation 1 January 1992: s. 2.

<sup>2</sup> Came into operation 6 July 1992: *Gaz.* 25 June 1992, p. 1869.

<sup>3</sup> Came into operation 28 August 1997: *Gaz.* 28 August 1997, p. 456.

<sup>4</sup> Came into operation 31 October 1997: *Gaz.* 4 September 1997, p. 612.

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

**An Act to provide for public access to official documents and records; to provide for the correction of public documents and records in appropriate cases; and for other purposes.**

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Freedom of Information Act 1991*.

**Commencement**

2. This Act will come into operation on 1 January 1992.

**Objects**

3. (1) The objects of this Act are to extend, as far as possible, the rights of the public—

- (a) to obtain access to information held by the Government; and
- (b) to ensure that records held by the Government concerning the personal affairs of members of the public are not incomplete, incorrect, out-of-date or misleading.

- (2) The means by which it is intended to achieve these objects are as follows:

- (a) ensuring that information concerning the operations of the Government (including, in particular, information concerning the rules and practices followed by the Government in its dealings with members of the public) is made available to the public; and
- (b) conferring on each member of the public a legally enforceable right to be given access to documents held by the Government, subject only to such restrictions as are reasonably necessary for the proper administration of the Government; and
- (c) enabling each member of the public to apply for the amendment of such of the Government's records concerning his or her personal affairs as are incomplete, incorrect, out-of-date or misleading.

- (3) It is the intention of Parliament—

- (a) that this Act should be interpreted and applied so as to further the objects of this Act; and
- (b) that the administrative discretions conferred by this Act should be exercised, as far as possible, so as to facilitate and encourage the disclosure of information of a kind that can be disclosed without infringing the right to privacy of private individuals.

- (4) This Act must be administered so as to make the maximum amount of information of the kind referred to in subsection (3) available to members of the public promptly and efficiently.

- (5) Nothing in this Act is intended to prevent or discourage the publication of information, the giving of access to documents or the amendment of records as permitted or required by or under any other Act or law.

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**Interpretation**

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

"**agency**" means—

- (a) a Minister of the Crown; or
- (b) a person who holds an office established by an Act; or
- (c) a body corporate (other than a council) that—
  - (i) is established for a public purpose by, or in accordance with, an Act; and
  - (ii) comprises or includes, or has a governing body that comprises or includes, a Minister of the Crown or a person or body appointed by the Governor or a Minister of the Crown; or
- (d) an unincorporated body established by the Governor or a Minister; or
- (e) an administrative unit under the *Government Management and Employment Act 1985*; or
- (f) the Police Force of South Australia; or
- (g) a person or body, controlled by the Crown, or an instrumentality or agency of the Crown, declared by the regulations to be an agency,

but does not include an exempt agency;

"**council**" means a municipal or district council;

"**court**" includes a justice or a coroner;

"**District Court**" means any District Court in its civil jurisdiction;

"**document**" includes anything in which information is stored or from which information may be reproduced;

"**exempt agency**" means—

- (a) any council; or
- (b) a person or body referred to in schedule 2; or
- (c) an agency declared by regulation to be an exempt agency;

"**member of the public**" includes an incorporated or unincorporated body or organisation;

"**officer**" of an agency includes—

- (a) a member of the agency;
- (b) the principal officer of the agency;
- (c) any person employed in, or for the purposes of, the agency;

"**personal affairs**" of a person includes that person's—

- (a) financial affairs;
- (b) criminal records;
- (c) marital or other personal relationships;
- (d) employment records;
- (e) personal qualities or attributes;

"**policy document**", in relation to an agency, means—

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

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

"**principal officer**", in relation to an agency, means—

- (a) if the agency consists of a single person (not being a body corporate)—that person;
- (b) if the agency consists of an unincorporated board or committee—the presiding officer;
- (c) in any other case—the chief executive officer of the agency or a person designated by the regulations as principal officer of the agency;

"**responsible Minister**" in relation to an agency means the Minister responsible for administration of the agency or the legislative instrument under which it is established and, if there is no such Minister, a Minister designated by the regulations as the responsible Minister or, in the absence of such a designation, the Minister responsible for the administration of this Act;

"**restricted document**" means a document that is an exempt document by virtue of Part 1 of schedule 1;

"**State**" includes Territory;

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"**State Records**" means the office of State Records established under the *State Records Act 1997*;

"**tribunal**" means any body (other than a court) invested by the law of the State with judicial or quasi-judicial powers.

(2) A body that forms part, or is established for the purposes, of an agency is not to be regarded as itself constituting a separate agency.

(3) A reference in this Act to documents held by or in the possession of an agency is, where the agency is a Minister, a reference only to such of those documents as relate to agencies for which the Minister is responsible.

(4) An agency is to be taken to hold a document if the agency has an immediate right of access to the document.

(5) Where—

(a) an agency holds information in computer storage; and

(b) a particular document is capable of being produced by the computer on the basis of information so stored,

the agency is to be taken to hold that document.

**Act binds Crown**

5. This Act binds the Crown not only in right of the State but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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

6. (1) For the purposes of this Act—

(a) neither a court nor a judicial officer of a court is to be regarded as an agency or part of an agency; and

(b) neither a registry or other office of a court nor the members of staff of such a registry or other office are, in relation to matters relating to the court's judicial functions, to be regarded as an agency or part of an agency.

(2) For the purposes of this Act—

(a) neither a tribunal nor an officer vested with power to determine questions raised in proceedings before a tribunal is to be regarded as an agency or part of an agency; and

(b) neither a registry or other office of a tribunal nor the members of staff of such a registry or other office are, in relation to matters relating to the determination of proceedings before the tribunal, to be regarded as an agency or part of an agency.

**Documents in State Records**

7. If a document held by an agency is delivered into the custody of State Records, the document is, for the purposes of this Act, to be taken to continue in the possession of the agency by which it was formerly held.



**Defunct agencies**

8. (1) Where an agency takes over the functions of another agency and that other agency ceases to exist, the responsibilities of the continuing agency under this Act will include those of the former agency as if the former agency had merged with, and continued as part of, the continuing agency.

(2) Where an agency ceases to exist, and no other agency takes over its functions, the responsibilities of the defunct agency under this Act will devolve—

- (a) if the Minister nominates an agency—on the agency so nominated as if the former agency had merged with, and continued as part of, the nominated agency; or
- (b) in the absence of such a nomination—on State Records.

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**PART 2  
PUBLICATION OF CERTAIN INFORMATION**

**Publication of information concerning agencies**

9. (1) The responsible Minister for an agency—

(a) must (within 12 months after the commencement of this section and at intervals of not more than 12 months thereafter) cause to be published, in such manner as the Minister administering this Act may approve, an up-to-date information statement; and

(b) must (within 12 months after the commencement of this section and at intervals of not more than 12 months thereafter) cause to be published in the *Gazette* an up-to-date information summary.

(2) An information statement must contain—

(a) a description of the structure and functions of the agency (including of any board, committee or other body constituted by two or more persons that is part of the agency or has been established for the purpose of advising the agency and whose meetings are open to the public or the minutes of whose meetings are available for public inspection); and

(b) a description of the ways in which the functions (including, in particular, the decision-making functions) of the agency affect members of the public; and

(c) a description of any arrangements that exist to enable members of the public to participate in the formulation of the agency's policy and the exercise of the agency's functions; and

(d) a description of the various kinds of documents that are usually held by the agency, including—

(i) a description of the various kinds of documents that are available for inspection at the agency (whether as part of a public register or otherwise) in accordance with the provisions of a legislative instrument other than this Act, whether or not inspection of any such document is subject to a fee or charge; and

(ii) a description of the various kinds of documents that are available for purchase from the agency; and

(iii) a description of the various kinds of documents that are available from the agency free of charge; and

(e) a description of the arrangements that exist to enable a member of the public to obtain access to the agency's documents and to seek amendment of the agency's records concerning his or her personal affairs; and

(f) a description of the procedures of the agency in relation to the giving of access to the agency's documents and to the amendment of the agency's records concerning the personal affairs of a member of the public, including—

(i) the designation of the officer or officers to whom inquiries should be made; and

(ii) the address or addresses at which applications under this Act should be lodged.

(3) An information summary—

- (a) must identify each of the agency's policy documents; and
- (b) must identify the most recent information statement published under this section; and
- (c) must specify the designation of the officer or officers to whom inquiries concerning the procedures for inspecting and purchasing the agency's policy documents and information statements should be made; and
- (d) must specify the address or addresses at which, and the times during which, the agency's policy documents and information statements may be inspected and purchased.

(4) Nothing in this section requires the publication of information if its inclusion in a document would result in the document being an exempt document.

**Availability of certain documents**

**10.** (1) An agency must cause copies of—

- (a) its most recent information statement; and
- (b) its most recent information summary; and
- (c) each of its policy documents,

to be made available for inspection and purchase by members of the public.

(2) Nothing in this section prevents an agency from deleting information from the copies of a policy document if its inclusion in the document would result in the document being an exempt document otherwise than by virtue of clause 9 or 10 of schedule 1.

(3) An agency should not enforce a particular policy to the detriment of a person—

- (a) if the relevant policy document should have been, but was not, made available for inspection and purchase in accordance with this section at the time the person became liable to the detriment; and
- (b) the person could, by knowledge of the policy have avoided liability to the detriment.

(4) During the period of 12 months following the commencement of this section—

- (a) an agency is required to comply with subsection (1) only to such extent as is reasonably practicable; and
- (b) subsection (3) does not have effect.

**Application of this Part**

**11.** This Part does not apply to—

- (a) an agency that is a Minister (unless the agency is declared by regulation to be one to which this Part applies); or
- (b) an agency that is exempted by regulation from the obligations of this Part.

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**PART 3  
ACCESS TO DOCUMENTS**

**DIVISION 1—GENERAL**

**Right of access to agencies' documents**

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

**Applications for access to agencies' documents**

**13.** An application for access to an agency's document—

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

**Persons by whom applications to be dealt with, etc.**

**14.** (1) An application will be dealt with on behalf of an agency—

- (a) by the principal officer of the agency; or
- (b) by such other officer of the agency as the principal officer of the agency may direct for that purpose, either generally or in a particular case.

(2) An application must be dealt with as soon as practicable (and, in any case, within 45 days) after it is received.

**Incomplete and wrongly directed applications**

**15.** An agency must not refuse to accept an application merely because it does not contain sufficient information to enable the document to which it relates to be identified without first taking such steps as are reasonably practicable to assist the applicant to provide such information.

**Transfer of applications**

**16.** (1) An agency to which an application has been made may transfer the application to another agency if the document to which it relates—

- (a) is not held by the agency but is, to the knowledge of the agency, held by the other agency; or
- (b) is held by the agency but is more closely related to the functions of the other agency.

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

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

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

(5) An agency is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.

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

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

(b) 14 days after the day on which it was received by the agency to which it was originally made,

whichever is the earlier.

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

**17.** (1) If, in the opinion of an agency, the cost of dealing with an application is likely to exceed the application fee, the agency may request the applicant to pay to it such reasonable amount, by way of advance deposit, as the agency may determine.

(2) If, in the opinion of an agency, the cost of dealing with an application is likely to exceed the sum of the application fee and of any advance deposits paid in respect of the application, the agency may request the application to pay to it such reasonable amount, by way of further advance deposit, as the agency may determine.

(3) The aggregate of the application fee and the advance deposit or deposits requested under this section may not exceed the agency's estimate of the cost of dealing with the application.

(4) A request for an advance deposit must be accompanied by a notice that sets out the basis on which the amount of the deposit has been calculated.

(5) The amount of an advance deposit requested by an agency in respect of an application must be paid to the agency within such period as the agency specifies in the request.

(6) The period between the making of a request under this section and the payment of an advance deposit in accordance with the request is not to be taken into account in calculating the period of 45 days within which the relevant application is to be dealt with.

#### **Agencies may refuse to deal with certain applications**

**18.** (1) An agency may refuse to deal with an application if it appears to the agency that the nature of the application is such that the work involved in dealing with it would, if carried out, substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.

(2) An agency must not refuse to deal with such an application without first endeavouring to assist the applicant to amend the application so that the work involved in dealing with it would, if carried out, no longer substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.

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- (3) An agency may refuse to continue dealing with an application if—
- (a) it has requested payment of an advance deposit in relation to the application; and
  - (b) payment of the deposit has not been made within the period specified in the request.
- (4) If an agency refuses to continue dealing with an application under subsection (3)—
- (a) it must refund to the applicant such part of the advance deposits paid in respect of the application as exceeds the costs incurred by the agency in dealing with the application; and
  - (b) it may retain the remainder of those deposits.
- (5) An agency that refuses to deal with an application under this section must forthwith cause written notice of that fact to be given to the applicant.
- (6) Such a notice must specify—
- (a) the reasons for the refusal; and
  - (b) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based.
- (7) An agency is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.
- (8) A refusal to deal with, or to continue to deal with, an application under this section is a determination for the purposes of this Act.

**Determination of applications**

- 19.** (1) After considering an application for access to a document, an agency must determine—
- (a) whether access to the document is to be given (either immediately or subject to deferral) or refused; and
  - (b) if access to the document is to be given—any charge payable in respect of the giving of access; and
  - (c) any charge payable for dealing with the application.
- (2) An agency that fails to determine an application within 45 days after the application is received by the agency is, for the purposes of this Act, to be taken to have determined the application by refusing access to the document to which it relates.
- (3) This section does not require an agency to determine an application if the agency has, in accordance with this Act, transferred the application to another agency or refused to deal with, or to continue to deal with, the application.

**Refusal of access**

- 20.** (1) An agency may refuse access to a document—
- (a) if it is an exempt document; or

- (b) if it is a document that is available for inspection at that or some other agency (whether as part of a public register or otherwise) in accordance with Part 2, or in accordance with a legislative instrument other than this Act, whether or not inspection of the document is subject to a fee or charge; or
- (c) if it is a document that is usually and currently available for purchase; or
- (d) if it is a document that—
  - (i) was not created or collated by the agency itself; and
  - (ii) genuinely forms part of library material held by the agency; or
- (e) if it is a document that came into existence before 1 January 1987.

(2) Subsection (1)(e) does not permit an agency to refuse access to—

- (a) a document that contains information concerning the personal affairs of the applicant; or
- (b) a document that is reasonably necessary to enable some other document (being a document to which the agency has given access under this Act) to be understood; or
- (c) a document if 20 years have passed since the end of the calendar year in which the document came into existence.

(3) Subject to subsection (4), an agency must refuse access to a restricted document that is the subject of a Ministerial certificate.

(4) If—

- (a) it is practicable to give access to a copy of a document from which the exempt matter has been deleted; and
- (b) it appears to the relevant agency (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to such a copy,

the agency must not refuse to give access to the document to that limited extent (even though the exempt document may be a restricted document subject to a Ministerial certificate).

### **Deferral of access**

**21.** (1) An agency may defer access to a document—

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

(2) Access to a document to which subsection (1)(a) applies may not be deferred beyond the time the document is required by law to be published.

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(3) Access to a document to which subsection (1)(b) or (c) applies may not be deferred for more than a reasonable time after the date of its preparation.

**Forms of access**

**22.** (1) Access to a document may be given to a person—

- (a) by giving the person a reasonable opportunity to inspect the document; or
- (b) by giving the person a copy of the document; or
- (c) in the case of a document from which sounds or visual images are capable of being reproduced, whether or not with the aid of some other device—by making arrangements for the person to hear or view those sounds or visual images; or
- (d) in the case of a document in which words are recorded in a manner in which they are capable of being reproduced in the form of sound—by giving the person a written transcript of the words recorded in the document; or
- (e) in the case of a document in which words are contained in the form of shorthand writing or in encoded form—by giving the person a written transcript of the words contained in the document; or
- (f) in the case of a document in which words are recorded in a manner in which they are capable of being reproduced in the form of a written document—by giving the person a written document so reproduced.

(2) If an applicant has requested that access to a document be given in a particular way, access to the document must be given in that way unless giving access as requested—

- (a) would unreasonably divert the resources of the agency (or, if the document is in the custody of State Records, the resources of State Records) from their use for other official purposes; or
- (b) would be detrimental to the preservation of the document or (having regard to the physical nature of the document) would otherwise not be appropriate; or
- (c) would involve an infringement of copyright in matter contained in the document,

in which case access may be given in some other way.

(2a) If a document is in the custody of State Records, the determination as to the way in which access is given to the document must be made by or jointly with the Manager of State Records.

(3) If an applicant has requested that access to a document be given in a particular way and access is given in some other way, the applicant is not required to pay a charge in respect of the giving of access that is greater than the charge that the applicant would have been required to pay had access been given as requested.

(4) Subject to subsection (2a), this section does not prevent an agency from giving access to a document in any way agreed on between the agency and the person to whom access is to be given.

(5) An agency may refuse to give access to a document if a charge payable in respect of the application, or giving access to the document, has not been paid.



**Notices of determination**

**23.** (1) An agency must notify an applicant in writing—

- (a) of its determination of his or her application; or
- (b) if the application relates to a document that is not held by the agency—of the fact that the agency does not hold such a document.

(2) Such a notice must specify—

- (a) the day on which the determination was made; and
- (b) —
  - (i) the name and designation of the officer by whom the determination was made; and
  - (ii) the rights of review and appeal conferred by this Act; and
  - (iii) the procedures to be followed for the purpose of exercising those rights; and
- (c) if the determination is to the effect that access to a document is to be given (either immediately or subject to deferral)—the amount of any charge payable in respect of the giving of access; and
- (d) if the determination is to the effect that the document is an exempt document and that access is to be given to a copy of the document from which exempt matter has been deleted—the fact that the document is such a copy and the provision of schedule 1 by virtue of which the document is an exempt document; and
- (e) if the determination is to the effect that access to a document is to be given subject to deferral—
  - (i) the reason for the deferral; and
  - (ii) if applicable—the likely period of deferral; and
- (f) if the determination is to the effect that access to a document is refused—
  - (i) the reasons for the refusal; and
  - (ii) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based; and
- (g) the amount of any charge for dealing with the application, together with—
  - (i) a statement of any amount payable by the applicant; or
  - (ii) a statement of any amount refundable to the applicant,

in relation to the charge, having regard to the sum of any advance deposits paid in respect of the application.

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(3) Where an applicant applies for access to a document that is an exempt document for reasons related to criminal investigation or law enforcement, the notice may be given in a form that neither admits or denies the existence of the document and, if disclosure of the existence of the document could prejudice the safety of a person, the notice must be given in that form.

(4) An agency is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.

**Division to be read subject to Division 2**

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

**DIVISION 2—CONSULTATION**

**Documents affecting inter-governmental or local governmental relations**

25. (1) This section applies to a document that contains matter concerning the affairs of—

- (a) the Government of the Commonwealth or of another State; or
- (b) a council.

(2) An agency must not give access under this Act to a document to which this section applies unless the agency has taken such steps as are reasonably practicable to obtain the views of the Government or council concerned as to whether or not the document is an exempt document by virtue of clause 5 of schedule 1.

(3) If—

- (a) an agency determines, after having sought the views of the Government or council concerned, that access to a document to which this section applies is to be given; and
- (b) the views of the Government or council concerned are that the document is an exempt document by virtue of clause 5 of schedule 1,

the agency must—

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

**Documents affecting personal affairs**

26. (1) This section applies to a document that contains information concerning the personal affairs of any person (whether living or dead).

(2) An agency must not give access under this Act to a document to which this section applies (except to the person concerned) unless the agency has taken such steps as are reasonably practicable to obtain the views of the person concerned as to whether or not the document is an exempt document by virtue of clause 6 of schedule 1.

(3) If—

(a) —

(i) an agency determines, after having sought the views of the person concerned, that access to a document to which this section applies is to be given; and

(ii) the views of the person concerned are that the document is an exempt document by virtue of clause 6 of schedule 1; or

(b) after having taken reasonable steps to obtain the views of the person concerned—

(i) the agency is unable to obtain the views of the person; and

(ii) the agency determines that access to the document should be given,

the agency must—

(c) forthwith give written notice to the person concerned—

(i) that the agency has determined that access to the document is to be given; and

(ii) of the rights of review and appeal conferred by this Act in relation to the determination; and

(iii) of the procedures to be followed for the purpose of exercising those rights; and

(d) defer giving access to the document until after the expiration of the period within which an application for a review or appeal under this Act may be made or, if such an application is made, until after the application has been finally disposed of.

(4) If—

(a) an application is made to an agency for access to a document to which this section applies; and

(b) the document contains information of a medical or psychiatric nature concerning the applicant; and

(c) the agency is of the opinion that disclosure of the information to the applicant may have an adverse effect on the physical or mental health, or the emotional state, of the applicant; and

(d) the agency decides that access to the document is to be given,

it is sufficient compliance with this Act if access to the document is given to a registered medical practitioner nominated by the applicant.

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(5) A reference in this section to the person concerned is, in the case of a deceased person, a reference to the personal representative of that person or, if there is no personal representative, the closest relative of that person of or above the age of 18 years.

**Documents affecting business affairs**

**27.** (1) This section applies to a document that contains—

- (a) information concerning the trade secrets of any person; or
- (b) information (other than trade secrets) that has a commercial value to any person; or
- (c) any other information concerning the business, professional, commercial or financial affairs of any person.

(2) An agency must not give access under this Act to a document to which this section applies (except to the person concerned) unless the agency has taken such steps as are reasonably practicable to obtain the views of the person concerned as to whether or not the document is an exempt document by virtue of clause 7 of schedule 1.

(3) If—

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

the agency must—

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

**Documents affecting the conduct of research**

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

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

(3) If—

- (a) an agency determines, after seeking the views of the person concerned, that access to a document to which this section applies is to be given; and

- (b) the views of the person concerned are that the document is an exempt document by virtue of clause 8 of schedule 1,

the agency must—

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

### DIVISION 3—INTERNAL REVIEW

#### Internal review

**29.** (1) Subject to subsection (5), a person who is aggrieved by a determination made by an agency under any other provision of this Part is entitled to a review of the determination.

(2) An application for review of a determination—

- (a) must be in writing; and
- (b) must be accompanied by such application fee as may be prescribed; and
- (c) must be addressed to the principal officer of the agency; and
- (d) must specify an address in Australia to which notices under this Act should be sent; and
- (e) must be lodged at an office of the agency within 28 days after the day on which notice of the determination was given to the applicant or within such further time as the principal officer of the agency may allow.

(3) On an application for review under this section the agency may confirm, vary or reverse the determination under review.

(4) If on a review the agency varies or reverses a determination so that access to a document is to be given (either immediately or subject to deferral), the agency must refund any application fee paid in respect of the review.

(5) An agency that fails to determine an application made under this section within 14 days after it is received by the agency is, for the purposes of this Act, to be taken to have confirmed the determination in respect of which a review is sought.

(6) Where a determination is made by the Minister, or by the principal officer of an agency, it is not subject to review under this section.

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**PART 4  
AMENDMENT OF RECORDS**

**DIVISION 1—GENERAL**

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

**30.** A person to whom access to an agency's documents has been given may apply for the amendment of the agency's records if—

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

**Applications for amendment of agencies' records**

**31.** An application for the amendment of an agency's records—

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

**Persons by whom applications to be dealt with, etc.**

**32.** (1) An application will be dealt with on behalf of an agency—

- (a) by the principal officer of the agency; or
- (b) by such other officer of the agency as the principal officer of the agency may direct for that purpose, either generally or in a particular case.

(2) An application must be dealt with as soon as practicable (and, in any case, within 45 days) after it is received.

**Incomplete applications**

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

**Determination of applications**

**34.** (1) An agency must determine an application—

- (a) by amending its records in accordance with the application; or
- (b) by refusing to amend its records.

(2) An agency that fails to determine an application within 45 days after the application is received by the agency is, for the purposes of this Act, to be taken to have determined the application by refusing to amend its records in accordance with the application.

**Refusal to amend records**

**35.** An agency may refuse to amend its records in accordance with an application—

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

**Notices of determination**

**36.** (1) An agency must give written notice to the applicant—

- (a) of its determination of his or her application; or
- (b) if the application relates to records that are not held by the agency—of the fact that the agency does not hold such records.

(2) Such a notice must specify—

- (a) the day on which the determination was made; and
- (b) if the determination is to the effect that amendment of the agency's records is refused—
  - (i) the name and designation of the officer by whom the determination was made; and
  - (ii) the reasons for the refusal; and
  - (iii) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based; and
  - (iv) the rights of review and appeal conferred by this Act in relation to the determination; and
  - (v) the procedures to be followed for the purpose of exercising those rights.

(3) An agency is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.

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**Notations to be added to records**

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

- (a) specifying the respects in which the applicant claims the records to be incomplete, incorrect, out-of-date or misleading; and
- (b) if the applicant claims the records to be incomplete or out-of-date—setting out such information as the applicant claims is necessary to complete the records or to bring them up-to-date.

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

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

- (a) must ensure that, when the information is disclosed, a statement is given to that person—
  - (i) stating that the person to whom the information relates claims that the information is incomplete, incorrect, out-of-date or misleading; and
  - (ii) setting out particulars of the notation added to its records under this section; and
- (b) may include in the statement the reason for the agency's refusal to amend its records in accordance with the notation.

(4) Nothing in this section is intended to prevent or discourage agencies from giving particulars of a notation added to its records under this section to a person (including any other agency and any Minister) to whom information contained in those records was given before the commencement of this section.

**DIVISION 2—INTERNAL REVIEW**

**Internal review**

**38.** (1) Subject to subsection (5), a person who is aggrieved by a determination made by an agency under Division 1 is entitled to a review of the determination.

(2) An application for review of a determination—

- (a) must be in writing; and
- (b) must be addressed to the principal officer of the agency; and
- (c) must specify an address in Australia to which notices under this Act should be sent; and
- (d) must be lodged at an office of the agency within 28 days after the day on which notice of the determination was given to the applicant or within such further time as the principal officer of the agency may allow.

(3) On an application for review under this section, the agency may confirm, vary or reverse the determination under review.



(4) An agency that fails to determine an application made under this section within 14 days after it is received by the agency is, for the purposes of this Act, to be taken to have confirmed the determination in respect of which review is sought.

(5) Where a determination is made by a Minister, or the principal officer of an agency, it is not subject to review under this section.

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**PART 5  
EXTERNAL REVIEW**

**DIVISION 1—REVIEW BY THE OMBUDSMAN OR POLICE COMPLAINTS  
AUTHORITY**

**Review by the Ombudsman or Police Complaints Authority**

**39.** (1) A person—

(a) who is dissatisfied with a determination of an agency that is liable to internal review and remains dissatisfied following an internal review; or

(b) who is dissatisfied with a determination that is not liable to internal review,

may apply for a review of the determination to the Ombudsman or the Police Complaints Authority.

(2) Such an application must be directed to the Ombudsman unless the determination was made by an officer of the Police Force, or the Minister responsible for the administration of the Police Force in that capacity, in which case it must be directed to the Police Complaints Authority.

(3) Where such an application is made—

(a) the Ombudsman or Police Complaints Authority may carry out an investigation into the subject-matter of the application (and for the purposes of such an investigation either the Ombudsman or the Police Complaints Authority (as the case requires) may exercise the same investigative powers as are conferred on the Ombudsman by the *Ombudsman Act 1972* in relation to an investigation duly initiated under that Act); and

(b) if satisfied that the determination was not properly made, direct the agency to make a determination in specified terms.

(4) The propriety of a Ministerial certificate cannot be questioned in proceedings under this section.

**DIVISION 2—REVIEW BY THE DISTRICT COURT**

**Right of appeal**

**40.** (1) A person—

(a) who is dissatisfied with a determination of an agency that is liable to internal review and remains dissatisfied following an internal review; or

(b) who is dissatisfied with a determination that is not subject to internal review,

may appeal against the determination to a District Court.

(2) On such an appeal the Court may—

(a) confirm, vary or reverse the determination to which the appeal relates or remit the subject-matter of the appeal to the agency for further consideration;

(b) make such further or other orders (including orders for costs) as the justice of the case may require.

**Time within which appeals to be commenced**

**41.** (1) An appeal must be commenced—

- (a) where there has been a review of the determination by the agency, the Ombudsman or the Police Complaints Authority—within 60 days after notice of the decision on review of the determination is given to the applicant; or
- (b) in any other case—within 60 days after the date of the determination.

(2) Where an application for review is made to the Ombudsman or the Police Complaints Authority, an appeal cannot be commenced until that application is decided and the commencement of an appeal to a District Court bars any right to apply to the Ombudsman or Police Complaints Authority for a review.

**Procedure for hearing appeals**

**42.** (1) Subject to subsection (2), an appeal will be by way of re-hearing and evidence may be taken on the appeal.

(2) Where it appears that the determination subject to appeal has been made on grounds of public interest, and the Minister makes known to the Court his or her assessment of what the public interest requires in the circumstances of the case subject to the appeal, the Court must uphold that assessment unless satisfied that there are cogent reasons for not doing so.

(3) Neither the Ombudsman nor any officer of the Ombudsman or the Police Complaints Authority can be called to give evidence on an appeal.

**Consideration of restricted documents**

**43.** (1) A District Court may, on the application of the appellant, consider the grounds on which it is claimed that a document is a restricted document, notwithstanding that the document is the subject of a Ministerial certificate.

(2) In any proceedings under this section, the District Court must, on the application of—

- (a) the Minister administering this Act; or
- (b) the agency concerned,

receive evidence and hear argument in the absence of the public, the appellant and, where in the opinion of the District Court it is necessary to do so in order to prevent the disclosure of any exempt matter, the appellant's representative.

(3) If the District Court is not satisfied, by evidence on affidavit or otherwise, that there are reasonable grounds for the claim, it may require the document to be produced in evidence before it.

(4) After considering any document produced before it, the District Court may make a declaration—

- (a) if satisfied that there are reasonable grounds for the claim—that the document is a restricted document by virtue of a specified provision of Part 1 of schedule 1;
- (b) if not satisfied that there are reasonable grounds for the claim—that the document is not a restricted document.

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(5) The District Court must not make such a declaration unless the Court—

(a) has given the Minister administering this Act a reasonable opportunity to appear and be heard in relation to the matter; and

(b) has given due weight to any submissions made by or on behalf of the Minister.

(6) For the purposes of any proceedings under this section, the Minister administering this Act is a party to the proceedings.

(7) A Ministerial certificate the subject of a declaration under this section ceases to have effect at the end of 28 days after the declaration is made under subsection (4)(b) unless, before the end of that period, the Premier gives notice to the agency concerned that the certificate is confirmed.

(8) If the Premier gives such a notice, the Premier must also give a copy of the notice to the appellant and table a further copy in Parliament on the first sitting day after the giving of the notice.

(9) Such a notice must specify the reasons for the Premier's decision to confirm the certificate.

(10) Nothing in this section requires any matter to be included in a notice if its inclusion in the notice would result in the notice being an exempt document.

(11) If a Ministerial certificate ceases to have effect by virtue of this section, the document to which it relates is not to be regarded as a restricted document by virtue of the provision of Part 1 of schedule 1 specified in the certificate.

(12) If a Ministerial certificate is withdrawn before the end of the period of 28 days referred to in subsection (7), the Minister must, as soon as practicable, serve notice on the appellant, and on the agency concerned, that the certificate is no longer in force.

**Disciplinary action**

**44.** Where the District Court, at the completion of an appeal under this Act, is of the opinion that there is evidence that a person, being an officer of an agency, has been guilty of a breach of duty or of misconduct in the administration of this Act and that the evidence is, in all the circumstances, of sufficient force to justify it in doing so, the Court may bring the evidence to the notice of—

(a) if the person is the principal officer of an agency—the responsible Minister; or

(b) if the person is an officer of an agency but not the principal officer of the agency—the principal officer of that agency.

**Appeals to Supreme Court**

**45.** Subject to the rules of the Supreme Court, an appeal lies against a decision of the District Court under this Part.

**PART 6  
MISCELLANEOUS**

**Ministerial certificates**

**46.** (1) A certificate that is signed by the Minister and that states that a specified document is a restricted document by virtue of a specified provision of Part 1 of schedule 1 is, except for the purposes of section 43, conclusive evidence that the document is a restricted document by virtue of that provision.

(2) A certificate under this section ceases to have effect at the end of two years after it is signed by the Minister unless it is sooner withdrawn by the Minister.

(3) Nothing in subsection (2) prevents the Minister from issuing a further certificate in respect of the same document.

**Service of notices**

**47.** A notice that an agency is required by this Act to give to a person—

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

**Burden of proof**

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

**Agency taken to have made determinations**

**49.** For the purposes of any proceedings, a determination under this Act that has been made by an officer of an agency is to be taken to have been made by the agency concerned.

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

**50.** (1) If access to a document is given pursuant to a determination under this Act, and if the person by whom the determination is made honestly believes, when making the determination, that this Act permits or requires the determination to be made—

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

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

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**Protection in respect of certain criminal actions**

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

**Personal liability**

**52.** A person acting honestly and in the exercise or purported exercise of functions under this Act incurs no civil or criminal liability in consequence of doing so.

**Fees and charges**

**53.** (1) The fees and charges payable under this Act must be fixed by the regulations or in accordance with a scale fixed in the regulations.

(2) The regulations—

- (a) must provide for such waiver or remission of fees as may be necessary to ensure that disadvantaged persons are not prevented from exercising rights under this Act by reason of financial hardship;
- (b) must provide for access to documents by Members of Parliament without charge unless the work generated by the application exceeds a threshold stated in the regulations,

and (except as provided above) the fees or charges must reflect the costs incurred by agencies in exercising their functions under this Act.

(3) Where an agency determines a fee or charge it must, at the request of the person required to pay, review the fee or charge and, if it thinks fit, reduce it.

(4) A person dissatisfied with the decision of an agency on an application for review of a fee or charge may apply to the Ombudsman for a further review, and the Ombudsman may, according to his or her determination of what is fair and reasonable in the circumstances of the particular case—

- (a) waive, confirm or vary the fee or charge;
  - (b) give directions as to the time for payment of the fee or charge.
- (5) A fee or charge may be recovered by an agency as a debt.

**Reports to Parliament**

**54.** (1) The Minister must—

- (a) as soon as practicable after 30 June and in any case before 31 October in each year prepare a report on the administration of this Act for the 12 months ending on 30 June; and
- (b) cause a copy of the report to be laid before both Houses of Parliament within six sitting days after preparation of the report is completed.

(2) The report must—

- (a) state the number of Ministerial certificates issued under this Act in respect of restricted documents, the nature of the documents to which the certificates related and the provisions of schedule 1 by virtue of which the documents were restricted; and
- (b) contain such other information as the Minister considers appropriate to include in the report.

(3) Each agency must—

- (a) furnish to the Minister administering this Act such information as the Minister requires for the purpose of preparing a report under this section; and
- (b) comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.

**Regulations**

**55.** The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

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**SCHEDULE 1**  
*Exempt Documents*

**PART 1**  
**RESTRICTED DOCUMENTS**

**Cabinet documents**

1. (1) A document is an exempt document—

- (a) if it is a document that has been specifically prepared for submission to Cabinet (whether or not it has been so submitted); or
- (b) if it is a preliminary draft of a document referred to in paragraph (a); or
- (c) if it is a document that is a copy of or part of, or contains an extract from, a document referred to in paragraph (a) or (b); or
- (d) if it is an official record of Cabinet; or
- (e) if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet; or
- (f) if it is a briefing paper specifically prepared for the use of a Minister in relation to a matter submitted, or proposed to be submitted to Cabinet.

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

- (a) if it merely consists of factual or statistical material (including public opinion polling) that does not—
  - (i) disclose information concerning any deliberation or decision of Cabinet; or
  - (ii) relate directly to a contract or other commercial transaction that is still being negotiated; or
- (b) if 20 years have passed since the end of the calendar year in which the document came into existence.

(3) In this clause, a reference to Cabinet includes a reference to a committee of Cabinet and to a subcommittee of a committee of Cabinet.

**Executive Council documents**

2. (1) A document is an exempt document—

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

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

- (a) if it merely consists of—
  - (i) matter that appears in an instrument that has been made or approved by the Governor and that has been officially published (either in the *Gazette* or elsewhere); or



- (ii) factual or statistical material that does not disclose information concerning any deliberation or advice of the Executive Council; or
- (b) if 20 years have passed since the end of the calendar year in which the document came into existence.

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

3. A document is an exempt document if—

- (a) it contains information communicated to the Government of South Australia by the Government of the Commonwealth or of another State; and
- (b) notice has been received from the Government of the Commonwealth or of the other State that the information is exempt matter within the meaning of a corresponding law of the Commonwealth or that other State.

**Documents affecting law enforcement and public safety**

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

- (a) to prejudice the investigation of any contravention or possible contravention of the law (including any revenue law) whether generally or in a particular case; or
- (b) to enable the existence or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
- (c) to endanger the life or physical safety of any person; or
- (d) to prejudice the fair trial of any person or the impartial adjudication of any case; or
- (e) to prejudice the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law (including any revenue law); or
- (f) to prejudice the maintenance or enforcement of any lawful method or procedure for protecting public safety; or
- (g) to endanger the security of any building, structure or vehicle; or
- (h) to prejudice any system or procedure for the protection of persons or property; or
- (i) to facilitate the escape from lawful custody of any person.

(2) A document is not an exempt document by virtue of subclause (1) if—

- (a) it merely consists of—
  - (i) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or
  - (ii) a document containing a general outline of the structure of a programme adopted by an agency for dealing with any contravention or possible contravention of the law; or
  - (iii) a report on the degree of success achieved in any programme adopted by an agency for dealing with any contravention or possible contravention of the law; or
  - (iv) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law); or

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

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

(3) A document is an exempt document if it is a document that has been created or is held by the Bureau of Criminal Intelligence or any authority substituted for that body.

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

**PART 2  
DOCUMENTS REQUIRING CONSULTATION**

**Documents affecting inter-governmental or local governmental relations**

5. (1) A document is an exempt document if it contains matter—

(a) the disclosure of which—

- (i) could reasonably be expected to cause damage to relations between the Government of South Australia and the Government of the Commonwealth or of another State; or
- (ii) would divulge information communicated in confidence by or on behalf of the Government of the Commonwealth or of another State to the Government of South Australia or to an agency or other person or body receiving the communication on behalf of the Government of South Australia; and

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

(2) A document is an exempt document if it contains matter—

- (a) the disclosure of which would divulge information communicated in confidence by or on behalf of a council; and
- (b) the disclosure of which would, on balance, be contrary to the public interest.

**Documents affecting personal affairs**

6. (1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

(2) A document is an exempt document if it contains allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) and the truth of those allegations or suggestions has not been established by judicial process.

(3) A document is not an exempt document by virtue of this clause merely because it contains information concerning the person by or on whose behalf an application for access to the document is made.

(4) A document that is an exempt document under this clause ceases to be so exempt on the expiration of 30 years from the date on which the document came into existence or, if some longer period is prescribed, on the expiration of that period.

**Exempt electoral records**

6A. A document is an exempt document if it is a record of information about an elector obtained in the course of the administration of the *Electoral Act 1985*; but not recorded on an electoral roll (as defined in that Act).

**Documents affecting business affairs**

7. (1) A document is an exempt document—

- (a) if it contains matter the disclosure of which would disclose trade secrets of any agency or any other person; or

- (b) if it contains matter—
  - (i) consisting of information (other than trade secrets) that has a commercial value to any agency or any other person; and
  - (ii) the disclosure of which could reasonably be expected to destroy or diminish the commercial value of the information; or
- (c) if it contains matter—
  - (i) consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and
  - (ii) the disclosure of which could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency.

(2) A document is not an exempt document by virtue of this clause merely because it contains matter concerning the business, professional, commercial or financial affairs of the agency or other person by or on whose behalf an application for access to the document is made.

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

- 8.** (1) A document is an exempt document if it contains matter—
- (a) that relates to the purpose or results of research (other than public opinion polling that does not relate directly to a contract or other commercial transaction that is still being negotiated), including research that is yet to be commenced or yet to be completed; and
  - (b) the disclosure of which could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research is being, or is intended to be, carried out.

(2) A document is not an exempt document by virtue of this clause merely because it contains matter concerning research that is being, or is intended to be, carried out by the agency or other person by or on whose behalf an application for access to the document is made.

### **PART 3 OTHER DOCUMENTS**

#### **Internal working documents**

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

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**Documents subject to legal professional privilege**

**10.** (1) A document is an exempt document if it contains matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document is not an exempt document by virtue of this clause merely because it contains matter that appears in an agency's policy document.

**Documents relating to judicial functions, etc.**

**11.** A document is an exempt document if it contains matter—

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

**Documents the subject of secrecy provisions**

**12.** (1) A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act.

(2) A document is not an exempt document by virtue of this clause unless disclosure of the matter contained in the document, to the person by or on whose behalf an application for access to the document is made, would constitute such an offence.

**Documents containing confidential material**

**13.** A document is an exempt document—

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

**Documents affecting the economy of the State**

**14.** A document is an exempt document if it contains matter the disclosure of which—

- (a) could reasonably be expected—
  - (i) to have a substantial adverse effect on the ability of the Government or an agency to manage the economy, or any aspect of the economy, of the State; or
  - (ii) to expose any person or class of persons to an unfair advantage or disadvantage as a result of the premature disclosure of information concerning any proposed action or inaction of the Parliament, the Government or an agency in the course of, or for the purpose of, managing the economy of the State; and
- (b) would, on balance, be contrary to the public interest.

**Documents affecting financial or property interests**

**15.** A document is an exempt document if it contains matter the disclosure of which—

- (a) could reasonably be expected to have a substantial adverse effect on the financial or property interests of the State or an agency; and
- (b) would, on balance, be contrary to the public interest.

**Documents concerning operations of agencies**

**16.** (1) A document is an exempt document if it contains matter the disclosure of which—

- (a) could reasonably be expected—
  - (i) to prejudice the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency; or
  - (ii) to prejudice on the attainment of the objects of any test, examination or audit conducted by an agency; or
  - (iii) to have a substantial adverse effect on the management or assessment by an agency of the agency's personnel; or
  - (iv) to have a substantial adverse effect on the effective performance by an agency of the agency's functions; or
  - (v) to have a substantial adverse effect on the conduct of industrial relations by an agency; and
- (b) would, on balance, be contrary to the public interest.

(2) A document is an exempt document if—

- (a) it relates to an agency engaged in commercial activities; and
- (b) it contains matter the disclosure of which could prejudice the competitiveness of the agency in carrying on those commercial activities.

**Documents subject to contempt, etc.**

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

- (a) constitute contempt of court; or
- (b) contravene any order or direction of a person or body having power to receive evidence on oath; or
- (c) infringe the privilege of Parliament.

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

**18.** A document is an exempt document if it contains matter that appears in—

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

**Private documents in public library or archival collections**

**19.** (1) A document is an exempt document—

- (a) if it has been created otherwise than by an agency; and

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- (b) if it is held in a public library or archival collection subject to a condition imposed by the person or body (not being an agency or Minister) by whom it has been placed in the possession of the library—
  - (i) prohibiting its disclosure to members of the public generally or to certain members of the public; or
  - (ii) restricting its disclosure to certain members of the public.
- (2) In this clause a reference to a public library or archival collection includes—
  - (a) State Records;
  - (b) a library that forms part of a university, college of advanced education or college of technical and further education.

**SCHEDULE 2**  
*Exempt Agencies*

The following are exempt agencies:

- (a) the Legislative Council or an officer or committee of the Legislative Council;
- (b) the House of Assembly or an officer or committee of the House of Assembly;
- (c) a joint Committee of the House of Assembly and the Legislative Council;
- (d) the Public Accounts Committee, the Public Works Standing Committee, and the Industries Development Committee;
- (e) all Royal Commissions;
- (f) the State Bank of South Australia;
- (g) the State Government Insurance Commission;
- (h) the Auditor-General;
- (i) the Attorney-General, in respect of functions related to the enforcement of the criminal law;
- (j) the Parole Board;
- (k) the Solicitor-General, the Crown Solicitor and the Director of Public Prosecutions;
- (l) the Ombudsman and the Police Complaints Authority in respect of their investigative functions;
- (m) the Public Trustee, in respect of functions exercised as executor, administrator or trustee;
- (n) the South Australian Government Financing Authority, the Local Government Financing Authority and the South Australian Superannuation Fund Investment Trust;
- (o) any Minister of the Crown in respect of the administration of the South Australian Development Fund;
- (p) the Police Force in relation to information compiled by—
  - (i) the former Special Branch; or
  - (ii) the Operations Planning and Intelligence Unit; or
  - (iii) the Anti-Corruption Branch.

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APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

*(Transition provision from Freedom of Information (Public Opinion Polls) Amendment Act 1998, s. 3)*

3. The principal Act as in force immediately before the commencement of this Act applies to a document that came into existence before that commencement as if this Act had not been enacted.

Legislative History

*(entries in bold type indicate amendments incorporated since the last reprint)*

|                     |   |
|---------------------|---|
| Section 4(1):       | definition of "State Records" substituted by 8, 1997, Sched. cl. 2(a) |
| Section 7:          | amended by 8, 1997, Sched. cl. 2(b)                                   |
| Section 8(2):       | amended by 8, 1997, Sched. cl. 2(c)                                   |
| Section 20(2):      | amended by 8, 1997, Sched. cl. 2(d)                                   |
| Section 22(2):      | amended by 8, 1997, Sched. cl. 2(e)                                   |
| Section 22(2a):     | inserted by 8, 1997, Sched. cl. 2(f)                                  |
| Section 22(3):      | amended by 8, 1997, Sched. cl. 2(g)                                   |
| Section 22(4):      | amended by 8, 1997, Sched. cl. 2(h)                                   |
| <b>Schedule 1</b>   |   |
| <b>Clause 1(2):</b> | <b>amended by 8, 1997, Sched. cl. 2(i); 42, 1998, s. 2(a)</b>         |
| Clause 2(2):        | amended by 8, 1997, Sched. cl. 2(j)                                   |
| Clause 6A:          | inserted by 22, 1997, Sched. 3 cl. 1                                  |
| <b>Clause 8(1):</b> | <b>amended by 42, 1998, s. 2(b)</b>                                   |
| Clause 19(2):       | amended by 8, 1997, Sched. cl. 2(k)                                   |
| Schedule 2:         | amended by 49, 1991, Sched. 2   |