

South Australia

# Freedom of Information Act 1991

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.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

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

#### 3—Objects

- (1) The objects of this Act are, consistently with the principle of the Executive Government's responsibility to Parliament—
  - (a) to promote openness in government and accountability of Ministers of the Crown and other government agencies and thereby to enhance respect for the law and further the good government of the State; and
  - (b) to facilitate more effective participation by members of the public in the processes involved in the making and administration of laws and policies.
- (2) The means by which it is intended to achieve these objects are as follows:
  - (a) ensuring that information concerning the operations of government (including, in particular, information concerning the rules and practices followed by government in its dealings with members of the public) is readily available to members of the public and to Members of Parliament; and

- (b) conferring on each member of the public and on Members of Parliament a legally enforceable right to be given access to documents held by government, subject only to such restrictions as are consistent with the public interest (including maintenance of the effective conduct of public affairs through the free and frank expression of opinions) and the preservation of personal privacy; and
  - (c) enabling each member of the public to apply for the amendment of such government records concerning his or her personal affairs as are incomplete, incorrect, out-of-date or misleading.
- (3) 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 otherwise than under this Act if it is proper and reasonable to do so or if it is permitted or required by or under any other Act or law.

### **3A—Principles of administration**

- (1) It is the intention of the Parliament—
- (a) that this Act should be interpreted and applied so as to further the objects of this Act; and
  - (b) that a person or body exercising an administrative discretion conferred by this Act exercise the discretion, as far as possible, in a way that favours the disclosure of information of a kind that can be disclosed without infringing the right to privacy of individuals.
- (2) Agencies are to give effect to this Act in a way that—
- (a) assists members of the public and Members of Parliament to exercise rights given by this Act; and
  - (b) ensures that applications under this Act are dealt with promptly and efficiently.

### **4—Interpretation**

- (1) In this Act, unless the contrary intention appears—
- accredited FOI officer**, in relation to an agency, means—
- (a) the principal officer of the agency; or
  - (b) an officer of the agency who—
    - (i) has completed training of a type approved by the Minister for an accredited FOI officer; and
    - (ii) has been designated by the principal officer of the agency as an accredited FOI officer of the agency; and
    - (iii) —
      - (A) in relation to an administrative unit of the Public Service—is an executive employee or an employee who usually reports to an executive employee; or
      - (B) in relation to South Australia Police—is an officer in South Australia Police; or

- (C) in relation to any other agency—is employed in a position that usually reports to the principal officer of the agency or to the deputy or immediate delegate of the principal officer;

**agency** means—

- (a) a Minister of the Crown; or
- (b) a person who holds an office established by an Act; or
- (c) an administrative unit of the Public Service; or
- (d) South Australia Police; or
- (e) a council; or
- (f) an incorporated or unincorporated body—
  - (i) established or continued in existence for a public purpose by an Act; or
  - (ii) established or continued in existence for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or
  - (iii) subject to control or direction by the Governor, a Minister of the Crown or other instrumentality or agency of the Crown or a council (whether or not the body is established or continued in existence by or under an Act); or
- (fa) a regional development assessment panel or a council development assessment panel constituted under section 34 or 56A of the *Development Act 1993*; or
- (g) a person or body 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;

**District Court** means the Administrative and Disciplinary Division of the District Court;

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

**exempt agency** means—

- (b) a person or body referred to in Schedule 2 or a person or body referred to in that Schedule in respect of functions or classes of information specified in that Schedule; or
- (c) an agency declared by regulation to be an exempt agency or declared by regulation to be an exempt agency in respect of functions or classes of information specified in the regulation;

**exempt document** means a document that is an exempt document by virtue of Schedule 1;

**government** includes local government, and **intergovernmental** has a corresponding meaning;

**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,

but does not include the personal affairs of a body corporate;

**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 (including a corporation sole but not any other 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 a State Government 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;

**State Government agency** means an agency other than a council or a prescribed person or body;

**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) The holder of an office or a body that forms part, or is established for the purposes, of an agency is not to be regarded as 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.
- (6) An agency is not to be taken to hold a document while the document is held by or in the possession of an exempt agency for which the agency is responsible.

## **5—Act binds Crown**

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.

## **5A—Act not to apply to Parliament or parliamentary committees**

- (1) This Act does not apply to the Parliament, an officer of the Parliament or a parliamentary committee.
- (2) In this section—

**parliamentary committee** means a committee established under the *Parliamentary Committees Act 1991* or any other committee of either or both of the Houses of Parliament.

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

- (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.

## **7—Documents in State Records**

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.

## **8—Defunct agencies**

- (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 administering this Act 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.

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

### **9—Publication of information concerning agencies**

- (1) The responsible Minister for a State Government agency must, at intervals of not more than 12 months, cause an up-to-date information statement to be published in a manner prescribed by regulation.
- (1a) An agency (other than a State Government agency) must, at intervals of not more than 12 months, cause an up-to-date information statement to be published in a manner prescribed by regulation.



- (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 statement—
- (a) must identify each of the agency's policy documents; 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 should be made; and
  - (d) must specify the address or addresses at which, and the times during which, the agency's policy documents 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.

## 10—Availability of information statement and policy documents

- (1) An agency must cause copies of—
  - (a) its most recent information statement; 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.

## 11—Application of this Part

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 (provided that any conditions of the exemption are complied with).

## Part 3—Access to documents

### Division 1—General

## 12—Right of access to agencies' documents

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

## 13—Applications for access to agencies' documents

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.

**14—Applications to be dealt with by certain persons and within certain time**

- (1) An application will be dealt with on behalf of an agency by an accredited FOI officer of the agency.
- (2) An application must be dealt with as soon as practicable (and, in any case, within 30 days) after it is received.

**14A—Extension of time limit**

- (1) The principal officer of an agency that is dealing with an application may extend the period within which the application would otherwise have to be dealt with under section 14 if satisfied that—
  - (a) the application is for access to a large number of documents or necessitates a search through a large quantity of information and dealing with the application within that period would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions; or
  - (b) the application is for access to a document in relation to which consultation is required under Division 2 and it will not be reasonably practicable to comply with Division 2 within that period.
- (2) An extension under subsection (1) must be for a reasonable period of time having regard to the circumstances.
- (3) The extension must be effected by giving written notice of the extension to the applicant within 20 days after the application is received.
- (4) Such a notice must specify—
  - (a) the period of the extension; and
  - (b) the reasons for the extension; and
  - (c) the rights of review and appeal conferred by this Act.
- (5) An extension under subsection (1) is a determination for the purposes of this Act.

**15—Incomplete and wrongly directed applications**

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.

**16—Transfer of applications**

- (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.

### **17—Agencies may require advance deposits**

- (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 within which the relevant application is to be dealt with.

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

- (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 within the period allowed under section 14 (or within any reasonable extension of that period under section 14A) 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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- (2a) An agency may refuse to deal with an application if, in the opinion of the agency, the application is part of a pattern of conduct that amounts to an abuse of the right of access or is made for a purpose other than to obtain access to information.
- (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.

## **19—Determination of applications**

- (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) If—
- (a) —
    - (i) the principal officer of an agency has, under section 14A, extended the period within which an application must be dealt with by the agency; and
    - (ii) the agency fails to determine the application within the period as so extended; or

- (b) in any other case—an agency fails to determine an application within 30 days after receiving the application,

the agency is to be taken to have determined the application by refusing access to the document to which it relates for the purposes of the provisions of Division 3 and Part 5.

- (2a) However, nothing prevents an agency from making a determination to give access to a document on an application after the period within which it was required to deal with the application (and any such determination is to be taken to have been made under this Act).
- (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.

## **20—Refusal of access**

- (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.
- (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.

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## 21—Deferral of access

- (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 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 but is yet to be submitted.
- (1a) A State Government agency may defer access to a document—
  - (a) if it is a document that has been designated by the responsible Minister for the agency as appropriate for presentation to Parliament, but is yet to be presented; or
  - (b) if it is a document 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.
- (3) Access to a document to which subsection (1)(b), (1)(c), (1a)(a) or (1a)(b) applies may not be deferred for more than a reasonable time after the date of its preparation.

## 22—Forms of access

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

### **23—Notices of determination**

- (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, including—
    - (A) the grounds for the refusal under section 20(1); and
    - (B) if a ground for the refusal is that the document is an exempt document—the particular provision of Schedule 1 by virtue of which the document is an exempt document and, if under the provision disclosure of the document must, on balance, be contrary to the public interest in order for the document to be exempt, the reasons why disclosure of the document would be contrary to the public interest; and
  - (ii) the findings on any material questions of fact underlying the reasons for the refusal, 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.
- (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.

## **24—Division to be read subject to Division 2**

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

## **Division 2—Consultation**

### **25—Documents affecting inter-governmental or local governmental relations**

- (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 (including a council constituted under a law of another State).
- (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.
- (2a) However, if the agency is a council, subsection (2) does not apply in relation to documents that only contain matter concerning the affairs of that council.

- (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.

## **26—Documents affecting personal affairs**

- (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.
- (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.

## **27—Documents affecting business affairs**

- (1) This section applies to a document that contains—
- (a) information concerning the trade secrets of any person; or
  - (b) information (other than trade secrets) that has a commercial value to any person; or
  - (c) 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.

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

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

### **29—Internal review**

- (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 30 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) A determination is not subject to review under this section if it is made by or at the direction of the principal officer of the agency or at the direction of a person or body to which the principal officer is responsible.

## **Part 4—Amendment of records**

### **Division 1—General**

#### **30—Right to apply for amendment of agencies' records**

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.

#### **31—Applications for amendment of agencies' records**

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.

### **32—Persons by whom applications to be dealt with etc**

- (1) An application will be dealt with on behalf of an agency by an accredited FOI officer of the agency.
- (2) An application must be dealt with as soon as practicable (and, in any case, within 30 days) after it is received.

### **33—Incomplete applications**

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.

### **34—Determination of applications**

- (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 30 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.

### **35—Refusal to amend records**

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

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

### **36—Notices of determination**

- (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.

### **37—Notations to be added to records**

- (1) If an agency has refused to amend its records, the applicant may, by notice in writing lodged at an office of the agency, require the agency to add to those records a notation—
  - (a) specifying the respects in which the applicant claims the records to be incomplete, incorrect, out-of-date or misleading; and
  - (b) if the applicant claims the records to be incomplete or out-of-date—setting out such information as the applicant claims is necessary to complete the records or to bring them up-to-date.
- (2) An agency 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

### 38—Internal review

- (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 30 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) A determination is not subject to review under this section if it is made by or at the direction of the principal officer of the agency or at the direction of a person or body to which the principal officer is responsible.

## Part 5—External review and appeal

### Division 1—Right of external review

#### 39—External review

- (1) In this section—

*interested person*, in relation to a review, means a person who should, under Division 2 of Part 3, be consulted in relation to an application for access to a document the subject of the review;

*relevant review authority*, in relation to a determination, means—

- (a) if the determination was not made by a person described in paragraph (b)—the Ombudsman; or
- (b) if the determination was made by a police officer or the Minister responsible for the administration of South Australia Police in that capacity—the Police Ombudsman.



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- (2) A person—
    - (a) who is aggrieved by a determination of an agency following an internal review; or
    - (b) who is aggrieved by a determination that is not liable to internal review, may apply to the relevant review authority for a review of the determination.
  - (3) Subject to subsection (4), an application under this section must be made—
    - (a) where there has been a review of the determination by the agency—within 30 days after notice of the decision on review of the determination is given to the applicant; or
    - (b) in any other case—within 30 days after the date of the determination.
  - (4) The relevant review authority may, in its discretion, extend the time for making an application under this section.
  - (5) In conducting a review under this section, the relevant review authority—
    - (a) may carry out an investigation into the subject matter of the application (and for the purposes of such an investigation 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, including the powers of a commission as defined in the *Royal Commissions Act 1917*); and
    - (b) may, if it appears to the relevant review authority that the agency has failed to properly sort or compile documents relevant to the review or to undertake consultations relevant to the review that should have been undertaken by the agency—
      - (i) require the agency to sort or compile the documents or undertake the consultations; or
      - (ii) require officers of the agency to attend at a time and place specified by the relevant review authority for the purpose of sorting and compiling the documents or undertaking the consultations; and
    - (c) may—
      - (i) try to effect a settlement between the participants to a review at any time during the review; and
      - (ii) at the request of the agency, suspend proceedings under this section at any time to allow an opportunity for a settlement to be negotiated.
  - (6) Section 21 of the *Ombudsman Act 1972* does not apply in relation to a review under this section.
  - (7) The agency and the applicant must cooperate in the process proposed by the relevant review authority for the purposes of the conduct of a review under this section (including any attempt of the relevant review authority to effect a settlement between the participants), and must do all such things as are reasonably required to expedite the process.
  - (8) The relevant review authority may dismiss an application if the relevant review authority considers that the applicant has failed to comply with subsection (7).

- (9) If, in determining an application for a review under this section—
- (a) the relevant review authority is advised that the determination of the agency was made on grounds of the public interest; and
  - (b) the Minister administering this Act makes known to the relevant review authority the Minister's assessment of what the public interest requires in the circumstances of the case subject to the review,
- the relevant review authority must, in determining the application, uphold that assessment unless satisfied that there are cogent reasons for not doing so.
- (10) A relevant review authority must not make a determination to the effect that access is to be given to a document to which Division 2 of Part 3 applies unless the relevant review authority has taken steps as are reasonably practicable to obtain the views of any interested person as to whether or not the document is an exempt document under a provision of Part 2 of Schedule 1.
- (11) On an application under this section, the relevant review authority may (based on the circumstances existing at the time of the review) confirm, vary or reverse the determination the subject of the review.
- (12) If, in conducting a review under this section, the relevant review authority is satisfied that a document is an exempt document, the relevant review authority does not have power to make a determination to the effect that access is to be given to the document (but may, if it thinks fit, offer, together with its reasons for its determination, reasons why the agency might give access to the document despite its exempt status).
- (13) On making a determination on a review under this section, the relevant review authority must notify each of the following persons of the determination and the reasons for the determination:
- (a) the applicant;
  - (b) the agency;
  - (c) if—
    - (i) the determination is to the effect that access is to be given to a document; and
    - (ii) the relevant review authority—
      - (A) is aware that the views of an interested person are that the document is an exempt document under a provision of Part 2 of Schedule 1; or
      - (B) after having taken reasonable steps to obtain the views of an interested person, has been unable to obtain the views of the person,
- the interested person.
- (14) If the relevant review authority considers it to be in the public interest or the interests of an agency to do so, the relevant review authority may publish, in such manner as the relevant review authority thinks fit, the reasons for a determination made on a review under this section.

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- (15) A relevant review authority should avoid disclosing in its reasons for a determination any matter that the agency claims is exempt matter (whether or not the relevant review authority agrees with that claim).
  - (16) In publishing reasons for a determination, a relevant review authority may comment on any unreasonable, frivolous or vexatious conduct by the applicant or the agency.
  - (17) If, after conducting a review under this section, a relevant review authority 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 doing so, the relevant review authority may bring the evidence to the notice of—
    - (a) if the person is the principal officer of a State Government agency—the responsible Minister; or
    - (b) if the person is the principal officer of an agency other than a State Government agency—the agency; or
    - (c) if the person is an officer of an agency but not the principal officer of the agency—the principal officer of that agency.

## **Division 2—Right of appeal**

### **40—Appeal to District Court**

- (1) An agency that is aggrieved by a determination made on a review under Division 1 may, with the permission of the District Court, appeal against the determination to the District Court on a question of law.
- (2) A person (other than an agency)—
  - (a) who is aggrieved by a determination of an agency following an internal review; or
  - (b) who is aggrieved by a determination that is not subject to internal review; or
  - (c) who is aggrieved by a determination made on a review under Division 1,may appeal against the determination to the District Court.
- (3) Proceedings under this section must be commenced by an agency or person within 30 days after notice of the determination to which the proceedings relate is given to the agency or person or, in the case of a person who was not given notice of the determination, within 30 days after the determination.
- (4) Where an application for review is made under Division 1, an appeal cannot be commenced until that application is decided and the commencement of an appeal to the District Court bars any right to apply for a review under Division 1.
- (5) The following are parties to proceedings under this section:
  - (a) the agency;
  - (b) in the case of an appeal against a determination of an agency following an internal review or a determination made on a review under Division 1—the applicant for the review;
  - (c) in the case of an appeal against a determination that has not been the subject of a review—the applicant for the determination.

- (6) Neither the Ombudsman nor the Police Ombudsman can be a party to proceedings under this section.
- (7) If, in proceedings under this section—
- (a) the Court is advised that the determination of the agency was made on grounds of the public interest; and
  - (b) the Minister administering this Act makes known to the Court the Minister's assessment of what the public interest requires in the circumstances of the case subject to the appeal,

the Court must, in determining the appeal, uphold that assessment unless satisfied that there are cogent reasons for not doing so.

- (8) In proceedings under this section—
- (a) in the case of proceedings commenced by an agency—the Court must order that the agency pay the other party's reasonable costs; or
  - (b) in any other case—the Court must not make an order requiring a party to pay any costs of an agency unless the Court is satisfied that the party acted unreasonably, frivolously or vexatiously in the bringing or conduct of the proceedings.

#### **41—Consideration of restricted documents**

- (1) In any proceedings under this Division in which it is claimed that a document is a restricted document, the District Court must, on the application of—
- (a) the agency concerned; or
  - (b) if the agency concerned is a State Government agency—the Minister administering this Act,

receive evidence and hear argument in the absence of the public, the other party to the appeal 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 party's representative.

- (2) 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.
- (3) If the agency concerned is a State Government agency, the Minister administering this Act is a party to the proceedings, and the District Court must not determine the appeal unless the Court has given the Minister a reasonable opportunity to appear and be heard in relation to the matter and has given due weight to any submissions made by or on behalf of the Minister.

#### **42—Disciplinary actions**

If, at the completion of any proceedings under this Division, the District Court 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 doing so, the Court may bring the evidence to the notice of—

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

- (b) if the person is the principal officer of an agency other than a State Government agency—the agency; or
- (c) if the person is an officer of an agency but not the principal officer of the agency—the principal officer of that agency.

## **Part 6—Miscellaneous**

### **47—Service of notices**

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.

### **48—Burden of proof**

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.

### **49—Agency taken to have made determinations**

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

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

- (1) If access to a document is given pursuant to a determination under this Act, and if the person by whom the determination is made 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.

### **51—Protection in respect of certain criminal actions**

If access to a document is given pursuant to a determination under this Act, and if the person by whom the determination is made 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.

## 52—Personal liability

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.

## 53—Fees and charges

- (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, reduction 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 by this section) the fees or charges must reflect the reasonable administrative costs incurred by agencies in exercising their functions under this Act.

- (2aa) A fee or charge can only be required by an agency under this Act in respect of the costs to the agency of finding, sorting, compiling and copying documents necessary for the proper exercise of a function under this Act and undertaking any consultations required by this Act in relation to the exercise of that function.
- (2a) An agency may, as it thinks fit, waive, reduce or remit a fee or charge in circumstances other than those in which such action is provided for under the regulations.
- (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 or Police Ombudsman for a further review, and the Ombudsman or Police 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.
- (4a) Such an application for further review must be directed to the Ombudsman unless the determination of the fee or charge was made by a police officer, or the Minister responsible for the administration of South Australia Police in that capacity, in which case it must be directed to the Police Ombudsman.
- (5) A fee or charge may be recovered by an agency as a debt.

## 54—Reports to Parliament

- (1) The Minister administering this Act 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.

#### **54AA—Provision of information to Minister**

Each agency must—

- (a) furnish to the Minister administering this Act such information as the Minister requires by notice in the Gazette—
  - (i) for the purpose of monitoring compliance with this Act; and
  - (ii) for the purpose of preparing a report under section 54; and
- (b) comply with any requirements notified by the Minister in the Gazette concerning the furnishing of that information and the keeping of records for the purposes of this section.

#### **54A—Training to be provided to agencies**

The Minister administering this Act must, in consultation with the Ombudsman and the Police Ombudsman, develop and maintain appropriate training programs to assist agencies in complying with this Act.

#### **55—Regulations**

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

### **Schedule 1—Exempt documents**

#### **Part 1—Restricted documents**

##### **1—Cabinet documents**

- (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
  - (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

- (ab) merely because it was attached to a document described in subclause (1); or
  - (b) if 20 years have passed since the end of the calendar year in which the document came into existence.
- (2a) A document is not an exempt document by virtue of this clause if—
- (a) the document has been submitted to Cabinet by a Minister; and
  - (b) a Minister has certified that Cabinet have approved the document as a document to which access may be given under this Act.
- (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.

## **2—Executive Council documents**

- (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
  - (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;
  - (ab) merely because it was attached to a document described in subclause (1); or
  - (b) if 20 years have passed since the end of the calendar year in which the document came into existence.
- (3) A document is not an exempt document by virtue of this clause if—
- (a) the document has been submitted to Executive Council by a Minister; and
  - (b) a Minister has certified that Executive Council have approved the document as a document to which access may be given under this Act.

## **3—Exempt documents communicated by another government**

A document is an exempt document if—

- (a) it contains information from an intergovernmental communication to the Government of South Australia or a council; and
- (b) notice has been received from the relevant Government or council that the information would be protected from disclosure under a corresponding law of the Commonwealth or another State.



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

- (1) A document is an exempt document if it contains matter the disclosure of which could reasonably be expected—
  - (a) to endanger the life or physical safety of any person; or
  - (b) to prejudice the fair trial of any person or the impartial adjudication of any case; or
  - (c) to facilitate the escape from lawful custody of any person.
- (2) A document is an exempt document if it contains matter the disclosure of which—
  - (a) could reasonably be expected—
    - (i) 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
    - (ii) 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
    - (iii) 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
    - (iv) to prejudice the maintenance or enforcement of any lawful method or procedure for protecting public safety; or
    - (v) to endanger the security of any building, structure or vehicle; or
    - (vi) to prejudice any system or procedure for the protection of persons or property; and
  - (b) would, on balance, be contrary to the public interest.
- (3) A document is an exempt document if it is a document that was created by the former Bureau of Criminal Intelligence or has been created or is held by the State Intelligence Section of South Australia Police or any authority substituted for that body.
- (3a) A document is an exempt document if it has been created by South Australia Police and contains information classified by the Commissioner of Police, in accordance with the provisions of any other Act, as criminal intelligence.
- (4) In this clause, a reference to the law includes a reference to the law of the Commonwealth, the law of another State and the law of another country.

### **Part 2—Documents requiring consultation**

#### **5—Documents affecting inter-governmental or local governmental relations**

- (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 intergovernmental relations; or

- (ii) would divulge information from a confidential intergovernmental communication; and
- (b) the disclosure of which would, on balance, be contrary to the public interest.

## 6—Documents affecting personal affairs

- (1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (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) the truth of which has not been established by judicial process and the disclosure of which would be unreasonable.
- (3) A document is not an exempt document by virtue of subclause (1) or (2) merely because it contains information concerning the person by or on whose behalf an application for access to the document is made.
- (3a) A document is an exempt document if it contains matter—
  - (a) consisting of information concerning a person who is presently under the age of 18 years or suffering from mental illness, impairment or infirmity or concerning such a person's family or circumstances, or information of any kind furnished by a person who was under that age or suffering from mental illness, impairment or infirmity when the information was furnished; and
  - (b) the disclosure of which would be unreasonable having regard to the need to protect that person's welfare.

## 6A—Exempt electoral records

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* or the *Local Government (Elections) Act 1999*; but not recorded on an electoral roll (as defined in that Act).

## 7—Documents affecting business affairs

- (1) A document is an exempt document—
  - (a) if it contains matter the disclosure of which would disclose trade secrets of any agency or any other person; or
  - (b) if it contains matter—
    - (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—
      - (A) could reasonably be expected to destroy or diminish the commercial value of the information; and
      - (B) would, on balance, be contrary to the public interest; 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—
    - (A) 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; and
    - (B) would, on balance, be contrary to the public interest.
- (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.
- (3) A document is not an exempt document by virtue of this clause if it is a contract entered into by the Crown or an agency after the commencement of this subclause.

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

- (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—
    - (i) 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; and
    - (ii) would, on balance, be contrary to the public interest.
- (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**

### **9—Internal working documents**

- (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.

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

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

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

A document is an exempt document if it contains matter—

- (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.

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

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

### **13—Documents containing confidential material**

- (1) 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.
- (2) A document that is a contract entered into by the Crown or an agency after the commencement of this subclause is not an exempt document by virtue of subclause (1) unless—
- (a) it contains matter the disclosure of which would, under a term of the contract, constitute a breach of the contract or found an action for breach of confidence; and
  - (b) that term of the contract has been approved by—

- (i) in the case of a contract entered into by the Crown—a Minister; or
  - (ii) in the case of a contract entered into by a State Government agency—the responsible Minister for the agency; or
  - (iii) in the case of a contract entered into by an agency that is not a State Government agency—the agency.
- (3) Subject to subclause (4), a Minister may, by instrument in writing, delegate the power to approve a term of a contract under subclause (2) to a specified person or to the holder of a specified office.
- (4) A delegation under subclause (3) may be made subject to such conditions and restrictions as the Minister thinks fit and specifies in the instrument of delegation.
- (5) A delegation by a Minister under subclause (3) is revocable at will, and does not derogate from the power of the Minister to act personally in any matter.
- (6) If a Minister or agency approves a term of a contract in accordance with subclause (2), the Minister or agency must, as soon as practicable, notify the Minister administering this Act, in writing, of that fact.
- (7) The Minister administering this Act must, in a report under section 54, state the number of contracts containing terms approved in accordance with subclause (2) during the period to which the report relates.

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

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

- (a) could reasonably be expected—
  - (i) to have a substantial adverse effect on the ability of the Government or an agency to manage the economy, 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.

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

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

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

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

(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.

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

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

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

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

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

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

### **19—Private documents in public library or archival collections**

- (1) A document is an exempt document—
- (a) if it has been created otherwise than by an agency; and

- (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:

- (e) all Royal Commissions;
- (ea) the Independent Commissioner Against Corruption;
- (eb) the Office for Public Integrity;
- (f) the Motor Accident Commission in respect of any matter relating to a claim or action under Part 4 of the *Motor Vehicles Act 1959*;
- (g) the Essential Services Commission in relation to—
  - (i) information gained under Part 5 of the *Independent Industry Regulator Act 1999* that would, if it were gained under Part 5 of the *Essential Services Commission Act 2002*, be capable of being classified by the Commission as being confidential under section 30(1) of that Act; and
  - (ii) information gained under Part 5 of the *Essential Services Commission Act 2002* that is classified by the Commission as being confidential under section 30(1) of that Act;
- (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, the Director of Public Prosecutions and the Commissioner for Victims' Rights;
- (l) the Ombudsman and the Police Ombudsman;
- (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) a Minister of the Crown in respect of the administration of the former South Australian Development Fund or the Industry Investment Attraction Fund (or a fund substituted for the Industry Investment Attraction Fund);

- (p) South Australia Police in relation to information compiled by—
  - (i) the former Special Branch; or
  - (ii) the former Operations Planning and Intelligence Unit; or
  - (iii) the Operations Intelligence Section (or a body substituted for the Operations Intelligence Section); or
  - (iv) the Anti-Corruption Branch (or a body substituted for the Anti-Corruption Branch);
- (q) the Local Government Association.



## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1991	20	<i>Freedom of Information Act 1991</i>	18.4.1991	1.1.1992: s 2
1991	49	<i>Director of Public Prosecutions Act 1991</i>	21.11.1991	6.7.1992 ( <i>Gazette</i> 25.6.1992 p1869)
1997	8	<i>State Records Act 1997</i>	20.3.1997	31.10.1997 ( <i>Gazette</i> 4.9.1997 p612)
1997	22	<i>Electoral (Miscellaneous) Amendment Act 1997</i>	27.3.1997	28.8.1997 ( <i>Gazette</i> 28.8.1997 p456)
1998	42	<i>Freedom of Information (Public Opinion Polls) Amendment Act 1998</i>	27.8.1998	27.8.1998
2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 15)—1.6.2000 ( <i>Gazette</i> 18.5.2000 p2554)
2001	61	<i>Freedom of Information (Miscellaneous) Amendment Act 2001</i>	6.12.2001	1.7.2002 ( <i>Gazette</i> 15.1.2002 p184)
2003	33	<i>Coroners Act 2003</i>	31.7.2003	Sch (cl 13)—1.7.2005 ( <i>Gazette</i> 23.6.2005 p1899)
2004	16	<i>Freedom of Information (Miscellaneous) Amendment Act 2004</i>	3.6.2004	1.1.2005 ( <i>Gazette</i> 2.12.2004 p4443)
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 37 (s 130)—4.9.2006 ( <i>Gazette</i> 17.8.2006 p2831)
2008	13	<i>Serious and Organised Crime (Control) Act 2008</i>	15.5.2008	Sch 1 (cl 5)—4.9.2008 ( <i>Gazette</i> 4.9.2008 p4227)
2009	79	<i>Statutes Amendment (Victims of Crime) Act 2009</i>	10.12.2009	Pt 5 (s 19)—19.9.2010 ( <i>Gazette</i> 16.9.2010 p4868)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 65 (s 160)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
<b>2012</b>	<b>52</b>	<b><i>Independent Commissioner Against Corruption Act 2012</i></b>	<b>6.12.2012</b>	<b>Sch 3 (cl 18)—20.12.2012 (<i>Gazette</i> 20.12.2012 p5742); cll 19 &amp; 20—1.9.2013 (<i>Gazette</i> 23.5.2013 p2006)</b>
2013	44	<i>Legal Practitioners (Miscellaneous) Amendment Act 2013</i>	3.10.2013	Sch 2 (cl 2)—1.7.2014 ( <i>Gazette</i> 5.6.2014 p2241)

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2005</i>
s 3 before substitution by 16/2004		
s 3(1)	<i>amended by 61/2001 s 3(a)</i>	<i>1.7.2002</i>
s 3(2)	<i>amended by 61/2001 s 3(a), (b)</i>	<i>1.7.2002</i>
s 3	substituted by 16/2004 s 3	1.1.2005
s 3A	inserted by 16/2004 s 3	1.1.2005
s 4		
s 4(1)		
accredited FOI officer	inserted by 61/2001 s 4(a)	1.7.2002
	amended by 84/2009 s 160(1)	1.2.2010
agency	substituted by 61/2001 s 4(b)	1.7.2002
	amended by 16/2004 s 4(a)	1.1.2005
	amended by 84/2009 s 160(2)	1.2.2010
	<b>amended by 52/2012 Sch 3 cl 19(1)</b>	<b>1.9.2013</b>
agency certificate	<i>inserted by 61/2001 s 4(c)</i>	<i>1.7.2002</i>
	<i>deleted by 16/2004 s 4(b)</i>	<i>1.1.2005</i>
court	amended by 33/2003 Sch (cl 13)	1.7.2005
District Court	substituted by 4/2000 s 9(1) (Sch 1 cl 15(a))	1.6.2000
exempt agency	(a) deleted by 61/2001 s 4(d)	1.7.2002
	amended by 16/2004 s 4(c), (d)	1.1.2005
exempt document	inserted by 61/2001 s 4(e)	1.7.2002
government	inserted by 61/2001 s 4(e)	1.7.2002
Ministerial certificate	<i>inserted by 61/2001 s 4(f)</i>	<i>1.7.2002</i>
	<i>deleted by 16/2004 s 4(e)</i>	<i>1.1.2005</i>
personal affairs	amended by 16/2004 s 4(f)	1.1.2005
principal officer	amended by 61/2001 s 4(g)	1.7.2002
responsible Minister	amended by 61/2001 s 4(h)	1.7.2002
State Government agency	inserted by 61/2001 s 4(i)	1.7.2002
State Records	substituted by 8/1997 Sch cl 2(a)	31.10.1997
s 4(2)	amended by 61/2001 s 4(j), (k)	1.7.2002
<b>s 4(6)</b>	<b>inserted by 52/2012 Sch 3 cl 19(2)</b>	<b>1.9.2013</b>
s 5A	inserted by 61/2001 s 5	1.7.2002
s 7	amended by 8/1997 Sch cl 2(b)	31.10.1997

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s 8		
s 8(2)	amended by 8/1997 Sch cl 2(c)	31.10.1997
	amended by 61/2001 s 6	1.7.2002
Pt 2		
s 9		
s 9(1)	substituted by 61/2001 s 7(a)	1.7.2002
s 9(1a)	inserted by 61/2001 s 7(a)	1.7.2002
s 9(3)	amended by 61/2001 s 7(b), (d), (e)	1.7.2002
	(b) deleted by 61/2001 s 7(c)	1.7.2002
s 10		
s 10(1)	(b) deleted by 61/2001 s 8(a)	1.7.2002
s 10(4)	<i>deleted by 61/2001 s 8(b)</i>	<i>1.7.2002</i>
s 11	amended by 61/2001 s 9	1.7.2002
Pt 3		
s 14		
s 14(1)	substituted by 61/2001 s 10(a)	1.7.2002
s 14(2)	amended by 61/2001 s 10(b)	1.7.2002
s 14A	inserted by 61/2001 s 11	1.7.2002
s 17		
s 17(6)	amended by 61/2001 s 12	1.7.2002
s 18		
s 18(1)	amended by 61/2001 s 13(a)	1.7.2002
s 18(2a)	inserted by 61/2001 s 13(b)	1.7.2002
s 19		
s 19(2)	substituted by 61/2001 s 14	1.7.2002
s 19(2a)	inserted by 61/2001 s 14	1.7.2002
s 20		
s 20(2)	amended by 8/1997 Sch cl 2(d)	31.10.1997
s 20(3)	<i>amended by 61/2001 s 15(a)</i>	<i>1.7.2002</i>
	<i>deleted by 16/2004 s 5(a)</i>	<i>1.1.2005</i>
s 20(4)	amended by 61/2001 s 15(b)	1.7.2002
	amended by 16/2004 s 5(b)	1.1.2005
s 21		
s 21(1)	amended by 61/2001 s 16(a), (b)	1.7.2002
s 21(1a)	inserted by 61/2001 s 16(c)	1.7.2002
s 21(3)	amended by 61/2001 s 16(d)	1.7.2002
s 22		
s 22(2)	amended by 8/1997 Sch cl 2(e)	31.10.1997
s 22(2a)	inserted by 8/1997 Sch cl 2(f)	31.10.1997
s 22(3)	amended by 8/1997 Sch cl 2(g)	31.10.1997
s 22(4)	amended by 8/1997 Sch cl 2(h)	31.10.1997
s 23		
s 23(2)	amended by 61/2001 s 17	1.7.2002

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s 25		
s 25(1)	amended by 61/2001 s 18(a)	1.7.2002
s 25(2a)	inserted by 61/2001 s 18(b)	1.7.2002
s 29		
s 29(2)	amended by 61/2001 s 19(a)	1.7.2002
s 29(6)	substituted by 61/2001 s 19(b)	1.7.2002
Pt 4		
s 32		
s 32(1)	substituted by 61/2001 s 20(a)	1.7.2002
s 32(2)	amended by 61/2001 s 20(b)	1.7.2002
s 34		
s 34(2)	amended by 61/2001 s 21	1.7.2002
s 38		
s 38(2)	amended by 61/2001 s 22(a)	1.7.2002
s 38(5)	substituted by 61/2001 s 22(b)	1.7.2002
<i>Pt 5 before substitution by 16/2004</i>		
s 39		
s 39(1a)	<i>inserted by 61/2001 s 23(a)</i>	1.7.2002
s 39(2)	<i>amended by 61/2001 s 23(b)</i>	1.7.2002
s 39(3)	<i>amended by 61/2001 s 23(c)</i>	1.7.2002
s 39(3a)—(3c)	<i>inserted by 61/2001 s 23(d)</i>	1.7.2002
s 39(4)	<i>amended by 61/2001 s 23(e)</i>	1.7.2002
<i>Pt 5 Div 1A</i>	<i>inserted by 61/2001 s 24</i>	1.7.2002
<i>Pt 5 Div 2</i>	<i>heading amended by 61/2001 s 25</i>	1.7.2002
s 40		
s 40(1)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 15(b))</i>	1.6.2000
s 40(2)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 15(c))</i>	1.6.2000
s 41		
s 41(1)	<i>amended by 61/2001 s 26</i>	1.7.2002
s 41(2)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 15(d))</i>	1.6.2000
s 42		
s 42(1)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 15(e))</i>	1.6.2000
s 42(2)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 15(f))</i>	1.6.2000
	<i>amended by 61/2001 s 27</i>	1.7.2002
s 43		
s 43(1)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 15(g))</i>	1.6.2000
	<i>amended by 61/2001 s 28(a)</i>	1.7.2002
s 43(2)	<i>amended by 61/2001 s 28(b)</i>	1.7.2002
s 43(5)—(12)	<i>substituted by 61/2001 s 28(c)</i>	1.7.2002
s 43(13) and (14)	<i>inserted by 61/2001 s 28(c)</i>	1.7.2002
s 44	<i>amended by 61/2001 s 29</i>	1.7.2002
Pt 5	substituted by 16/2004 s 6	1.1.2005

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s 39		
s 39(1)		
relevant review authority	amended by 52/2012 Sch 3 cl 18	20.12.2012
s 40		
s 40(1)	amended by 17/2006 s 130	4.9.2006
s 40(6)	amended by 52/2012 Sch 3 cl 18	20.12.2012
Pt 6		
s 46	<i>substituted by 61/2001 s 30</i> <i>deleted by 16/2004 s 7</i>	1.7.2002 1.1.2005
s 53		
s 53(2)	amended by 61/2001 s 31(a), (b) amended by 16/2004 s 8(a)	1.7.2002 1.1.2005
s 53(2aa)	inserted by 16/2004 s 8(b)	1.1.2005
s 53(2a)	inserted by 61/2001 s 31(c)	1.7.2002
s 53(4)	amended by 61/2001 s 31(d) amended by 52/2012 Sch 3 cl 18	1.7.2002 20.12.2012
s 53(4a)	inserted by 61/2001 s 31(e) amended by 52/2012 Sch 3 cl 18	1.7.2002 20.12.2012
s 54		
s 54(1)	amended by 61/2001 s 32(a)	1.7.2002
s 54(2)	<i>amended by 61/2001 s 32(b)</i> <i>deleted by 16/2004 s 9</i>	1.7.2002 1.1.2005
s 54(3)	<i>deleted by 16/2004 s 9</i>	1.1.2005
s 54AA	inserted by 16/2004 s 10	1.1.2005
s 54A	inserted by 61/2001 s 33 amended by 52/2012 Sch 3 cl 18	1.7.2002 20.12.2012
Sch 1		
cl 1		
cl 1(1)	(d) deleted by 16/2004 s 11(a)	1.1.2005
cl 1(2)	amended by 8/1997 Sch cl 2(i) amended by 42/1998 s 2(a) amended by 16/2004 s 11(b)	31.10.1997 27.8.1998 1.1.2005
cl 1(2a)	inserted by 16/2004 s 11(c)	1.1.2005
cl 2		
cl 2(1)	(d) deleted by 16/2004 s 11(d)	1.1.2005
cl 2(2)	amended by 8/1997 Sch cl 2(j) amended by 16/2004 s 11(e)	31.10.1997 1.1.2005
cl 2(3)	inserted by 16/2004 s 11(f)	1.1.2005
cl 3	substituted by 61/2001 s 34(a)	1.7.2002
cl 4		
cl 4(1) and (2)	substituted by 61/2001 s 34(b)	1.7.2002
cl 4(3)	amended by 61/2001 s 34(c)	1.7.2002

cl 4(3a)	inserted by 13/2008 Sch 1 cl 5	4.9.2008
cl 5		
cl 5(1)	amended by 61/2001 s 34(d)	1.7.2002
cl 5(2)	<i>deleted by 61/2001 s 34(e)</i>	1.7.2002
cl 6		
cl 6(2)	amended by 16/2004 s 11(g)	1.1.2005
cl 6(3)	amended by 61/2001 s 34(f)	1.7.2002
cl 6(3a)	inserted by 61/2001 s 34(g)	1.7.2002
cl 6(4)	<i>deleted by 16/2004 s 11(h)</i>	1.1.2005
cl 6A	inserted by 22/1997 Sch 3 cl 1	28.8.1997
	amended by 61/2001 s 34(h)	1.7.2002
cl 7		
cl 7(1)	amended by 61/2001 s 34(i), (j)	1.7.2002
cl 7(3)	inserted by 16/2004 s 11(i)	1.1.2005
cl 13		
cl 13(1)	cl 13 redesignated as cl 13(1) by 16/2004 s 11(j)	1.1.2005
cl 13(2)—(7)	inserted by 16/2004 s 11(j)	1.1.2005
cl 8		
cl 8(1)	amended by 42/1998 s 2(b)	27.8.1998
	amended by 61/2001 s 34(k)	1.7.2002
cl 18	amended by 61/2001 s 34(l), (m)	1.7.2002
cl 19		
cl 19(2)	amended by 8/1997 Sch cl 2(k)	31.10.1997
Sch 2	amended by 49/1991 Sch 2	6.7.1992
	amended by 61/2001 s 35(b)—(d)	1.7.2002
	(a)—(d) deleted by 61/2001 s 35(a)	1.7.2002
	(g) deleted by 61/2001 s 35(b)	1.7.2002
	amended by 16/2004 s 12	1.1.2005
	amended by 79/2009 s 19	19.9.2010
	amended by 52/2012 Sch 3 cl 18	20.12.2012
	<b>amended by 52/2012 Sch 3 cl 20</b>	<b>1.9.2013</b>

## **Transitional etc provisions associated with Act or amendments**

### ***Freedom of Information (Public Opinion Polls) Amendment Act 1998***

#### **3—Transitional provision**

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.

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***Freedom of Information (Miscellaneous) Amendment Act 2001*****37—Transitional provisions**

- (1) The amendments to the principal Act effected by this Act do not apply in relation to an application for access to an agency's documents made before the commencement of this Act.
- (2) An information statement or an information summary in force under Part 5A of the *Local Government Act 1934* immediately before the repeal of that Part by this Act will continue and have effect under the *Freedom of Information Act 1991* as if it had been prepared under that Act.
- (3) An application or proceeding commenced under Part 5A of the *Local Government Act 1934* that has not been finally determined immediately before the repeal of that Part by this Act may be continued and completed as if that repeal had not been effected.

***Freedom of Information (Miscellaneous) Amendment Act 2004*****13—Transitional provision**

- (1) Subject to subsection (2), an amendment to the principal Act effected by a provision of this Act applies in relation to an application under the principal Act, or review or appeal proceedings relating to an application under the principal Act, if the application or proceedings are determined after the commencement of that provision (whether the application was lodged before or after that commencement).
- (2) Part 5 of the principal Act, as substituted by section 6 of this Act, only applies in relation to determinations made on applications lodged under Parts 3 and 4 of the principal Act after the commencement of section 6 of this Act.
- (3) If, before the commencement of this subsection, a document ceased to be an exempt document under subclause (4) of clause 6 of Schedule 1 of the principal Act (as in force immediately before the commencement of section 11 of this Act) because the period of 30 years referred to in that subclause had expired, the document is, for the purposes of an application under the principal Act, or review or appeal proceedings relating to an application under the principal Act, determined after the commencement of section 11 of this Act, to be taken to have continued to be an exempt document under that clause (whether the application was lodged before or after that commencement).

**Historical versions**

Reprint No 1—6.7.1992

Reprint No 2—28.8.1997

Reprint No 3—31.10.1997

Reprint No 4—27.8.1998

Reprint No 5—1.6.2000

Reprint No 6—1.7.2002

1.1.2005

1.7.2005

4.9.2006

**Freedom of Information Act 1991—1.9.2013 to 30.6.2014**  
Legislative history

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4.9.2008

1.2.2010

19.9.2010

20.12.2012