

The Freedom of Information Bill 1978

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(As read a first time)

FREEDOM OF INFORMATION BILL 1978

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1978

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

(Presented pursuant to leave granted and read 1^o, 9 June 1978)

(ATTORNEY-GENERAL, SENATOR DURACK)

A BILL
FOR
AN ACT

To give to members of the public rights of access to
official documents of the Government of the
Commonwealth and of its agencies.

No. 108

BE IT ENACTED by the Queen, and the Senate and House of
Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

1. This Act may be cited as the *Freedom of Information Act* 1978. Short title
- 5 2. The several Parts of this Act shall come into operation on such
respective dates as are fixed by Proclamation. Commence-
ment
3. (1) In this Act, unless the contrary intention appears— Interpretation
“agency” means a Department or a prescribed authority;
“applicant” means a person who has made a request;
- 10 “Department” means a Department of the Australian Public Service
other than the Department of the Senate, the Department of the
House of Representatives, the Department of the Parliamentary

Library, the Department of the Parliamentary Reporting Staff and the Joint House Department;

- “document” includes any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing, but does not include library material maintained for reference purposes; 5 10
- “document of an agency” or “document of the agency” means a document in the possession of an agency, or in the possession of the agency concerned, as the case requires, whether created in the agency or received in the agency; 15
- “enactment” means— 15
- (a) an Act;
 - (b) an Ordinance of the Australian Capital Territory; or
 - (c) an instrument (including rules, regulations or by-laws) made under an Act or under such an Ordinance;
- “exempt document” means— 20
- (a) a document which, by virtue of a provision of Part IV, is an exempt document;
 - (b) a document in respect of which, by virtue of regulations made in accordance with section 5, an agency is exempt from the operation of this Act; or 25
 - (c) an official document of a Minister that contains some matter that does not relate to the affairs of an agency or of a Department of State;
- “exempt matter” means matter the inclusion of which in a document causes the document to be an exempt document; 30
- “officer”, in relation to an agency, includes a member of the agency or a member of the staff of the agency;
- “official document of a Minister” or “official document of the Minister” means a document in the possession of a Minister, or in the possession of the Minister concerned, as the case requires, that relates to the affairs of an agency or of a Department of State and, for the purposes of this definition, a Minister shall be deemed to be in possession of a document that has passed from his possession if he is entitled to access to the document and the document is not a document of an agency; 40
- “Ombudsman” means the Commonwealth Ombudsman;
- “Ordinance”, in relation to the Australian Capital Territory or the Northern Territory, includes a law of a State that applies, or the provisions of a law of a State that apply, in the Territory by virtue of an enactment; 45

“prescribed authority” means—

(a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment, other than—

(i) an incorporated company or association;

(ii) a body that, under sub-section (2), is not to be taken to be a prescribed authority for the purposes of this Act;

(iii) the Australian Capital Territory Legislative Assembly;

(iv) the Legislative Assembly of the Northern Territory or the Executive Council of the Northern Territory; or

(v) a Royal Commission;

(b) any other body, whether incorporated or unincorporated, declared by the regulations to be a prescribed authority for the purposes of this Act, being—

(i) a body established by the Governor-General or by a Minister; or

(ii) an incorporated company or association over which the Commonwealth is in a position to exercise control;

(c) subject to sub-section (3), the person holding, or performing the duties of, an office established by an enactment; or

(d) the person holding, or performing the duties of, an appointment declared by the regulations to be an appointment the holder of which is a prescribed authority for the purposes of this Act, being an appointment made by the Governor-General, or by a Minister, otherwise than under an enactment;

“principal officer” means—

(a) in relation to a Department—the person holding, or performing the duties of, the office of Permanent Head of the Department; and

(b) in relation to a prescribed authority—

(i) if the regulations declare an office to be the principal office in respect of the authority—the person holding, or performing the duties of, that office; or

(ii) in any other case—the person who constitutes that authority or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which he is present;

“request” means a request made in accordance with sub-section

13 (1);

“ responsible Minister ” means—

- (a) in relation to a Department—the Minister administering the relevant Department of State;
- (b) in relation to a prescribed authority referred to in paragraph (a) of the definition of “ prescribed authority ”— 5
the Minister administering the enactment by which, or in accordance with the provisions of which, the prescribed authority is established;
- (c) in relation to a prescribed authority referred to in paragraph (c) of that definition—the Minister administering 10
the enactment by which the office is established; or
- (d) in relation to any other prescribed authority—the Minister declared by the regulations to be the responsible Minister in respect of that authority,

or another Minister acting for and on behalf of that Minister; 15

“ Tribunal ” means the Administrative Appeals Tribunal.

(2) An unincorporated body, being a board, council, committee, sub-committee or other body established by, or in accordance with the provisions of, an enactment for the purpose of assisting, or performing functions connected with, a prescribed authority shall not be taken to be 20
a prescribed authority for the purposes of this Act, but shall be deemed to be comprised within that prescribed authority.

(3) A person shall not be taken to be a prescribed authority—

- (a) by virtue of his holding an office of member of the Australian Capital Territory Legislative Assembly, member of the Legislative 25
Assembly of the Northern Territory or Administrator or Minister of the Northern Territory; or
- (b) by virtue of his holding, or performing the duties of—
 - (i) a prescribed office;
 - (ii) an office the duties of which he performs as duties of his 30
employment as an officer of a Department or as an officer of or under a prescribed authority;
 - (iii) an office of member of a body; or
 - (iv) an office established by an enactment for the purposes of 35
a prescribed authority.

(4) For the purposes of this Act, the Defence Force shall be deemed to be comprised in the Department of Defence.

(5) For the purposes of this Act, the Commonwealth Police Force and the Police Force of the Australian Capital Territory shall each be 40
deemed to be a prescribed authority.

4. For the purposes of this Act—

Act not to
apply to
courts and
certain
tribunals

- 5 (a) a court, or the holder of a judicial office or other office pertaining to a court in his capacity as the holder of that office, is not to be taken to be a prescribed authority or to be included in a Department;
- (b) a registry or other office of a court, and the staff of such a registry or other office in their capacity as members of that staff, shall not be taken to be part of a Department;
- 10 (c) a tribunal, authority or body specified in this paragraph, or the holder of an office pertaining to such a tribunal, authority or body in his capacity as the holder of that office, is not to be taken to be a prescribed authority or to be included in a Department, namely:
- 15 (i) the Australian Conciliation and Arbitration Commission;
- (ii) the Industrial Registrar or a Deputy Industrial Registrar;
- (iii) the Flight Crew Officers Industrial Tribunal;
- (iv) the Public Service Arbitrator or a Deputy Public Service Arbitrator; and
- 20 (v) the Coal Industry Tribunal or any other Tribunal, authority or body appointed in accordance with Part V of the *Coal Industry Act* 1946; and
- 25 (d) a registry or other office of, or under the charge of, a tribunal, authority or body referred to in paragraph (c), and the staff of such a registry or other office in their capacity as members of that staff, shall not be taken to be part of a Department.

5. The regulations may provide that—

Exemption
of bodies by
regulations

- (a) a specified body is to be deemed not to be a prescribed authority for the purposes of this Act;
- 30 (b) a body specified in accordance with paragraph (a) is, or is not, to be taken to be included in a specified agency; or
- (c) a specified agency is to be exempt from the operation of this Act in respect of documents relating to specified functions or activities of the agency or in respect of documents of any other prescribed description.

PART II—PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION

Publication of information concerning functions and documents of agencies

- 6. (1) The responsible Minister of an agency shall—
 - (a) cause to be published, as soon as practicable after the commencement of this Part but not later than 12 months after that commencement, in a form approved by the Minister administering this Act—
 - (i) a statement setting out particulars of the organization and functions of the agency, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions and particulars of any arrangement that exists for consultation with, or representations by, bodies and persons outside the Commonwealth administration in relation to the formulation of policy in, or the administration of, the agency; and
 - (ii) a statement of the categories of documents that are maintained in the possession of the agency; and
 - (b) within 12 months after the publication, in respect of the agency, of the statement under sub-paragraph (i) or (ii) of paragraph (a) that is the first statement published under that sub-paragraph, and thereafter at intervals of not more than 12 months, cause to be published statements bringing up to date the information contained in the previous statement or statements published under that sub-paragraph.
- (2) A form approved by the Minister under sub-section (1) shall be such as he considers appropriate for the purpose of assisting members of the public to exercise effectively their rights under Part III.
- (3) The information to be published in accordance with this section may be published by including it in the publication known as the Commonwealth Government Directory.
- (4) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.
- (5) Sub-section (1) applies in relation to an agency that comes into existence after the commencement of this Part as if the references in that sub-section to the commencement of this Part were references to the day on which the agency comes into existence.

Certain documents to be available for inspection and purchase

- 7. (1) This section applies, in respect of an agency, to documents that are provided by the agency for the use of, or are used by, the agency or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the agency, with respect to rights, privileges or benefits, or to obligations, penalties or

other detriments, to or for which persons are or may be entitled or subject, being—

- (a) manuals or other documents containing interpretations, rules, guidelines, practices or precedents; or
- 5 (b) documents containing particulars of such a scheme, not being particulars contained in an enactment as published apart from this Act,

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

- 10 (2) The principal officer of an agency shall—
 - (a) cause copies of all documents to which this section applies in respect of the agency that are in use from time to time to be made available for inspection and for purchase by members of the public;
 - (b) not later than 12 months after the commencement of this Part, cause to be published in the *Gazette* a statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and
 - 15 (c) within 12 months after the publication of the statement under paragraph (b) and thereafter at intervals of not more than 12 months, cause to be published in the *Gazette* statements bringing up to date the information contained in the previous statement or statements.
 - 20

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

- (4) This section does not require a document of the kind referred to in sub-section (1) containing exempt matter to be made available in accordance with sub-section (2), but, if such a document is not so made available, the principal officer of the agency shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be
 - 30
 - 35 dealt with in accordance with sub-section (2).

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

- 40 (6) In this section, “enactment” includes an Ordinance of the Northern Territory or an instrument (including rules, regulations or by-laws) made under such an Ordinance.

Unpublished
documents
not to be
published

8. If a document required to be made available in accordance with section 7, being a document containing a rule, guideline or practice relating to a function of an agency, was not made available, and included in a statement in the *Gazette*, as referred to in that section, before the time (being more than 12 months after the date of commencement of this Part or the day on which the agency came into existence, whichever is the later) at which a person did, or omitted to do, any act or thing relevant to the performance of that function in relation to him (whether or not the time allowed for publication of a statement in respect of the document had expired before that time), that person, if he was not aware of that rule, guideline or practice at that time, shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice. 5 10 15

PART III—ACCESS TO DOCUMENTS

Right of
access

9. Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to—

- (a) a document of an agency, other than an exempt document; or
- (b) an official document of a Minister, other than an exempt document. 20

Part not
to apply
to certain
documents

10. (1) A person is not entitled to obtain access under this Part to—

- (a) a document, or a copy of a document, where a period of 30 years has elapsed since the end of the year ending on 31 December in which the document came into existence; 25
- (b) a document that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge; or
- (c) a document that is available for purchase by the public in accordance with arrangements made by an agency. 30

(2) A person is not entitled to obtain access under this Part to a document that became a document of an agency or an official document of a Minister before the date of commencement of this Part, except where access to the document by him is reasonably necessary to enable a proper understanding of a document of an agency or an official document of a Minister to which he has lawfully had access. 35

Documents
in certain
institutions

11. (1) A document shall not be deemed to be a document of an agency for the purposes of this Act by reason of its being—

- (a) in the collection of war relics of the Commonwealth within the meaning of the *Australian War Memorial Act 1962*; 40

(b) in the collection of library material maintained by the National Library of Australia; or

5 (c) in the custody of the Australian Archives (otherwise than as a document relating to the administration of the Australian Archives),

if the document was placed in that collection, or in that custody, by or on behalf of a person (including a Minister or former Minister) other than an agency.

10 (2) For the purposes of this Act, a document that has been placed in the custody of the Australian Archives, or in a collection referred to in sub-section (1), by an agency shall be deemed to be in the possession of that agency or, if that agency no longer exists, the agency to the functions of which the document is most closely related.

15 (3) Notwithstanding sub-sections (1) and (2), records of a Royal Commission that are in the custody of the Australian Archives shall, for the purposes of this Act, be deemed to be documents of an agency and to be in the possession of the Department administered by the Minister administering the *Royal Commissions Act* 1902.

20 (4) Nothing in this Act affects the provision of access to documents by the Australian Archives in accordance with the *Archives Act* 1978.

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

25 13. (1) A person who wishes to obtain access to a document of an agency or an official document of a Minister may make a request in writing to the agency or Minister for access to the document. Requests for access

30 (2) Subject to sub-section (3), a request shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, as the case may be, to identify the document.

35 (3) Where a request is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject-matter, compliance with the request may be refused if it would interfere unreasonably with the operations of the agency or the performance by the Minister of his functions, as the case may be, having regard to any difficulty that would exist in identifying, locating or collating documents containing relevant information within the filing system of the agency or of the office of the Minister.

(4) It is the duty of an agency, where practicable, to assist a person who wishes to make a request, or has made a request that does not comply with this section or has not been directed to the appropriate agency or Minister, to make a request in a manner that complies with this section or to direct a request to the appropriate agency or Minister. 5

(5) Where a request in writing is made to an agency for access to a document, the agency shall not refuse to comply with the request on the ground—

- (a) that the request does not comply with sub-section (2); or
- (b) that, in the case of a request of the kind referred to in sub-section (3), compliance with the request would interfere unreasonably with the operations of the agency, 10

without first giving the applicant a reasonable opportunity of consultation with the agency with a view to the making of a request in a form that would remove the ground for refusal. 15

Transfer of requests

14. (1) Where—

- (a) a request is made to an agency for access to a document; and
- (b) the document is not in the possession of that agency but is in the possession of another agency or the subject-matter of the document is more closely connected with the functions of another agency than with those of the agency to which the request is made, 20

the agency to which the request is made may transfer the request to the other agency and inform the person making the request accordingly and, if it is necessary to do so in order to enable the other agency to deal with the request, send the document to the other agency. 25

(2) Where a request is transferred to an agency in accordance with this section, it shall be deemed to be a request made to that agency and received at the time at which it was originally received.

(3) In this section “agency” includes a Minister.

Requests involving use of computers, &c.

15. (1) Where— 30

- (a) a request (including a request of the kind described in sub-section 13 (3)) is duly made to an agency;
- (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in documents of the agency; and 35
- (c) the agency could produce a written document containing the information in discrete form by—

- (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or 40
- (ii) the making of a transcript from a sound recording held in the agency,

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

5 (2) An agency is not required to comply with sub-section (1) if compliance would interfere unreasonably with the operations of the agency.

16. (1) Subject to this Act, where—

Access to documents to be given on request

10 (a) a request is duly made by a person to an agency or Minister for access to a document of the agency or an official document of the Minister; and

(b) any charge that, under the regulations, is required to be paid before access is granted has been paid,

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

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

17. If a request to an agency or Minister—

Time within which formal requests to be decided

20 (a) is made in writing and is expressed to be made in pursuance of this Act; and

25 (b) is sent by post to the agency or Minister, or delivered to an officer of the agency or a member of the staff of the Minister, at an address of the agency or of the Minister, as the case may be, that is, under the regulations, an address to which requests made in pursuance of this Act may be sent or delivered in accordance with this section,

the agency or Minister shall take all reasonable steps to enable the applicant to be notified of a decision on the request as soon as practicable but in any case not later than 60 days after the day on which the request is received by or on behalf of the agency or Minister.

30 18. (1) Access to a document may be given to a person in one or more of the following forms:

Forms of access

(a) a reasonable opportunity to inspect the document;

(b) provision by the agency or Minister of a copy of the document;

35 (c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;

40 (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of

shorthand writing or in codified form, provision by the agency or Minister of a written transcript of the words recorded or contained in the document.

(2) Subject to sub-section (3) and to section 20, where the applicant has requested access in a particular form, access shall be given in that form. 5

(3) If the form of access requested by the applicant—

(a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of his functions, as the case may be; 10

(b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or

(c) would involve an infringement of copyright (other than copyright owned by the Commonwealth) subsisting in the document, 15

access in that form may be refused and access given in another form.

Deferment
of access

19. (1) An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned until the happening of a particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices. 20

(2) Where the provision of access to a document is deferred in accordance with sub-section (1), the agency or Minister shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate. 25

Deletion of
exempt
matter

20. (1) Where—

(a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;

(b) it is practicable for the agency or Minister to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and 30

(c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy, 35

the agency or Minister shall grant access to such a copy of the document.

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

(a) the applicant shall be informed that it is such a copy and also informed of the provision of this Act by virtue of which any matter deleted is exempt matter; and 40

(b) section 22 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the agency or Minister to furnish to him a notice in writing in accordance with that section.

5 **21.** A decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him in accordance with arrangements approved by the responsible Minister or the
10 principal officer of the agency.

Decisions to be made by authorized persons

15 **22.** (1) Where, in relation to a request for access to a document of an agency or an official document of a Minister, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document
be deferred, the agency or Minister shall cause the applicant to be given notice in writing of the decision, and the notice shall—

Reasons and other particulars of decisions to be given

- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision;
- 20 (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
- (c) inform the applicant of his right to apply for a review of the decision.

25 (2) An agency or Minister is not required to include in a notice under sub-section (1) any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

PART IV—EXEMPT DOCUMENTS

30 **23.** (1) A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure—

(a) would prejudice—

35 (i) the security of the Commonwealth;

 (ii) the defence of the Commonwealth;

 (iii) the international relations of the Commonwealth; or

 (iv) relations between the Commonwealth and any State; or

(b) would divulge any information or matter communicated in confidence by or on behalf of the Government of another country or of a State to the Government of the Commonwealth or a person receiving the communication on behalf of that Government.

40

Documents affecting national security, defence, international relations and relations with States

(2) Where a Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in sub-section (1), he may sign a certificate to that effect and such a certificate, so long as it remains in force, establishes conclusively that the document is an exempt document referred to in sub-section (1). 5

(3) Where a Minister is satisfied as mentioned in sub-section (2) by reason only of matter contained in a particular part or particular parts of a document, a certificate under that sub-section in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given. 10

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

(5) A power delegated under sub-section (4), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the responsible Minister. 15

(6) A delegation under sub-section (4) does not prevent the exercise of a power by the responsible Minister.

Cabinet
documents

24. (1) A document is an exempt document if it is— 20

- (a) a document that has been submitted to the Cabinet for its consideration or is proposed by a Minister to be so submitted;
- (b) an official record of the Cabinet;
- (c) a document that is a copy of, or of a part of, a document referred to in paragraph (a) or (b); or 25
- (d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.

(2) For the purposes of this Act, a certificate signed by the Secretary to the Department of the Prime Minister and Cabinet certifying that a document is one of a kind referred to in a paragraph of sub-section (1) establishes conclusively that it is an exempt document of that kind. 30

(3) Where a document is a document referred to in paragraph (1) (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under sub-section (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given. 35

(4) Sub-section (1) does not apply to a document by reason of the fact that it was submitted to the Cabinet for its consideration or is proposed by a Minister to be so submitted if it was not brought into existence for the purpose of submission for consideration by the Cabinet. 40

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

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

Executive
Council
documents

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

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

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

25 (4) Sub-section (1) does not apply to a document by reason of the fact that it was submitted to the Executive Council for its consideration, or is proposed by a Minister to be so submitted, if it was not brought into existence for the purpose of submission for consideration by the Executive Council.

30 26. (1) Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act—

Internal
working
documents

- 35 (a) would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Government of the Commonwealth; and
- (b) would be contrary to the public interest.

40 (2) In the case of a document of the kind referred to in sub-section 7 (1), the matter referred to in paragraph (1) (a) of this section does not include matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in sub-section 7 (1).

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

(4) This section does not apply to—

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters; 5
- (b) reports of a prescribed body or organization established within an agency; or
- (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function. 10

(5) Where a decision is made under Part III that an applicant is not entitled to access to a document by reason of the application of this section, the notice under section 22 shall state the ground of public interest on which the decision is based. 15

Documents affecting enforcement or administration of the law

27. A document is an exempt document if its disclosure under this Act would, or would be reasonably likely to—

- (a) prejudice the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular instance; 20
- (b) prejudice the fair trial of a person or the impartial adjudication of a particular case;
- (c) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law; 25
- (d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or 30
- (e) endanger the lives or physical safety of persons engaged in or in connexion with law enforcement.

Documents to which secrecy provisions of enactments apply

28. (1) A document is an exempt document if it is a document to which a prescribed provision of an enactment, being a provision prohibiting or restricting disclosure of the document or of information or other matter contained in the document, applies. 35

(2) In this section, “enactment” includes an Ordinance of the Northern Territory or an instrument (including rules, regulations or by-laws) made under such an Ordinance. 40

29. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that the disclosure would have a substantial adverse effect on the financial, property or staff management interests of the Commonwealth or of an agency or would
5 otherwise have a substantial adverse effect on the efficient and economical conduct of the affairs of an agency.

Certain documents concerning operations of agencies

30. (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).
10 (2) Subject to sub-section (3), the provisions of sub-section (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Documents affecting personal privacy

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

25 31. (1) A document is an exempt document if its disclosure under this Act would be reasonably likely to have a substantial adverse effect on the interests of the Commonwealth or of an agency in or in relation to pending or likely legal proceedings.

Documents affecting legal proceedings or subject to legal professional privilege

(2) A document is an exempt document if it is of such a nature that
30 it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(3) A document of the kind referred to in sub-section 7 (1) is not an exempt document by virtue of sub-section (2) of this section by reason
35 only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in sub-section 7 (1).

32. (1) A document is an exempt document if its disclosure under this Act would disclose information concerning a person in respect of his business or professional affairs or concerning a business, commercial or
40 financial undertaking, and—

Documents relating to trade secrets, &c.

(a) the information relates to trade secrets or relates to other matter the disclosure of which under this Act would be reasonably likely to expose the person or undertaking unreasonably to disadvantage; or

- (b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of the Commonwealth or of an agency to obtain similar information in the future.

(2) The provisions of sub-section (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of information concerning that person in respect of his business or professional affairs or of information concerning a business, commercial or financial undertaking of which that person, or a person on whose behalf that person made the request, is the proprietor. 5 10

Documents affecting national economy

33. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it would be reasonably likely to have a substantial adverse effect on the national economy.

Documents containing material obtained in confidence

34. A document is an exempt document if its disclosure under this Act would constitute a breach of confidence. 15

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

35. A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown—

- (a) be in contempt of court;
- (b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or
- (c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory. 20 25

Privileged documents

36. (1) Where the Attorney-General is satisfied that the disclosure under this Act of a particular document, or of any document included in a particular class of documents, would be contrary to the public interest on a particular ground, being a ground that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the contents of the document, or of a document included in that class, as the case may be, should not be disclosed, he may sign a certificate that he is so satisfied, specifying in the certificate the ground concerned, and, while such a certificate is in force, but subject to Part V, the document, or every document included in that class, as the case may be, is an exempt document. 30 35

(2) A certificate under sub-section (1) in relation to a particular document shall be deemed to refer also to every document that is substantially identical to that document.

PART V—REVIEW OF DECISIONS

37. (1) Application may be made to the Administrative Appeals Tribunal for review of a decision refusing to grant access to a document in accordance with a request or deferring the provision of access to a document.

Applications
to Adminis-
trative
Appeals
Tribunal

(2) Subject to sub-section (3), in proceedings under this Part, the Tribunal has power, in addition to any other power, to review any decision that has been made by an agency or Minister in respect of the request and any decision of the Attorney-General to give a certificate under section 36 that is applicable to the document and to decide any matter in relation to the request that, under this Act, could have been or could be decided by an agency or Minister, and any decision of the Tribunal under this section has the same effect as a decision of the agency or Minister.

(3) Where, in proceedings under this section, it is established that a document is an exempt document, the Tribunal does not have power to decide that access to the document, so far as it contains exempt matter, is to be granted.

(4) The powers of the Tribunal do not extend to reviewing a decision of an agency or Minister, for the purposes of sub-section 26 (1), that the disclosure of a document would be contrary to the public interest.

(5) Where, under a provision of Part IV, it is provided that a certificate of a specified kind establishes conclusively, for the purposes of this Act, that a document is an exempt document and such a certificate has been given in respect of a document, the powers of the Tribunal do not extend to reviewing the decision to give the certificate or the existence of proper grounds for the giving of the certificate.

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

38. (1) Where a decision has been made, in relation to a request to an agency, otherwise than by the responsible Minister or principal officer of the agency (not being a decision on a review under this section), the applicant may, within 28 days after the day on which notice of the decision was given to the applicant in accordance with section 22, apply to the principal officer of the agency for a review of the decision in accordance with this section.

Internal
review

(2) A person is not entitled to apply to the Tribunal for a review of a decision in relation to which sub-section (1) applies unless—

- (a) he has made an application under that sub-section in relation to the decision; and
- (b) he has been informed of the result of the review or a period of 14 days has elapsed since the day on which he made that application.

(3) Where an application for a review of a decision is made to the principal officer in accordance with sub-section (1), he shall forthwith arrange for himself or a person (not being the person who made the decision) authorized by him to conduct such reviews to review the decision and to make a fresh decision on the original application. 5

(4) Where—

(a) an application for a review of a decision has been made in accordance with sub-section (1); and

(b) the applicant has not been informed of the result of the review within 14 days after the day on which he made that application, 10
an application to the Tribunal for a review of the decision may be treated by the Tribunal as having been made within the time allowed under the *Administrative Appeals Tribunal Act 1975* if it appears to the Tribunal that there was no unreasonable delay in making the application to the Tribunal.

Application
to Tribunal
where
decision
delayed

39. (1) Subject to this section, where— 15

(a) a request has been made to an agency or Minister in accordance with section 17;

(b) a period of 60 days has elapsed since the day on which the request was received by or on behalf of the agency or Minister; and

(c) notice of a decision on the request has not been received by the 20
applicant,

the principal officer of the agency or the Minister shall, for the purpose of enabling an application to be made to the Tribunal under section 37, be deemed to have made, on the last day of that period, a decision refusing to grant access to the document. 25

(2) Where a complaint is made to the Ombudsman under the *Ombudsman Act 1976* concerning failure to make and notify to the applicant a decision on a request (whether the complaint was made before or after the expiration of the period referred to in sub-section (1)), an application to the Tribunal under section 37 of this Act by virtue of this section shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 12 of the *Ombudsman Act 1976*. 30

(3) Where such a complaint is made before the expiration of the period referred to in sub-section (1), the Ombudsman, after having 35
investigated the complaint, may, if he is of the opinion that there has been unreasonable delay by an agency in connexion with the request, grant to the applicant a certificate certifying that he is of that opinion, and, if the Ombudsman does so, the principal officer of the agency or the Minister, as the case requires, shall, for the purposes of enabling applica- 40
tion to be made to the Tribunal under section 37, be deemed to have made, on the date on which the certificate is granted, a decision refusing to grant access to the document.

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

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

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

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

(a) a decision given by a person on behalf of an agency shall be deemed to have been given by the agency; and

(b) in the case of proceedings by virtue of section 39, the agency or Minister to which or to whom the request was made shall be a party to the proceedings.

41. In proceedings under this Part, the agency or Minister to which or to whom the request was made has the onus of establishing that a decision given in respect of the request was justified or that the Tribunal should give a decision adverse to the applicant.

42. Where, in relation to a request, the applicant has been given a notice in writing complying with section 22, section 28 of the *Administrative Appeals Tribunal Act 1975* does not apply to the decision on that request.

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

44. (1) Where there are proceedings before the Tribunal under this Act in relation to a document that is claimed to be an exempt document, section 37 of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to the document but if the Tribunal is not satisfied, by evidence on affidavit or otherwise—

(a) that the document is an exempt document; and

Parties

Onus

Application of section 28 of Administrative Appeals Tribunal Act

Orders under section 35 of Administrative Appeals Tribunal Act

Production of exempt documents

- (b) in the case of a document that is an exempt document by virtue of a certificate of the Attorney-General under section 36, that the giving of the certificate was justified,

it may require the document to be produced for inspection by members of the Tribunal only and if, upon the inspection, the Tribunal is satisfied that the document is an exempt document and, in the case of a document referred to in paragraph (b), that the giving of the certificate was justified, the Tribunal shall return the document to the person by whom it was produced without permitting any person other than a member of the Tribunal as constituted for the purposes of the proceeding, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person. 5 10

(2) The Tribunal may require the production, for inspection by members of the Tribunal only, of an exempt document for the purposes of determining whether it is practicable for an agency or a Minister to grant access to a copy of the document with such deletions as to make the copy not an exempt document and, where an exempt document is produced by reason of such a requirement, the Tribunal shall, after inspection of the document by the members of the Tribunal as constituted for the purposes of the proceeding, return the document to the person by whom it was produced without permitting any person other than such a member of the Tribunal, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person. 15 20 25

(3) Notwithstanding sub-sections (1) and (2) but subject to sub-section (4), the Tribunal is not empowered, in any proceedings, to require the production of a document in respect of which there is in force a certificate under section 23, 24 or 25.

(4) Where a certificate of a kind referred to in sub-section (3) identifies a part or parts of the document concerned in the manner provided in sub-section 23 (3), 24 (3) or 25 (3), sub-section (3) does not prevent the Tribunal from requiring the production, in proceedings before the Tribunal under this Act in relation to the document, of a copy of so much of the document as is not included in the part or parts so identified. 30 35

(5) Sub-sections (1) and (2) apply in relation to a document in the possession of a Minister that is claimed by the Minister not to be an official document of the Minister as if references in those sub-sections to an exempt document were references to a document in the possession of a Minister that is not an official document of the Minister. 40

(6) Sub-section (1) or (2) does not operate so as to prevent the Tribunal from causing a document produced in accordance with that sub-section to be sent to the Federal Court of Australia in accordance with section 46 of the *Administrative Appeals Tribunal Act 1975*, but, where such a document is so sent to the Court, the Court shall do all things necessary to 45

ensure that the contents of the document are not disclosed (otherwise than in accordance with this Act) to any person other than a member of the Court as constituted for the purpose of the proceeding before the Court or a member of the staff of the Court in the course of the performance of his
5 duties as a member of that staff.

45. In proceedings before the Tribunal under this Part, evidence of a certificate under section 23, 24 or 25, including evidence of the identity or nature of the document to which the certificate relates, may be given by affidavit or otherwise and such evidence is admissible without production
10 of the certificate or of the document to which it relates.

Evidence of certificates

PART VI—MISCELLANEOUS

46. (1) Where access has been given to a document and—
 (a) the access was required by this Act to be given; or
 (b) the access was authorized by a Minister, or by an officer having
15 authority, in accordance with section 21 or 38, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

Protection against actions for defamation or breach of confidence

no action for defamation or breach of confidence lies, by reason of the authorizing or giving of the access, against the Commonwealth or an agency
20 or against the Minister or officer who authorized the access or any person who gave the access.

(2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authoriz-
25 ation or approval of the publication of the document or of its contents by the person to whom the access was given.

47. Where access has been given to a document and—
 (a) the access was required by this Act to be given; or
 (b) the access was authorized by a Minister, or by an officer having
30 authority, in accordance with section 21 or 38, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

Protection in respect of offences

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

48. (1) The Minister administering this Act shall, as soon as practicable after the end of each year ending on 31 December, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before each House of the Parliament.

Reports to Parliament

(2) Each agency shall, in relation to the agency, and each Minister shall, in relation to his official documents, furnish to the Minister administering this Act such information as he requires for the purposes of the preparation of reports under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section. 5

Regulations

49. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, making provision for or in relation to— 10

- (a) the making of charges of amounts, or at rates, fixed by or in accordance with the regulations for access to documents (including the provision of copies or transcripts) in accordance with this Act, including requiring deposits on account of such charges; and 15
- (b) the officers who may give decisions on behalf of an agency.

(2) Where, as a result of a request, access is given to an exempt document, regulations under this Act relating to charges apply as if the access had been given in accordance with this Act.