

South Australia

Freedom of Information (Exempt Agency) Regulations 2023

under the *Freedom of Information Act 1991*

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Schedule 1—Repeal of *Freedom of Information (Exempt Agency) Regulations 2008*

1—Short title

These regulations may be cited as the *Freedom of Information (Exempt Agency) Regulations 2023*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

- (1) In these regulations—
Act means the *Freedom of Information Act 1991*.
- (2) For the avoidance of doubt, if a provision of these regulations declares an agency to be an exempt agency in respect of a specified class of information, the agency is, from the commencement of the provision, so exempt regardless of whether the information was created or received by the agency before or after that commencement.

4—Exempt agencies

For the purposes of the definition of **exempt agency** in section 4(1) of the Act, the following agencies are declared to be exempt agencies:

- (a) the Inspector appointed under Schedule 4 of the *Independent Commission Against Corruption Act 2012*;
- (b) the Generation Lessor Corporation, the Distribution Lessor Corporation and the Transmission Lessor Corporation established under the *Public Corporations Act 1993*;
- (c) the commission of inquiry established under the *Commission of Inquiry (Children in State Care and Children on APY Lands) Act 2004*;
- (d) each agency established by or under the *Health and Community Services Complaints Act 2004*.

5—Exempt agencies in respect of certain information—education agencies

- (1) For the purposes of the definition of **exempt agency** in section 4(1) of the Act, the following agencies are declared to be exempt agencies in respect of comparative student performance information:

- (a) the Minister responsible for the administration of the *SACE Board of South Australia Act 1983*;
- (b) the Minister responsible for the administration of the *Education and Children's Services Act 2019*;
- (c) the Minister responsible for the administration of the *Education and Early Childhood Services (Registration and Standards) Act 2011*;
- (d) the Department for Education.

- (2) In this regulation—

children of compulsory education age has the same meaning as in the *Education and Children's Services Act 2019*;

comparative student performance information means information of any of the following classes (whether presented in a statistical form or otherwise):

- (a) aggregated information relating to the results of any assessments undertaken by senior secondary students or children of compulsory education age;
- (b) aggregated information relating to the tertiary entrance (including tertiary entrance ranks) of senior secondary students;
- (c) aggregated information relating to exemptions granted to children of compulsory education age under the *Education and Children's Services Act 2019* from a requirement under that Act that the children be enrolled in an approved learning program;

senior secondary students means students as defined in the *SACE Board of South Australia Act 1983*.

6—Exempt agency in respect of certain functions and information—South Australian Skills Commission

For the purposes of the definition of *exempt agency* in section 4(1) of the Act, the South Australian Skills Commission established under section 15 of the *South Australian Skills Act 2008* is declared to be an exempt agency in respect of—

- (a) functions set out in section 19(1)(d) of the *South Australian Skills Act 2008* regarding complaint handling and dispute resolution, including mediation and advocacy services; and
- (b) information formerly held by the Training Advocate (formerly in existence under the *Training and Skills Development Act 2008*) relating to functions in respect of which the Training Advocate was an exempt agency under regulation 6 of the *Freedom of Information (Exempt Agency) Regulations 2008* as in force immediately before 1 July 2021.

Editorial note—

The *Freedom of Information (Exempt Agency) (South Australian Skills Commission) Variation Regulations 2021* came into operation on 1 July 2021.

7—Exempt agencies in respect of certain information—investigation into City of Burnside

For the purposes of the definition of *exempt agency* in section 4(1) of the Act, the following agencies are declared to be exempt agencies in respect of information relating to the investigation into the City of Burnside carried out by the investigator appointed pursuant to instrument of appointment dated 22 July 2009 under section 272 of the *Local Government Act 1999* to carry out an investigation into the City of Burnside:

- (a) any agency that holds information formerly held by the investigator;
- (b) any agency that assisted in the investigation;
- (c) the Minister for Local Government;
- (d) the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Local Government Act 1999*.

8—Exempt agency in respect of certain information—SACE Board

- (1) For the purposes of the definition of *exempt agency* in section 4(1) of the Act, the SACE Board is declared to be an exempt agency in respect of the following classes of information:
 - (a) information relating to the results of students in SACE assessments;
 - (b) comparative school performance information;
 - (c) information comprising, relating to or used in the application of standards of marking (however described) in the assessment of students;
 - (d) information contained in a report prepared by a person or body appointed or established by the SACE Board to determine grade levels, or to ensure consistency in grading, and any information used in the preparation of such a report;

- (e) information comprising, or relating to, an examination paper for an examination that has not yet occurred at the time of an application under the Act relating to the information;
- (f) information relating to the assessment of students with disabilities;
- (g) information relating to the alternative assessment of students on compassionate or other grounds;
- (h) information used, or to be used, by the SACE Board to determine recipients of prizes, awards or commendations (however described);
- (i) information received by the SACE Board in the course of, or in relation to, a dispute resolution process (whether relating to a particular student or class of students, and however described);
- (j) information identifying a member of the SACE Board or a person exercising a power or performing a function under the *SACE Board of South Australia Act 1983*.

(2) In this regulation—

comparative school performance information means information of either of the following classes (whether presented in a statistical form or otherwise):

- (a) aggregated information relating to the results of any assessments undertaken by students at a particular school or group of schools;
- (b) aggregated information relating to the tertiary entrance ranks of students at a particular school or group of schools;

SACE Board means the SACE Board of South Australia continued under the *SACE Board of South Australia Act 1983*.

9—Exempt agency in respect of certain information—Small Business Commissioner

For the purposes of the definition of ***exempt agency*** in section 4(1) of the Act, the Small Business Commissioner is declared to be an exempt agency in respect of information other than—

- (a) financial and administrative information relating to the operations of the Small Business Commissioner; and
- (b) statistical information that does not identify any particular person or business.

10—Exempt agency in respect of certain information—Department of Treasury and Finance

For the purposes of the definition of ***exempt agency*** in section 4(1) of the Act, the Department of Treasury and Finance is declared to be an exempt agency in respect of information formerly held by the RESI Corporation (formerly in existence under the *Electricity Corporations Act 1994*).

11—Exempt agency in respect of certain information—CTP Regulator

For the purposes of the definition of *exempt agency* in section 4(1) of the Act, the CTP Regulator established under the *Compulsory Third Party Insurance Regulation Act 2016* is declared to be an exempt agency in respect of the following classes of information:

- (a) information relating to a claim or action under Part 4 of the *Motor Vehicles Act 1959*;
- (b) information gained under Part 3 of the *Compulsory Third Party Insurance Regulation Act 2016* that is confidential information within the meaning of section 17(1) of that Act.

12—Exempt agencies in respect of certain information—Parliamentary Budget Advisory Service

- (1) For the purposes of the definition of *exempt agency* in section 4(1) of the Act, any agency that—
 - (a) holds information formerly held by the Parliamentary Budget Advisory Service; or
 - (b) provided information to, or received information from, the Parliamentary Budget Advisory Service in connection with the advisory services provided by the Parliamentary Budget Advisory Service,

is declared to be an exempt agency in respect of that information.

- (2) In this regulation—

Parliamentary Budget Advisory Service means the Parliamentary Budget Advisory Service formerly in existence as an attached office under the *Public Sector Act 2009*.

13—Exempt agency in respect of certain functions—Public Advocate

For the purposes of the definition of *exempt agency* in section 4(1) of the Act, the Public Advocate established under the *Guardianship and Administration Act 1993* is declared to be an exempt agency in respect of—

- (a) functions exercised as a guardian; and
- (b) investigations of the affairs of persons under section 28 of the *Guardianship and Administration Act 1993*; and
- (c) functions under the *Advance Care Directives Act 2013* relating to dispute resolution; and
- (d) functions under the *Consent to Medical Treatment and Palliative Care Act 1995* relating to dispute resolution.

Schedule 1—Repeal of *Freedom of Information (Exempt Agency) Regulations 2008*

The *Freedom of Information (Exempt Agency) Regulations 2008* are repealed.

Freedom of Information (Exempt Agency) Regulations 2023

Schedule 1—Repeal of *Freedom of Information (Exempt Agency) Regulations 2008*

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 3 August 2023

No 80 of 2023