PART D
REVIEW AND APPEAL

Chapter 27

Present and proposed review procedures

27.1 In this chapter we describe the review and appeal procedures provided in the present Freedom of Information Bill, discuss what we consider to be the inadequacies of these procedures, and indicate in outline the changes we believe to be necessary. In the three following chapters, entitled respectively 'Internal Review', 'Role of the Ombudsman' and 'Proceedings before the Administrative Appeals Tribunal', we spell out our proposed changes in more detail and deal with a number of associated machinery matters.

27.2 The whole question of review and appeal loomed large throughout our inquiry. Most witnesses either made or acknowledged the point that it could not be assumed that the new legislation would always be applied with proper sensitivity at first instance; resort to inexpensive appellate machinery would be a necessary condition of its effective implementation. Written submissions tended to concentrate on the pros and cons of an expanded role for the Administrative Appeals Tribunal,[1] rather than on the question of internal review or the the desirability of giving an extended role to the Ombudsman or some analogous mediating authority. The latter issues, however, were fully debated with many witnesses in the course of our public hearings, and we believe that the scheme we propose—which, while making many more matters appealable to the Tribunal, simultaneously places much more emphasis than does the present Bill on dispute resolution by informal conciliation—will meet with quite widespread acceptance.

Review procedures under the present Bill

27.3 *Internal review.* Where an applicant is unhappy with a decision made otherwise than by the minister or head of the department concerned, he may apply under clause 38 of the Bill for an internal review of that decision—i.e. a reconsideration and fresh decision by a different officer. Where the decision is subject to review by the Administrative Appeals Tribunal, and the applicant intends to proceed to the Tribunal, he must in the first instance apply for an internal review. The applicant would, however, be entitled to appeal directly to the Tribunal if a decision on his request for an internal review was not made within fourteen days of his application.

27.4 *Investigation by the Ombudsman.* The Commonwealth Ombudsman is mentioned in the Bill, and has specific powers conferred upon him by it, only in the context of a very narrow area of its administration, namely, complaints of unreasonable delay in respect to meeting requests for information. Clause 39 enables the Ombudsman to certify in relation to a request (except where it is being

[1] Submissions which advocated an expansion of the Tribunal's power of review included: Council of Australian Government Employee Organisations, Submission no. 8, incorporated in *Transcript of Evidence*, p. 995; Mr J. Goldring, Submission no. 15, incorporated in *Transcript of Evidence* pp. 750–752; Australian Journalists' Association, Submission no. 81, incorporated in *Transcript of Evidence*, pp. 307–8; Women's Electoral Lobby (Vic.), Submission no. 7, incorporated in *Transcript of Evidence*, p. 370; Victorian Committee for Freedom of Information, Submission no. 44, incorporated in *Transcript of Evidence*, p. 397; The Law Institute of Victoria, Submission no. 112, pp. 1, 5–8; Australian Council of Social Service, Submission no. 48, incorporated in *Transcript of Evidence*, pp. 436–439; and, Freedom of Information Legislation Campaign Committee (ACT), Submission no. 9, incorporated in *Transcript of Evidence*, p. 170.

considered by a minister) that there has been, in all the circumstances, an unreasonable delay in responding to it, notwithstanding that the sixty-day maximum set up by clause 17 has not yet expired, in which case the matter can be appealed to the Tribunal as if it were a refusal.

27.5 In addition to this specific provision, however, the Ombudsman does have a general jurisdiction under the *Ombudsman Act* 1976 to investigate administrative practices, procedures and decisions generally, and this would enable him, subject to three important constraints set by that Act, to roam at large over the area covered by the Freedom of Information Bill. The first constraint is section 6 (3) of the Ombudsman Act, which provides that:

> (3) Where the Ombudsman is of the opinion that a complainant has or had a right to cause the action to which the complaint relates to be reviewed by a court or by a tribunal constituted by or under an enactment but has not exercised that right, the Ombudsman shall not investigate, or continue to investigate, as the case may be, the complaint unless the Ombudsman is of the opinion that, in all the circumstances of the case, the failure to exercise the right is not or was not unreasonable.

This would operate to limit the Ombudsman's powers in respect of all those matters under the Freedom of Information Bill which are appealable to the Administrative Appeals Tribunal. The second constraint is section 9 (3) of the Ombudsman Act, which provides, among other things, that where the Attorney-General certifies that disclosure of information would prejudice security, defence or international relations, or relations between the Commonwealth and a State, or would disclose the deliberations of Cabinet or a Cabinet Committee, the Ombudsman is barred from gaining access to any information concerning the matter. The third constraint is paragraph 5 (2)(a) of the Ombudsman Act, which expressly prohibits the Ombudsman investigating any action taken by a minister personally (as distinct from officers acting on his behalf).

27.6 *Review by the Administrative Appeals Tribunal.* The general right to seek a review by the Administrative Appeals Tribunal is laid down by clause 37 (1) of the Bill. This provides for applications to be made to the Tribunal for review 'of a decision refusing to grant access to a document in accordance with a request or deferring provision of access to a document'. The form of words is sufficiently wide to encompass all the clauses of Part IV, 'Exempt Documents' (although of course the Tribunal's jurisdiction is expressly excluded or curtailed in certain particular clauses), and also a major proportion of Part III, 'Access to Documents': the following paragraphs summarise the decisions which are caught under these Parts. Clauses 6 and 7 of Part II of the Bill, which require agencies to publish certain documents and make available certain information, do not give rise to decisions of refusal or deferment in relation to particular requests and consequently are not subject to review by the Tribunal.

27.7 As to Part III of the Bill, a decision to withhold a document on any of the following grounds would be reviewable by the Administrative Appeals Tribunal:

- a document in the possession of a minister does not relate to the affairs of a department (clause 9);
- a document is more than 30 years old, is available for inspection at a charge under another enactment, is available for purchase, or is a prior document and not reasonably necessary for the understanding of another lawfully obtained document (clause 10);

- a document was donated by a person, other than an agency, to the collection of Commonwealth war relics, or to the National Library or to the Australian Archives (clause 11);
- a document was not reasonably identified or that the identification, location or collation of requested documents would interfere unreasonably with the operations of the agency (clause 15);
- a charge required to be paid has not been paid (clause 16);
- the provision of a document in the form requested would interfere unreasonably with the operations of an agency, would be detrimental to the preservation of the document, would be inappropriate, or would involve an infringement of copyright (other than copyright owned by the Commonwealth) (clause 18);
- the production ought to be deferred in the public interest or having regard to normal and proper administrative practices (clause 19); or
- a document contains exempt as well as non-exempt information, and it is not practicable to delete the exempt information and produce the remainder of the document (clause 20).

27.8 There is also provision in the Bill for review by the Administrative Appeals Tribunal where an agency is dilatory in handling a request made under clause 17. A failure on the part of an agency to respond to such a request within the sixty-day time limit set by clause 17, is, by virtue of clause 39 (1), deemed to be a decision to refuse access on the sixtieth day for the purpose of enabling an application to be made to the Tribunal. Furthermore, as has already been briefly noted in paragraph 27.4 above, where the sixty-day period has not elapsed but it is alleged that an agency has failed to notify a decision 'as soon as practicable' as required by clause 17, the applicant may, by virtue of clause 39 (3), complain to the Ombudsman; if the Ombudsman is of the opinion that there has been unreasonable delay by an agency, he may grant a certificate to that effect, in which case a decision to refuse access will be deemed to have been made on the date on which the certificate is granted for the purpose of enabling an application to be made to the Tribunal. It is to be noted, however, that where a request is not made strictly in accordance with clause 17 (which requires that requests be made not only in writing but be 'expressed to be made in pursuance of this Act' and be forwarded to the right address), then there is no time limit with which the agency has to comply and no mechanism conferring power on the Tribunal to consider cases of unreasonable delay.

27.9 As to Part IV of the Bill, all the categories of exemption there set out are, under clause 37, reviewable with the following exceptions:

- a decision of a minister or principal officer of an agency to give a certificate under clause 23 of the Bill, certifying that disclosure of a document would be contrary to the public interest for the reason that the disclosure:
  (a) would prejudice the security or defence of the Commonwealth, international relations or Commonwealth–State relations; or
  (b) would divulge information communicated in confidence by or on behalf of another government.
- a certificate by the Secretary to the Department of the Prime Minister and Cabinet or the Secretary to the Executive Council certifying that a document is a Cabinet document or an Executive Council document, as the case may be (clauses 24 and 25).

- a decision that disclosure of an internal working document would be contrary to the public interest (clause 26 (1)(b)).

27.10 The Administrative Appeals Tribunal has no general residuary discretion, of the kind that is conferred upon ministers and agencies by clause 12, to release documents notwithstanding that they might qualify as exempt documents under the Bill: clause 37 (3) makes this clear.

Proposed review procedures

27.11 In general terms, we perceive as major inadequacies of the present review procedure the unnecessarily restricted jurisdiction of the Administrative Appeals Tribunal and the limited role which the Ombudsman is given in freedom of information matters.

27.12 *Review by the Administrative Appeals Tribunal.* We believe that the major inadequacy in the present review procedures, so far as the powers of the Administrative Appeals Tribunal are concerned, relates to the Part IV exemptions and in particular to clauses 23–26. We have already discussed, in large part, our criticisms of the non-existent or restricted power of review conferred on the Tribunal in relation to these clauses in Chapters 5 and 15–19. In brief, the relevant points were as follows:

- no Executive decisions ought to be regarded in principle as beyond legal reproach;
- this applies to decisions recorded in Cabinet, Executive Council and general policy documents as well as to decisions concerning defence, security, international and inter-governmental relations;
- to the extent that any special relationship can be claimed to exist between Parliament, ministers and public servants it would only require that some, not all, documents of political significance should be protected and it would not follow that ministers, or senior public servants, alone should decide conclusively what documents bear upon that relationship;
- case law indicates that judicial officers are considered fitted to weigh all relevant factors bearing upon the public interest, giving due respect to defence and like matters; and
- case law indicates the extent of review possible by the courts and the fact that it can on occasion approach review on the merits.

27.13 A question to which we have given attention, though it was not much pressed in evidence before us, is the scope of the review function capable of being performed by the *courts*, as opposed to the Administrative Appeals Tribunal, and the implications this may have for the restriction of the Tribunal's power of review in relation to clauses 23 to 26. Judicial review, as compared with tribunal review, of decisions made under these clauses, has not been excluded by the Bill; nor has it been suggested to us that it is intended to exclude it under the *Administrative Decisions (Judicial Review) Act* 1977 or other legislation.

27.14 Generally speaking, on application to the courts for review of an administrative decision, the courts are restricted to questions of whether the decision-maker has acted fairly, within his powers and according to the law. The applicant will usually face major difficulties in establishing a breach on the part of the decision-maker in any of these respects, not least because the

matter will often turn on establishing the decision-maker's particular state of mind at the time of the breach. And if the administrator is shown to have acted unfairly, beyond power or unlawfully the court may only quash the decision leaving the administrator free to reinstate his decision (albeit taking care not to leave this time any evidence of actionable conduct). The Tribunal, on the other hand, may exercise all the powers and discretions conferred on the original decision-maker. It may affirm or vary the decision under review; or it may set it aside and either make a suitable decision or refer the decision back for further consideration in the light of directions or recommendations of the Tribunal.

27.15 While it is the case, as we indicated in Chapter 5 (paragraph 5.12) that the distinction between review by the Administrative Appeals Tribunal and review by the courts can, in certain circumstances, be blurred, it remains generally true that, whereas the court focuses on the decision-making process, the Tribunal focuses on the decision itself and examines the merits of that decision. The restriction of the power of review by the Tribunal in relation to decisions made under clauses 23 to 26, would not abrogate the courts' powers of review in regard to these same decisions. Conclusive certificates under these sections preclude recourse to the Tribunal, but not to the courts. Thus in regard to these decisions the Executive has not avoided review by an independent body as such. Rather, what it has sought to do is limit that review to the traditionally rather narrow (though increasingly in practice, less so) area of judicial review, and avoid the overtly wide-ranging reconsideration of merits issue that is associated with tribunal review.

27.16 While we do not go so far as to urge that the whole range of sensitive matters presently subject to conclusive certificates should be subject to full scale review on the merits by the Administrative Appeals Tribunal, we do believe that, bearing in mind the extent to which the courts can already pass on these matters, the Bill as presently drawn is unnecessarily restrictive. As we have made clear in other chapters, we propose in respect of clause 26 (relating to internal working documents) that the existing public interest criterion be appealable to the Tribunal, and that in relation to that part of clause 23 which deals with Commonwealth–State relations, a specific public interest criterion be incorporated in the Bill, and that this too be appealable (see Chapters 17, 19). On the other hand, in relation to those parts of clause 23 which concern defence, security and international relations, we confine our recommendation to the proposal that the threshold decision as to whether the document in question is properly classified as one whose disclosure could damage defence, security or international relations, as the case may be, should be appealable to the Tribunal, constituted in this instance by a presidential member; we do not propose in these cases that the Tribunal should have any residual power to determine that over-riding public interest considerations nonetheless require disclosure (see Chapter 16). Similarly, in relation to clauses 24 and 25 (dealing with Cabinet and Executive Council documents), we propose that there be appealable to the Tribunal (again constituted for this purpose by a presidential member), only the threshold question as to whether the document in issue is properly categorised as a Cabinet or Executive Council document (see Chapter 18). We envisage all the proceedings before a single presidential member of the Tribunal to which we have referred as being essentially inquisitorial rather than adversarial in character, with the applicant's role being limited to the submission of affidavit evidence.

27.17 As to the other heads of exemption in Part IV, we have proposed the abolition of certain exemptions and substantial amendments to several others. Those clauses that remain would, under the present Bill, be fully reviewable by the Administrative Appeals Tribunal. We would not consider anything less than full review as acceptable. This point should perhaps be emphasised in relation to two clauses, in particular, where we have recommended changes to the existing provisions. One of our proposed amendments to clause 29—documents concerning the operations of agencies—requires the introduction of a public interest test in the same form as the public interest test in clause 26; that public interest test would be reviewable by the Tribunal, like its equivalent in clause 26. In relation to clause 30—documents affecting personal privacy—we have proposed the conferral of a right to correct personal records. If an agency refuses an individual the right to correct his own personal records maintained by that agency, the individual should have the right to appeal to the Tribunal for a review of the decision.

27.18 The proposed scheme of Tribunal review which thus emerges in relation to the Part IV exemptions may be summarised as follows:

(a) Decisions concerning documents relating to national security, defence and international relations (clause 23) will be reviewable by a single presidential member of the Administrative Appeals Tribunal in a non-adversarial proceeding with the applicant's role limited to the submission of affidavit evidence. The question at issue would be whether a document could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth.

(b) Decisions concerning Cabinet and Executive Council documents (clauses 24 and 25) would be reviewable in the same manner as outlined above in paragraph (a). The question here would be whether or not a document was properly characterised as a Cabinet or Executive Council document.

(c) Decisions concerning all other exempt documents (clauses 26, 27–32 and 35—the deletion of clauses 33, 34 and 36 having been proposed) would be reviewable in the ordinary way by the Tribunal. The question at issue would be whether the document came within the particular description of an exemption clause.

27.19 As to Part III of the Bill, dealing with the procedures governing access to documents, the existing rights of appeal to the Administrative Appeals Tribunal are generally speaking comprehensive and adequate. The only change that we recommend here arises out of our discussion of Reverse-FOI actions in Chapter 25. Decisions under clause 12, which enables an agency to release a document notwithstanding its exempt status, are presently not subject to review by the Tribunal. We propose that third parties wishing to prevent the release of information which they have submitted to government should be enabled to challenge a decision made under clause 12 in the same way that they would be enabled to challenge a decision that a document is not exempt.

27.20 As to Part II of the Bill, there is, as has already been noted, no provision whereby a failure to make available manuals, indexes and guidelines in accordance with clauses 6 and 7 is in any way actionable. Given the crucial importance of these provisions, we see this as a deficiency needing rectification, and we envisage a partial role in this respect for the Administrative Appeals Tribunal. The problem, of course, with devising a scheme of review for clauses 6 and 7 is that many complaints will centre on matters which cannot be satisfactorily resolved in adjudicative proceedings. There are three clear obligations

laid down by clauses 6 and 7 which could be the subject of a complaint: a requirement to act within the 12 months time limits, to act 'as soon as practicable', and to publish and make available certain information. Non-compliance with the time requirements will not always be an appropriate subject for application to the Tribunal since it is often likely to be the result of inefficiency or insufficient resources, matters which would not be especially capable of correction by a decision of the Tribunal. Omissions of items of information from either the published statements or available documents are, on the other hand, much more likely to be appropriate for review by the Tribunal, as they are the likely result of intransigence on the part of an agency or misinterpretation of the law.

27.21 To enable these omissions to be rectified and to provide for those occasions when the time constraints can and should be enforced by a Tribunal decision, we propose that the Ombudsman act as a filter of complaints so that where application to the Tribunal would satisfactorily resolve a dispute which cannot be resolved by conciliation, he would grant a certificate permitting application to be made to the Tribunal. This mechanism is, to a certain extent, based on section 10 of the Ombudsman Act. That section enables applicants to obtain relief when decisions are unreasonably delayed; a certificate granted by the Ombudsman deems an adverse decision to have been made for the purpose of review by the Tribunal.

27.22 As a remaining matter relating to the basic jurisdiction of the Administrative Appeals Tribunal, we considered the question of whether it should be empowered to release documents notwithstanding their exempt status. We took the view, however, that if the exemption clauses were sufficiently restrictive in their operation and if public interest tests were inserted, where appropriate, a supervening discretion to release would not be necessary. We therefore do not recommend such a power for the Tribunal.

27.23 *Complaints to the Ombudsman.* We believe that there is a very strong case for an intermediate conciliatory mechanism being built into the structure of the Freedom of Information legislation. It is important to have formal adjudicative bodies like the Administrative Appeals Tribunal to deal with intractable or precedent-setting cases, where the issues have crystallised and attitudes have hardened. But it is equally important that means be devised to resolve speedily and informally those inherently less intractable disputes that will usually constitute the great majority of the disputes which arise; it is important that there be some cheap, convenient and unintimidating machinery to filter out those disputes where compromise and consensus are, after all, possible. The utility of this kind of intermediate level grievance-remedying mechanism has come increasingly to be recognised in Australia and overseas with the appointment, to tackle various kinds of administrative and civil rights disputes, not only of Ombudsmen, but of a whole miscellany of Human Rights and Equal Opportunity Commissioners, Privacy Committees and the like.[2]

[2] e.g. The Commissioner for Community Relations established under the *Racial Discrimination Act* 1975; Commissioners for Equal Opportunity established under the Sex Discrimination Act 1975 (S.A.), and *Equal Opportunity Act* 1977 (Vic.); the Counsellor for Equal Opportunity established under the Anti-Discrimination Act 1975 (N.S.W.) and the N.S.W. Privacy Committee established under the Privacy Committee Act 1975 (N.S.W.); a Canadian model for much subsequent legislation of this type is the Ontario Human Rights Commission established under the Ontario Human Rights Code (1961–62); see: D. G. Hill, 'The Role of a Human Rights Commission: The Ontario Experience', *University of Toronto Law Journal*, 1969 p. 390; see also: Sir G. Powles, 'Ombudsmen and Human Rights Commissions,' *ICJ Review*, no. 21, December 1978, pp. 31–36.

27.24 We accordingly believe that a more substantial, prominent and active role should be played by the Ombudsman under the Freedom of Information legislation than seems so far to have been envisaged for him. As we have already noted, it is a feature of the present scheme of administrative review that by virtue of section 6 (3) of the Ombudsman Act, an extension of the power of the Administrative Appeals Tribunal means, save in exceptional circumstances, a corresponding curtailment of the power of the Omsbudsman. Where a complainant has the right to appeal to the Tribunal, the Ombudsman is required not to investigate the matter further unless he is satisfied in all the circumstances that the failure to appeal was not unreasonable. It may be that section 6 (3) does not in practice constitute a significant barrier to the Ombudsman exercising his investigative and conciliatory powers wherever he feels it appropriate to do so, but it certainly amounts to a clear expression of legislative policy which we regard, in the present freedom of information context, as quite unfortunate. The simple and cheap procedure of investigation and conciliation by the Ombudsman is a particularly valuable avenue of relief to members of the public and, accordingly, it is a matter of some concern that, as the legislation is drawn, the provision of a right of review by the Tribunal in freedom of information matters is grounds in itself for the non-intervention of the Ombudsman.

27.25 In considering these matters the reality, rather than the theory, of review by the Administrative Appeals Tribunal must be taken into account. Theoretically, the Tribunal provides a cheap and simple remedy. As opposed to the courts, there are no filing fees and the Administrative Appeals Tribunal Act requires the Tribunal to conduct its proceedings as informally as possible. In reality, however, the Tribunal strikes a different balance between the administrative and adjudicative elements of its review function according to the subject matter with which it is concerned at any particular time. Thus in some areas an inquisitorial procedure with a relaxed atmosphere and few rules of evidence may prevail, while in others strict evidential rules and adversarial approach may operate.

27.26 It remains to be seen which approach the Administrative Appeals Tribunal adopts towards freedom of information disputes, but if proceedings become unduly legalistic the applicant will have to choose between seeking legal representation and paying his own costs, or proceeding without legal representation and perhaps prejudicing his case. Even if cost were not a factor, some may prefer the direct and private assistance, flexibility and conciliatory approach of the Ombudsman to the more rigid, adjudicative process of the Tribunal. Others, through fear of litigation, might never contemplate pursuing a claim before a court or tribunal. The Ombudsman cannot of course make a binding decision and, if conciliation fails to resolve a dispute, recourse to the Tribunal may be necessary. Nevertheless, within these limitations, complaint to the Ombudsman would represent, to many members of the community, the most attractive avenue of relief.

27.27 Our recommendation, then, which is developed in more detail in Chapter 29, is that there be no legislative barrier or hindrance placed in the way of the Ombudsman playing a full and active role in the resolution of freedom of information disputes of any kind; that administrative arrangements positively encourage his early intervention as a mediator, conciliator and negotiator should it

be the wish of an applicant that he so act; and that, generally speaking, applicants should always have a choice as to whether to seek the help of the Ombudsman in the first instance, or to proceed directly to the Administrative Appeals Tribunal. We will also propose in Chapter 29 that for the purposes of freedom of information, and in addition to these powers of investigation and conciliation, the Ombudsman should also be empowered to act as counsel on behalf of applicants before the Tribunal, and should have certain advisory and critical functions in relation to the general administration of the Act.

27.28 For convenience, we append to this chapter a self-explanatory summary table indicating, in respect of each major decision-empowering clause in the Bill, both the present and proposed review arrangements as they involve the Ombudsman and the Administrative Appeals Tribunal.

27.29 *Internal review.* We have no significant quarrel with the statutory procedure laid down in the present Bill for internal review. There are a number of points to be made, however, as to how a system of preliminary internal review might best be administered, and we take up these matters in the next chapter.

Present and proposed external review procedures: Clauses in parts II, III and IV

Clause	*Present review procedure*	*Proposed review procedure*
Part II		
Clause 6 . .	Complaint to Ombudsman only	Complaint to Ombudsman with the possibility of a certificate to proceed to the AAT
Clause 7 . .	Complaint to Ombudsman only	Complaint to Ombudsman with the possibility of a certificate to proceed to the AAT
Part III		
Clause 9 . .	Appeal to the AAT; Ombudsman has a limited discretion to investigate	Complaint to the Ombudsman and/or appeal to the AAT
Clause 10 . .	Appeal to the AAT; Ombudsman has a limited discretion to investigate	Complaint to the Ombudsman and/or appeal to the AAT
Clause 11 . .	Appeal to the AAT; Ombudsman has a limited discretion to investigate	Complaint to the Ombudsman and/or appeal to the AAT
Clause 12 . .	Complaint to Ombudsman only	Complaint to Ombudsman; appeal to the AAT in Reverse-FOI cases
Clause 13 . .	Appeal to the AAT; Ombudsman has a limited discretion to investigate	Complaint to the Ombudsman and/or appeal to the AAT
Clause 15 . .	Appeal to the AAT; Ombudsman has a limited discretion to investigate	Complaint to the Ombudsman and/or appeal to the AAT
Clause 16 (b) .	*Fees* Appeal to AAT under clause 37 (6); Ombudsman has a limited discretion to investigate *Failure to respond* Complaint to Ombudsman only	*Fees* Complaint to the Ombudsman and/or appeal to the AAT *Failure to respond* Complaint to Ombudsman only

Clause	*Present review procedure*	*Proposed review procedure*
Clause 17 . .	*Failure to respond within 60 days* Appeal to the AAT; Ombudsman has a limited discretion to investigate *Unreasonable delay* Complaint to Ombudsman with the possibility of a certificate to proceed to the AAT (clause 39 (3))	*Failure to respond within time limit* Complaint to the Ombudsman and/or appeal to the AAT *Unreasonable delay* Complaint to Ombudsman with the possibility of a certificate to proceed to the AAT
Clause 18 . .	Appeal to the AAT; Ombudsman has a limited discretion to investigate	Complaint to Ombudsman and/or appeal to AAT
Clause 19 . .	Appeal to the AAT; Ombudsman has a limited discretion to investigate	Complaint to Ombudsman and/or appeal to AAT
Clause 20 . .	Appeal to the AAT; Ombudsman has a limited discretion to investigate	Complaint to Ombudsman and/or appeal to AAT
Part IV		
Clause 23 . .	*Defence, security, and international relations* Appeal to the AAT only in the absence of a conclusive ministerial certificate; Ombudsman has a limited discretion to investigate (in the absence of a certificate from Attorney-General)	*Defence, security, and international relations* Complaint to Ombudsman with no power to inspect documents for which exemption claimed; review by single presidential member of AAT in closed inquisitorial proceedings, with participation by applicant limited to submission of affidavit evidence
	Commonwealth–State relations Appeal to the AAT only in the absence of a conclusive ministerial certificate; Ombudsman has a limited discretion to investigate (in the absence of a certificate from Attorney-General)	*Commonwealth–State relations* Complaint to Ombudsman and/or appeal to AAT; Reverse-FOI proceedings available
Clause 24 . .	Appeal to AAT only in the absence of a conclusive ministerial certificate; Ombudsman has a limited discretion to investigate	Complaint to Ombudsman with no power to inspect documents for which exemption claimed; review by single presidential member of AAT in closed inquisitorial proceedings, with participation by applicant limited to submission of affidavit evidence
Clause 25 . .	Appeal to AAT only in the absence of a conclusive ministerial certificate; Ombudsman has a limited discretion to investigate	Complaint to Ombudsman with no power to inspect documents for which exemption claimed; review by single presidential member of AAT in closed inquisitorial proceedings, with participation by applicant limited to submission of affidavit evidence

Clause	*Present review procedure*	*Proposed review procedure*
Clause 26 . .	Appeal to the AAT does not extend to question of public interest; Ombudsman has a limited discretion to investigate	Complaint to Ombudsman and/or appeal to AAT on all issues
Clauses 27–36 .	Appeal to the AAT; Ombudsman has a limited discretion to investigate	Complaint to Ombudsman and/or appeal to AAT (clauses 33, 34 and 36 to be deleted); Reverse-FOI proceedings available under clause 32.