# Freedom of Information Act 1982

**No. 3, 1982**

## Compilation No. 85

| | |
|---|---|
| **Compilation date:** | 22 March 2017 |
| **Includes amendments up to:** | Act No. 13, 2017 |
| **Registered:** | 22 March 2017 |

Prepared by the Office of Parliamentary Counsel, Canberra

Authorised Version C2017C00102 registered 22/03/2017

# About this compilation

### This compilation

This is a compilation of the *Freedom of Information Act 1982* that shows the text of the law as amended and in force on 22 March 2017 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

# Contents


**Part I—Preliminary** 1

1 Short title ... 1
2 Commencement ... 1
3 Objects—general ... 1
3A Objects—information or documents otherwise accessible ... 2
4 Interpretation ... 2
4A Certain legislation relating to Australian Capital Territory not to be enactment ... 16
4B Extension to Norfolk Island ... 17
5 Act to apply to courts in respect of administrative matters ... 17
6 Act to apply to certain tribunals in respect of administrative matters ... 19
6A Official Secretary to the Governor-General ... 20
6C Requirement for Commonwealth contracts ... 20
7 Exemption of certain persons and bodies ... 21

**Part II—Information publication scheme** 24

**Division 1—Guide to this Part** 24

7A Information publication scheme—guide ... 24

**Division 2—Information to be published** 26

8 Information to be published—what information? ... 26
8A Information to be published—what is *operational information*? ... 28
8B Information to be published—accuracy etc. ... 28
8C Information to be published—restrictions ... 28
8D Information to be published—how (and to whom) information is to be published ... 29
8E Information to be published—Information Commissioner to assist agencies ... 30

**Division 3—Review of information publication scheme** 31

8F Review of scheme—Information Commissioner functions ... 31
9 Review of scheme—by agencies ... 31

**Division 4—Guidelines** 32

9A Functions and powers under this Part ... 32

**Division 5—Miscellaneous** 33

10 Unpublished operational information ... 33





Authorised Version C2017C00102 registered 22/03/2017

10A Who performs functions etc. given to agencies ..... 33
10B Transitional—Norfolk Island authorities ..... 34

**Part III—Access to documents** 35

11 Right of access ..... 35
11A Access to documents on request ..... 35
11B Public interest exemptions—factors ..... 37
11C Publication of information in accessed documents ..... 38
12 Part not to apply to certain documents ..... 39
13 Documents in certain institutions ..... 40
15 Requests for access ..... 42
15AA Extension of time with agreement ..... 44
15AB Extension of time for complex or voluminous requests ..... 45
15AC Decision not made on request within time—deemed refusal ..... 45
15A Request for access to personnel records ..... 47
16 Transfer of requests ..... 48
16A Requests transferred from the ACT ..... 49
17 Requests involving use of computers etc. ..... 50
20 Forms of access ..... 50
21 Deferment of access ..... 52
22 Access to edited copies with exempt or irrelevant matter deleted ..... 52
23 Decisions to be made by authorised persons ..... 54
24 Power to refuse request—diversion of resources etc. ..... 54
24AA When does a *practical refusal reason* exist? ..... 55
24AB What is a *request consultation process*? ..... 56
24A Requests may be refused if documents cannot be found, do not exist or have not been received ..... 58
25 Information as to existence of certain documents ..... 58
26 Reasons and other particulars of decisions to be given ..... 60
26A Consultation—documents affecting Commonwealth-State relations etc ..... 61
27 Consultation—business documents ..... 62
27A Consultation—documents affecting personal privacy ..... 65
29 Charges ..... 67
31 Decision to impose charge—extended period for processing request ..... 70



Authorised Version C2017C00102 registered 22/03/2017

**Part IV—Exempt documents** 72

**Division 1—Preliminary** 72

31A Access to exempt and conditionally exempt documents ..... 72
31B Exempt documents for the purposes of this Part ..... 73
32 Interpretation ..... 73

**Division 2—Exemptions** 75

33 Documents affecting national security, defence or international relations ..... 75
34 Cabinet documents ..... 75
37 Documents affecting enforcement of law and protection of public safety ..... 76
38 Documents to which secrecy provisions of enactments apply ..... 77
42 Documents subject to legal professional privilege ..... 78
45 Documents containing material obtained in confidence ..... 79
45A Parliamentary Budget Office documents ..... 79
46 Documents disclosure of which would be contempt of Parliament or contempt of court ..... 81
47 Documents disclosing trade secrets or commercially valuable information ..... 82
47A Electoral rolls and related documents ..... 83

**Division 3—Public interest conditional exemptions** 85

47B Public interest conditional exemptions—Commonwealth-State relations etc. ..... 85
47C Public interest conditional exemptions—deliberative processes ..... 85
47D Public interest conditional exemptions—financial or property interests of the Commonwealth ..... 86
47E Public interest conditional exemptions—certain operations of agencies ..... 87
47F Public interest conditional exemptions—personal privacy ..... 87
47G Public interest conditional exemptions—business ..... 89
47H Public interest conditional exemptions—research ..... 90
47J Public interest conditional exemptions—the economy ..... 91

**Part V—Amendment and annotation of personal records** 93

48 Application for amendment or annotation of personal records ..... 93
49 Requirements of an application for amendment ..... 93
50 Amendment of records ..... 94
51 Annotations of records etc. following unsuccessful applications for amendments of records ..... 95



Authorised Version C2017C00102 registered 22/03/2017

51A Requirements of an application for annotation ..... 95
51B Annotation of records ..... 96
51C Transfer of requests ..... 96
51D Notification etc. of a decision under this Part ..... 99
51DA Decision not made on request for amendment or annotation within time—deemed refusal ..... 99
51E Comments on annotations ..... 101

**Part VI—Internal review of decisions** 102
52 Internal review of decisions—guide ..... 102
53 Interpretation ..... 102
53A What is an *access refusal decision*? ..... 102
53B What is an *access grant decision*? ..... 103
53C Internal review—who is an *affected third party*? ..... 105
54 Internal review—access refusal decision ..... 106
54A Internal review—access grant decision ..... 106
54B Internal review—application for review ..... 107
54C Internal review—decision on internal review ..... 107
54D Internal review—deemed affirmation of original decision ..... 108
54E Internal review—decisions to which this Part does not apply ..... 109

**Part VII—Review by Information Commissioner** 110
**Division 1—Guide to this Part** 110
54F Review by the Information Commissioner—guide ..... 110
**Division 2—Key concepts** 112
54G Key concepts—what is an *IC review*? ..... 112
54H Key concepts—what is an *IC review application*? ..... 112
54J Key concepts—who is an *IC review applicant*? ..... 112
54K Key concepts—what is an *IC reviewable decision*? ..... 112
**Division 3—IC reviewable decisions** 113
54L IC reviewable decisions—access refusal decisions ..... 113
54M IC reviewable decisions—access grant decisions ..... 113
**Division 4—IC review applications** 115
**Subdivision A—Making an application** 115
54N IC review applications—application ..... 115
54P IC review applications—requirement to notify affected third parties ..... 116
54Q IC review applications—circumstances in which not giving notice is appropriate ..... 116



Authorised Version C2017C00102 registered 22/03/2017

54R IC review applications—withdrawal ..... 117
**Subdivision B—Time limits** 117
54S IC review applications—time limits ..... 117
54T IC review applications—extension of time ..... 118
**Division 5—Decision to review** 120
54U Decision to review—interpretation ..... 120
54V Decision to review—preliminary inquiries ..... 120
54W Decision to review—discretion not to review ..... 120
54X Decision to review—notice requirement if discretion not to review exercised ..... 121
54Y Decision to review—actual decisions made after IC review has commenced ..... 122
**Division 6—Procedure in IC review** 123
54Z Procedure in IC review—general notice requirement ..... 123
55 Procedure in IC review—general ..... 123
55A Procedure in IC review—parties to proceeding ..... 125
55B Procedure in IC review—application for hearing ..... 125
55C Procedure in IC review—representation ..... 126
55D Procedure in IC review—onus ..... 126
55DA Decision-maker must assist Information Commissioner ..... 126
55E Procedure in IC review—inadequate reasons from decision maker ..... 127
55F Procedure in IC review—review parties reach agreement ..... 127
55G Procedure in IC review—revocation or variation of access refusal decision ..... 128
55H Procedure in IC review—reference of questions of law to Federal Court of Australia ..... 129
55J Procedure in IC review—sending of documents to, and disclosure of documents by, the Federal Court of Australia ..... 130
**Division 7—Decision on IC review** 131
55K Decision on IC review—decision of Information Commissioner ..... 131
55L Decision on IC review—no power to give access to exempt documents ..... 132
55M Decision on IC review—limitation on amending records ..... 132
55N Decision on IC review—obligation to comply with decision ..... 133
55P Decision on IC review—enforcement of decision against agency ..... 133
55Q Decision on IC review—correction of errors ..... 134



Authorised Version C2017C00102 registered 22/03/2017

**Division 8—Information gathering powers** 135
55R Information gathering powers—obliging production of information and documents ..... 135
55S Information gathering powers—dealings with documents ..... 136
55T Information gathering powers—production of exempt documents generally ..... 137
55U Information gathering powers—production of national security, Cabinet or Parliamentary Budget Office documents ..... 138
55V Information gathering powers—further searches for a document ..... 139
55W Information gathering powers—obliging persons to appear ..... 139
55X Information gathering powers—administration of oath or affirmation ..... 140
55Y Information gathering powers—no loss of legal professional privilege ..... 140
55Z Information gathering powers—protection from liability ..... 141
**Division 9—Evidence by Inspector-General of Intelligence and Security** 142
55ZA Evidence by Inspector-General of Intelligence and Security—scope ..... 142
55ZB Evidence by Inspector-General of Intelligence and Security—request to give evidence ..... 142
55ZC Evidence by Inspector-General of Intelligence and Security—compliance with request ..... 143
55ZD Evidence by Inspector-General of Intelligence and Security—procedural matters ..... 144
**Division 10—Appeals** 146
56 Appeals—appeals to Federal Court of Australia on questions of law ..... 146
56A Appeals—Federal Court of Australia may make findings of fact ..... 147
**Part VIIA—Review by the Tribunal** 149
**Division 1—Guide to this Part** 149
57 Review by the Tribunal—guide ..... 149
**Division 2—Tribunal reviewable decisions** 150
57A Tribunal reviewable decisions—which decisions are reviewable? ..... 150
**Division 3—Powers of Tribunal** 151
58 Powers of Tribunal ..... 151



Authorised Version C2017C00102 registered 22/03/2017

58A Powers of Tribunal—requiring further searches ..... 151
58AA Powers of Tribunal—limitation on amending records ..... 151
**Division 4—Procedure in Tribunal** 153
58B Constitution of Tribunal for proceedings about certain exempt documents ..... 153
58D Modification of section 42 of the *Administrative Appeals Tribunal Act 1975* ..... 153
58E Production to the Tribunal of certain exempt documents ..... 154
60 Procedure in Tribunal—parties ..... 155
60AA Procedure in Tribunal—requirement to notify affected third parties ..... 155
60AB Procedure in Tribunal—circumstances in which not giving notice is appropriate ..... 156
60A Inspector-General of Intelligence and Security must be requested to give evidence in certain proceedings ..... 157
61 Onus ..... 160
61A Modification of the *Administrative Appeals Tribunal Act 1975* ..... 161
62 Application of section 28 of Administrative Appeals Tribunal Act etc. ..... 162
**Division 5—Protection of information in Tribunal** 164
63 Tribunal to ensure non-disclosure of certain matters ..... 164
64 Production of exempt documents ..... 165
**Division 6—Recommendations as to costs** 168
66 Tribunal may make recommendation that costs be available in certain circumstances ..... 168
**Division 7—Automatic stay of certain decisions** 169
67 Automatic stay of certain decisions on appeal ..... 169
**Part VIIB—Investigations and complaints** 171
**Division 1—Guide to this Part** 171
68 Investigations and complaints—guide ..... 171
**Division 2—Information Commissioner investigations** 173
**Subdivision A—Power to investigate** 173
69 Information Commissioner investigations—power to investigate ..... 173
**Subdivision B—Making complaints** 173
70 Information Commissioner investigations—making complaints ..... 173



Authorised Version C2017C00102 registered 22/03/2017

**Subdivision C—Decision to investigate** 174
71 Information Commissioner investigations—interpretation ..... 174
72 Information Commissioner investigations—preliminary inquiries ..... 174
73 Information Commissioner investigations—discretion not to investigate ..... 174
74 Information Commissioner investigations—transfer to Ombudsman ..... 175
75 Information Commissioner investigations—notice requirements ..... 176
**Subdivision D—Investigation procedure** 177
76 Information Commissioner investigations—conduct of investigation ..... 177
77 Information Commissioner investigations—general power to enter premises ..... 177
78 Information Commissioner investigations—places for which approval required before entry ..... 179
79 Information Commissioner investigations—obliging production of information and documents ..... 180
80 Information Commissioner investigations—dealings with documents ..... 181
81 Information Commissioner investigations—exempt documents ..... 182
82 Information Commissioner investigations—obliging persons to appear ..... 182
83 Information Commissioner investigations—administration of oath or affirmation ..... 183
84 Information Commissioner investigations—no loss of legal professional privilege ..... 183
85 Information Commissioner investigations—protection from liability ..... 183
**Subdivision E—Outcome of investigation** 184
86 Information Commissioner investigations—notice on completion ..... 184
87 Information Commissioner investigations—what are the *investigation results*? ..... 185
88 Information Commissioner investigations—what are the *investigation recommendations*? ..... 185
89 Information Commissioner investigations—failure to implement investigation recommendation ..... 185
89A Information Commissioner investigations—failure to take action in response to implementation notice ..... 186



Authorised Version C2017C00102 registered 22/03/2017

89B Information Commissioner investigations—requirements for report ..... 187
89C Information Commissioner investigations—ensuring non-disclosure of certain matters ..... 188
89D Information Commissioner investigations—limitation on amending records ..... 188
89E Information Commissioner investigations—protection from civil action ..... 189

**Division 3—Complaints to Ombudsman** 190

89F Complaints to Ombudsman—powers not affected ..... 190
89G Complaints to Ombudsman—report must not contain certain information ..... 190
89H Complaints to Ombudsman—certain rights not affected by certificates ..... 190
89J Complaints to Ombudsman—limitation on amending records in reports under the *Ombudsman Act 1976* ..... 191

**Part VIII—Miscellaneous** 192

**Division 1—Vexatious applicants** 192

89K Vexatious applicants—declaration ..... 192
89L Vexatious applicants—grounds for declaration ..... 192
89M Vexatious applicants—effect of declaration ..... 193
89N Vexatious applicants—review by Tribunal ..... 194

**Division 2—General** 195

89P Staff to hold appropriate security clearance ..... 195
90 Protection against civil liability—general ..... 195
91 Protection against civil liability—particular situations ..... 196
92 Protection against criminal liability ..... 198
93 Agencies to provide information to Information Commissioner ..... 198
93A Guidelines ..... 199
93B Review of operation of Act ..... 199
94 Regulations ..... 200



Authorised Version C2017C00102 registered 22/03/2017

**Schedule 1—Courts and tribunals exempt in respect of non-administrative matters** 202

**Schedule 2** 203

**Part I—Exempt agencies** 203

**Division 1** 203

**Division 2** 204

**Part II—Agencies exempt in respect of particular documents** 205

**Division 1** 205

**Division 2** 208

**Part III—Legislation relating to agencies exempt in respect of documents in relation to their commercial activities** 209

**Schedule 3—Secrecy provisions** 210

**Schedule 4—Research institutions** 212

**Endnotes** 213

**Endnote 1—About the endnotes** 213

**Endnote 2—Abbreviation key** 215

**Endnote 3—Legislation history** 216

**Endnote 4—Amendment history** 232



Authorised Version C2017C00102 registered 22/03/2017

# 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

# Part I—Preliminary

## 1 Short title

This Act may be cited as the *Freedom of Information Act 1982*.

## 2 Commencement

The several Parts of this Act shall come into operation on such respective dates as are fixed by Proclamation.

## 3 Objects—general

(1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth, by:

(a) requiring agencies to publish the information; and

(b) providing for a right of access to documents.

(2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:

(a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;

(b) increasing scrutiny, discussion, comment and review of the Government's activities.

(3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.

(4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to



Authorised Version C2017C00102 registered 22/03/2017

facilitate and promote public access to information, promptly and at the lowest reasonable cost.

## 3A Objects—information or documents otherwise accessible

*Scope*

(1) This section applies if a Minister, or an officer of an agency, has the power to publish, or give access to, information or a document (including an exempt document) apart from under this Act.

*Publication and access powers not limited*

(2) The Parliament does not intend, by this Act, to limit that power, or to prevent or discourage the exercise of that power:

(a) in the case of the power to publish the information or document—despite any restriction on the publication of the information or document under this Act; and

(b) in the case of the power to give access to the information or document—whether or not access to the information or document has been requested under section 15.

## 4 Interpretation

(1) In this Act, unless the contrary intention appears:

***access grant decision*** has the meaning given by section 53B.

***access refusal decision*** has the meaning given by section 53A.

***ACT enactment*** means an enactment as defined by section 3 of the *Australian Capital Territory (Self-Government) Act 1988*.

***action***, if the action is taken by a person or agency, has the same meaning as in the *Ombudsman Act 1976*.

Note: See subsections 3(2) to (7) of the *Ombudsman Act 1976*.

***affected third party*** has the meaning given by section 53C.



Authorised Version C2017C00102 registered 22/03/2017

***agency*** means a Department, a prescribed authority or a Norfolk Island authority.

***applicant*** means a person who has made a request.

***Australia***, when used in a geographical sense, includes Norfolk Island.

***Australian Geospatial-Intelligence Organisation*** means that part of the Department of Defence known as the Australian Geospatial-Intelligence Organisation.

***Australian Signals Directorate*** means that part of the Department of Defence known as the Australian Signals Directorate.

***authorised person*** has the meaning given by section 77.

***Cabinet*** includes a committee of the Cabinet.

***Cabinet notebook*** means a notebook or other like record that contains notes of discussions or deliberations taking place in a meeting of the Cabinet, if the notes were made in the course of those discussions or deliberations by, or under the authority of, the Secretary to the Cabinet.

***Chief Executive Medicare*** has the same meaning as in the *Human Services (Medicare) Act 1973*.

***Commission of inquiry*** means:

(a) the Commission of inquiry within the meaning of the *Quarantine Act 1908* (as in force immediately before its repeal); or

(b) a Commission of inquiry within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

***Commonwealth contract*** means a contract to which all of the following apply:

(a) the Commonwealth or an agency is, or was, a party to the contract;

(b) under the contract, services are, or were, to be provided:



Authorised Version C2017C00102 registered 22/03/2017

(i) by another party; and
(ii) for or on behalf of an agency; and
(iii) to a person who is not the Commonwealth or an agency;

(c) the services are in connection with the performance of the functions, or the exercise of the powers, of an agency.

***complainant*** has the meaning given by subsection 70(1).

***conditionally exempt***: a document is ***conditionally exempt*** if Division 3 of Part IV (public interest conditional exemptions) applies to the document.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

***contracted service provider***, for a Commonwealth contract, means an entity that is, or was:

(a) a party to the Commonwealth contract; and
(b) responsible for the provision of services under the Commonwealth contract.

***defence intelligence document*** has the meaning given by paragraph 7(2C)(a).

***Defence Intelligence Organisation*** means that part of the Department of Defence known as the Defence Intelligence Organisation.

***Department*** means a Department of the Australian Public Service that corresponds to a Department of State of the Commonwealth.

***document*** includes:

(a) any of, or any part of any of, the following things:
(i) any paper or other material on which there is writing;
(ii) a map, plan, drawing or photograph;
(iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;



Authorised Version C2017C00102 registered 22/03/2017

(iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

(v) any article on which information has been stored or recorded, either mechanically or electronically;

(vi) any other record of information; or

(b) any copy, reproduction or duplicate of such a thing; or

(c) any part of such a copy, reproduction or duplicate;

but does not include:

(d) material maintained for reference purposes that is otherwise publicly available; or

(e) Cabinet notebooks.

***document of an agency***: a document is ***a document of an agency*** if:

(a) the document is in the possession of the agency, whether created in the agency or received in the agency; or

(b) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document.

***edited copy*** has the meaning given by section 22 (access to edited copies with exempt or irrelevant matter deleted).

***electronic communication*** has the same meaning as in the *Electronic Transactions Act 1999*.

***enactment*** means, subject to section 4A:

(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 and includes an enactment as amended by another enactment.

***engage in conduct*** means:

(a) do an act; or

(b) omit to do an act.

***exempt content-service document*** means:



Authorised Version C2017C00102 registered 22/03/2017

(a) a document containing content, or a record of content (within the meaning of Schedule 7 to the *Broadcasting Services Act 1992*), that:

(i) has been delivered by, or accessed using, a content service (within the meaning of that Schedule); and

(ii) was offensive content-service content when it was delivered by, or accessed using, that content service; or

(b) a document that sets out how to access, or that is likely to facilitate access to, offensive content-service content (for example, by setting out the name of a website, an IP address, a URL or a password).

***exempt document*** means:

(a) a document that is exempt for the purposes of Part IV (exempt documents) (see section 31B); or

(b) a document in respect of which, by virtue of section 7, an agency, person or body is exempt from the operation of this Act; or

(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 internet-content document*** means:

(a) a document containing information (within the meaning of Schedule 5 to the *Broadcasting Services Act 1992*) that:

(i) has been copied from the internet; and

(ii) was offensive internet content when it was accessible on the internet; or

(b) a document that sets out how to access, or that is likely to facilitate access to, offensive internet content (for example: by setting out the name of a website, an IP address, a URL, a password, or the name of a newsgroup).

***exempt matter*** means matter the inclusion of which in a document causes the document to be an exempt document.

***Human Services Department*** means the Department administered by the Human Services Minister.



Authorised Version C2017C00102 registered 22/03/2017

***Human Services Minister*** means the Minister administering the *Human Services (Medicare) Act 1973*.

***IC review*** has the meaning given by section 54G.

***IC reviewable decision*** has the meaning given by section 54K.

***IC review applicant*** has the meaning given by section 54J.

***IC review application*** has the meaning given by section 54H.

***implementation notice*** has the meaning given by section 89.

***Information Commissioner*** has the meaning given by the *Australian Information Commissioner Act 2010*.

***intelligence agency document*** has the meaning given by paragraph 7(2A)(a).

***internal review*** has the meaning given by sections 54 and 54A.

***internal review applicant*** has the meaning given by section 54B.

***investigation recommendations*** has the meaning given by section 88.

***investigation results*** has the meaning given by section 87.

***NBN Co*** means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

***Norfolk Island authority*** means:

(a) a public sector agency (within the meaning of the *Public Sector Management Act 2000* of Norfolk Island); or

(b) a body (whether incorporated or not) established for a public purpose by or under a Norfolk Island enactment, other than a body established or registered under:

(i) the *Companies Act 1985* of Norfolk Island; or

(ii) the *Associations Incorporation Act 2005* of Norfolk Island; or



Authorised Version C2017C00102 registered 22/03/2017

(d) a person holding or performing the duties of:
  (i) an office established by or under a Norfolk Island enactment; or
  (ii) an appointment made under a Norfolk Island enactment.

***Norfolk Island enactment*** means:
(a) an enactment (within the meaning of the *Norfolk Island Act 1979*); or
(b) an instrument (including rules, regulations or by-laws) made under such an enactment;

and includes a Norfolk Island enactment as amended by another Norfolk Island enactment.

***offensive content-service content*** means content (within the meaning of Schedule 7 to the *Broadcasting Services Act 1992*) that is:
(a) delivered by, or accessed using, a content service (within the meaning of that Schedule); and
(b) either:
  (i) prohibited content (within the meaning of that Schedule); or
  (ii) potential prohibited content (within the meaning of that Schedule).

***offensive internet content*** means internet content (within the meaning of Schedule 5 to the *Broadcasting Services Act 1992*) that is:
(a) prohibited content (within the meaning of Schedule 5 to that Act as in force before the commencement of Schedule 7 to that Act); or
(b) potential prohibited content (within the meaning of Schedule 5 to that Act as in force before the commencement of Schedule 7 to that Act).

***officer***, in relation to an agency, includes a member of the agency or a member of the staff of the agency.



Authorised Version C2017C00102 registered 22/03/2017

***official document of a Minister*** or ***official document of the Minister*** means a document that is in the possession of a Minister, or that is in the possession of the Minister concerned, as the case requires, in his or her capacity as a Minister, being a document 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 or her possession if he or she is entitled to access to the document and the document is not a document of an agency.

***Ombudsman*** means the Commonwealth Ombudsman.

***operational information*** has the meaning given by section 8A.

***Ordinance***, in relation to the Australian Capital 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 (other than a law that is, or provisions that are an ACT enactment).

***Parliamentary Budget Office*** has the same meaning as in the *Parliamentary Service Act 1999*.

***Parliamentary Budget Officer*** has the same meaning as in the *Parliamentary Service Act 1999*.

***personal information*** has the same meaning as in the *Privacy Act 1988*.

***practical refusal reason*** has the meaning given by section 24AA.

***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 or an Order-in-Council, other than:

(i) an incorporated company or association; or

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

(iii) the Australian Capital Territory House of Assembly; or

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



Authorised Version C2017C00102 registered 22/03/2017

(vi) a Royal Commission; or

(vii) a Commission of inquiry; or

(aa) NBN Co; or

(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; or

(c) subject to subsection (3), the person holding, or performing the duties of, an office established by an enactment or an Order-in-Council; 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 or an Order-in-Council.

***principal officer*** means:

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

(b) in relation to a prescribed authority:

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

(ii) if the authority is an Agency (within the meaning of the *Public Service Act 1999*) other than a Department and subparagraph (i) does not apply—the Agency Head (within the meaning of the *Public Service Act 1999*) of the authority;

(iii) if neither subparagraph (i) nor (ii) applies—the person responsible for the day-to-day management of the authority;



Authorised Version C2017C00102 registered 22/03/2017

(iv) if the authority is constituted by one person and none of subparagraphs (i) to (iii) applies—that person;

(v) if the authority is constituted by 2 or more persons and none of subparagraphs (i) to (iv) applies—the person who is entitled to preside at any meeting of the authority at which he or she is present; or

(c) in relation to a Norfolk Island authority—the person holding, or performing the duties of, the office of Chief Executive Officer under the *Public Service Act 2014* of Norfolk Island.

***request*** means an application made under subsection 15(1).

***request consultation process*** has the meaning given by section 24AB.

***respondent agency*** has the meaning given by subsections 69(2) and 70(2).

***responsible Minister*** means:

(a) in relation to a Department—the Minister administering the relevant Department of State; or

(b) in relation to a prescribed authority referred to in paragraph (a) of the definition of ***prescribed authority***—the Minister administering the part of the enactment by which, or in accordance with the provisions of which, the prescribed authority is established; or

(ba) in relation to the prescribed authority referred to in paragraph (aa) of that definition—the Minister administering the *National Broadband Network Companies Act 2011*; or

(c) in relation to a prescribed authority referred to in paragraph (c) of that definition—the Minister administering the part of 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

(e) in relation to a Norfolk Island authority—the Minister administering the *Norfolk Island Act 1979*;



Authorised Version C2017C00102 registered 22/03/2017

or another Minister acting for and on behalf of that Minister.

***review parties*** has the meaning given by section 55A.

***run out***: all of a person's opportunities for review or appeal in relation to an access grant decision have ***run out*** when:

(a) the latest time for applying for an internal review or an IC review in relation to the decision has ended, if the person has not applied for either review; or

(b) if the person has applied for an internal review in relation to the decision:

(i) the internal review is concluded; and

(ii) the time for applying for an IC review of the decision on internal review has ended, if the person has not applied for the IC review; or

(c) if the person has applied for an IC review in relation to the decision:

(i) proceedings in relation to the IC review are concluded; and

(ii) the time for applying to the Tribunal for a review in relation to the decision has ended, if the person has not applied for such a review; and

(iii) the time for instituting an appeal to the Federal Court in relation to the IC review has ended (with no appeal instituted), or, if an appeal has been instituted, all proceedings in relation to the appeal have been concluded; or

(d) if the person has applied to the Tribunal for a review in relation to the decision:

(i) proceedings in relation to the review are concluded; and

(ii) the time for instituting an appeal to the Federal Court in relation to the review by the Tribunal has ended (with no appeal instituted), or, if an appeal has been instituted, all proceedings in relation to the appeal have been concluded.

Note: The time for applying for a review of a decision may be extended in certain circumstances (see sections 54B and 54T).



Authorised Version C2017C00102 registered 22/03/2017

***State*** includes the Australian Capital Territory and the Northern Territory.

***subcontractor***, for a Commonwealth contract, means an entity:

(a) that is, or was, a party to a contract (the ***subcontract***):

(i) with a contracted service provider for the Commonwealth contract; or

(ii) with another subcontractor for the Commonwealth contract (under a previous application of this definition); and

(b) that is, or was, responsible under the subcontract for the provision of services for the purposes (whether direct or indirect) of the Commonwealth contract.

***Tribunal*** means the Administrative Appeals Tribunal.

***vexatious applicant declaration*** has the meaning given by section 89K.

(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 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 or her holding:

(i) an office of member of the Legislative Assembly for the Australian Capital Territory;

(ii) an office of member of the Legislative Assembly of the Northern Territory or of Administrator or of Minister of the Northern Territory; or

(b) by virtue of his or her holding, or performing the duties of:

(i) a prescribed office;

(ii) an office the duties of which he or she performs as duties of his or her employment as an officer of a



Authorised Version C2017C00102 registered 22/03/2017

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 a prescribed authority.

(3A) If an unincorporated body consists of a board, council, committee, sub-committee or other body established by or under a Norfolk Island enactment for the purpose of assisting, or performing functions connected with, a Norfolk Island authority:

(a) the unincorporated body is taken not to be a Norfolk Island authority for the purposes of this Act; and

(b) the unincorporated body is taken to be comprised within that Norfolk Island authority.

(3B) A person is not taken to be a Norfolk Island authority because he or she holds, or performs the duties of:

(a) a prescribed office; or

(b) an office the duties of which he or she performs as duties of his or her employment as an officer of a Norfolk Island authority; or

(c) an office of member of a Norfolk Island authority; or

(d) an office established by a Norfolk Island enactment for the purposes of a Norfolk Island authority.

(4) For the purposes of this Act, the Department of Defence shall be deemed to include:

(a) the Defence Force; and

(b) the Australian Defence Force Cadets.

(5) Without limiting the generality of the expression ***security of the Commonwealth***, that expression shall be taken to extend to:

(a) matters relating to the detection, prevention or suppression of activities, whether within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth or of any country allied or associated with the Commonwealth; and



Authorised Version C2017C00102 registered 22/03/2017

(b) the security of any communications system or cryptographic system of the Commonwealth or of another country used for:

(i) the defence of the Commonwealth or of any country allied or associated with the Commonwealth; or

(ii) the conduct of the international relations of the Commonwealth.

(6) Where an agency is abolished, then, for the purposes of this Act:

(a) if the functions of the agency are acquired by another agency—any request made to the first-mentioned agency shall be deemed to have been made to, and any decision made by the first-mentioned agency in respect of a request made to it shall be deemed to have been made by, the other agency; and

(b) if the functions of the agency are acquired by more than one other agency—any request made to the first-mentioned agency shall be deemed to have been made to, and any decision made by the first-mentioned agency in respect of a request made to it shall be deemed to have been made by, whichever of those other agencies has acquired the functions of the first-mentioned agency to which the document the subject of the request most closely relates; and

(c) if the documents of the agency are transferred to the care (within the meaning of the *Archives Act 1983*) of the National Archives of Australia—any request made to the agency shall be deemed to have been made to, and any decision made by the agency in respect of a request made by it shall be deemed to have been made by, the agency to the functions of which the document the subject of the request most closely relates.

(7) If the agency to which a request is so deemed to have been made, or by which a decision upon a request is so deemed to have been made, was not itself in existence at the time when the request or decision was deemed so to have been made, then, for the purposes only of dealing with that request or decision under this Act, that agency shall be deemed to have been in existence at that time.



Authorised Version C2017C00102 registered 22/03/2017

(9) For the purposes of the application of the definition of ***responsible Minister*** in subsection (1), the reference in that definition to the Minister administering a Department is a reference to the Minister to whom the Department is responsible in respect of the matter in respect of which this Act is being applied.

(10) To avoid doubt, information or matter communicated in the way mentioned in paragraph 33(b) includes information or matter so communicated pursuant to any treaty or formal instrument on the reciprocal protection of classified information between the Government of the Commonwealth, or an authority of the Commonwealth, and:

(a) a foreign government or an authority of a foreign government; or

(b) an international organisation.

Note: Section 33 deals with documents affecting national security, defence or international relations.

## 4A Certain legislation relating to Australian Capital Territory not to be enactment

(1) ACT enactments are not enactments.

(2) The *Australian Capital Territory (Self-Government) Act 1988* and the *Canberra Water Supply (Googong Dam) Act 1974* are not enactments.

(3) Part IV, sections 29 and 30, subsection 63(2), section 66 and Division 5 of Part X of the *Australian Capital Territory Planning and Land Management Act 1988* are not enactments.

(4) Where the whole of an Act or Ordinance is not an enactment, an instrument made under it is not an enactment.

(5) Where part of an Act or Ordinance is not an enactment, an instrument made under the Act or Ordinance, as the case may be, is not an enactment unless made for the purposes of the other part of the Act or Ordinance, as the case may be.



Authorised Version C2017C00102 registered 22/03/2017

## 4B Extension to Norfolk Island

This Act extends to Norfolk Island.

## 5 Act to apply to courts in respect of administrative matters

*Courts other than courts of Norfolk Island—general*

(1) For the purposes of this Act:

(a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;

(b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and

(c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

*Certain documents relating to complaint handling—Federal Court Judges*

(1A) This Act does not apply to any request for access to a document of a court (other than a court of Norfolk Island) that relates to a complaint handler (or a body consisting of complaint handlers):

(a) exercising powers or performing functions under paragraph 15(1AA)(c) and subsection 15(1AAA) of the *Federal Court of Australia Act 1976*; or

(b) assisting in exercising those powers or performing those functions.



Authorised Version C2017C00102 registered 22/03/2017

For this purpose ***complaint handler*** has the meaning given by that Act.

*Certain documents relating to complaint handling—Family Court Judges*

(1B) This Act does not apply to any request for access to a document of a court (other than a court of Norfolk Island) that relates to a complaint handler (or a body consisting of complaint handlers):

(a) exercising powers or performing functions under paragraph 21B(1A)(c) and subsection 21B(1B) of the *Family Law Act 1975*; or

(b) assisting in exercising those powers or performing those functions.

For this purpose ***complaint handler*** has the meaning given by that Act.

*Certain documents relating to complaint handling—Judges of the Federal Circuit Court of Australia*

(1C) This Act does not apply to any request for access to a document of a court (other than a court of Norfolk Island) that relates to a complaint handler (or a body consisting of complaint handlers):

(a) exercising powers or performing functions under paragraph 12(3)(c) and subsection 12(3AA) of the *Federal Circuit Court of Australia Act 1999*; or

(b) assisting in exercising those powers or performing those functions.

For this purpose ***complaint handler*** has the meaning given by that Act.

*Courts of Norfolk Island*

(2) For the purposes of this Act:

(a) a court of Norfolk Island is taken to be a Norfolk Island authority; and

(b) if a person is the holder of a judicial office in a court of Norfolk Island—the person, in his or her capacity as the



Authorised Version C2017C00102 registered 22/03/2017

holder of the office, is taken not to be a Norfolk Island authority and is not to be included in a Norfolk Island authority; and

(c) if:

(i) a person is the holder of an office (other than a judicial office) that relates to a court of Norfolk Island; and

(ii) the office is established by a Norfolk Island enactment;

the person, in his or her capacity as the holder of the office, is taken not to be a Norfolk Island authority and is not to be included in a Norfolk Island authority; and

(d) a registry or other office of a court of Norfolk Island, and the staff of such a registry or other office when acting in a capacity as members of that staff, are taken to be a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

## 6 Act to apply to certain tribunals in respect of administrative matters

For the purposes of this Act:

(a) each tribunal, authority or body specified in Schedule 1 is deemed to be a prescribed authority;

(b) the holder of an office pertaining to a tribunal, authority or body specified in Schedule 1, being an office established by the legislation establishing the tribunal, authority or body so specified in his or her capacity as the holder of that office, is not to be taken to be a prescribed authority or to be included in a Department; and



Authorised Version C2017C00102 registered 22/03/2017

(c) a registry or other office of or under the charge of a tribunal, authority or body specified in Schedule 1, and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the tribunal, authority or body so specified as a prescribed authority;

but this Act does not apply to any request for access to a document of a tribunal, authority or body so specified unless the document relates to matters of an administrative nature.

## 6A Official Secretary to the Governor-General

(1) This Act does not apply to any request for access to a document of the Official Secretary to the Governor-General unless the document relates to matters of an administrative nature.

(2) For the purposes of this Act, a document in the possession of a person employed under section 13 of the *Governor-General Act 1974* that is in his or her possession by reason of his or her employment under that section shall be taken to be in the possession of the Official Secretary to the Governor-General.

## 6C Requirement for Commonwealth contracts

(1) This section applies to an agency if a service is, or is to be, provided under a Commonwealth contract in connection with the performance of the functions or the exercise of the powers of the agency.

(2) The agency must take contractual measures to ensure that the agency receives a document if:

(a) the document is created by, or is in the possession of:

(i) a contracted service provider for the Commonwealth contract; or

(ii) a subcontractor for the Commonwealth contract; and

(b) the document relates to the performance of the Commonwealth contract (and not to the entry into that contract); and

(c) the agency receives a request for access to the document.



Authorised Version C2017C00102 registered 22/03/2017

## 7 Exemption of certain persons and bodies

(1) The bodies specified in Division 1 of Part I of Schedule 2, and a person holding and performing the duties of an office specified in that Division, are to be deemed not to be prescribed authorities for the purposes of this Act.

(1A) For the purposes of the definition of ***agency***, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2:

(a) is taken not to be included in the Department of Defence (or in any other Department) for the purposes of this Act; and

(b) to avoid doubt, is not an agency in its own right for the purposes of this Act.

(2) The persons, bodies and Departments specified in Part II of Schedule 2 are exempt from the operation of this Act in relation to the documents referred to in that Schedule in relation to them.

(2AA) A body corporate established by or under an Act specified in Part III of Schedule 2 is exempt from the operation of this Act in relation to documents in respect of the commercial activities of the body corporate.

(2A) An agency is exempt from the operation of this Act in relation to the following documents:

(a) a document (an ***intelligence agency document***) that has originated with, or has been received from, any of the following:

(i) the Australian Secret Intelligence Service;

(ii) the Australian Security Intelligence Organisation;

(iii) the Inspector-General of Intelligence and Security;

(iv) the Office of National Assessments;

(v) the Australian Geospatial-Intelligence Organisation;

(vi) the Defence Intelligence Organisation;

(vii) the Australian Signals Directorate

(b) a document that contains a summary of, or an extract or information from, an intelligence agency document, to the



Authorised Version C2017C00102 registered 22/03/2017

extent that it contains such a summary, extract or information.

(2B) A Minister is exempt from the operation of this Act in relation to the following documents:

(a) an intelligence agency document;

(b) a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information.

(2C) An agency is exempt from the operation of this Act in relation to the following documents:

(a) a document (a ***defence intelligence document***) that has originated with, or has been received from, the Department of Defence and that is in respect of:

(i) the collection, reporting or analysis of operational intelligence; or

(ii) special access programs, under which a foreign government provides restricted access to technologies;

(b) a document that contains a summary of, or an extract or information from, a defence intelligence document, to the extent that it contains such a summary, extract or information.

(2D) A Minister is exempt from the operation of this Act in relation to the following documents:

(a) a defence intelligence document;

(b) a document that contains a summary of, or an extract or information from, a defence intelligence document, to the extent that it contains such a summary, extract or information.

(2E) A Minister and an agency are exempt from the operation of this Act in relation to the following documents:

(a) a document that has originated with, or has been received from, the Child Sexual Abuse Royal Commission (within the meaning of Part 4 of the *Royal Commissions Act 1902*) and:



Authorised Version C2017C00102 registered 22/03/2017

(i) that contains information obtained at a private session (within the meaning of that Part); or

(ii) that relates to a private session and identifies a natural person who appeared at a private session;

(b) a document that contains a summary of, or an extract or information from, a private session.

(3) In subsection (2AA) and Part II of Schedule 2, ***commercial activities*** (except when used in relation to NBN Co) means:

(a) activities carried on by an agency on a commercial basis in competition with persons other than governments or authorities of governments; or

(b) activities, carried on by an agency, that may reasonably be expected in the foreseeable future to be carried on by the agency on a commercial basis in competition with persons other than governments or authorities of governments.

(3A) In Part II of Schedule 2, ***commercial activities***, when used in relation to NBN Co, means:

(a) activities carried on by NBN Co on a commercial basis; or

(b) activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.

(4) In subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.



Authorised Version C2017C00102 registered 22/03/2017

# Part II—Information publication scheme

## Division 1—Guide to this Part

### 7A Information publication scheme—guide

This Part establishes an information publication scheme for agencies.

Each agency must publish a plan showing how it proposes to implement this Part.

An agency must publish a range of information including information about what the agency does and the way it does it, as well as information dealt with or used in the course of its operations, some of which is called operational information.

In addition, an agency may publish other information held by the agency.

Information published by an agency must be kept accurate, up-to-date and complete.

An agency is not required to publish exempt matter. An agency is also not required to publish information if prohibited by another enactment.

The information (or details of how to access the information) must be published on a website. If there is a charge for accessing the information, the agency must publish details of the charge.

An agency must, in conjunction with the Information Commissioner, review the operation of the scheme in the agency every 5 years (if not earlier).



Authorised Version C2017C00102 registered 22/03/2017

An agency must have regard to the objects of this Act, and guidelines issued by the Information Commissioner, in doing anything for the purposes of this Part.

If operational information is not published in accordance with this Part, a person must not be subjected to any prejudice as a result of not having access to the information.



Authorised Version C2017C00102 registered 22/03/2017

## Division 2—Information to be published

### 8 Information to be published—what information?

*Agency plans*

(1) An agency must prepare a plan showing the following:
  (a) what information the agency proposes to publish for the purposes of this Part;
  (b) how, and to whom, the agency proposes to publish information for the purposes of this Part;
  (c) how the agency otherwise proposes to comply with this Part.

*Information that must be published*

(2) The agency must publish the following information:
  (a) the plan prepared under subsection (1);
  (b) details of the structure of the agency's organisation (for example, in the form of an organisation chart);
  (c) as far as practicable, details of the functions of the agency, including its decision-making powers and other powers affecting members of the public (or any particular person or entity, or class of persons or entities);
  (d) details of the following appointments:
    (i) appointments of officers of the agency that are made under Acts (other than APS employees within the meaning of the *Public Service Act 1999*);
    (ii) appointments of officers of the agency that are made under Norfolk Island enactments (other than officers appointed or employed under the *Public Service Act 2014* of Norfolk Island);
  (e) the information in annual reports prepared by the agency that are laid before the Parliament;
  (f) details of arrangements for members of the public to comment on specific policy proposals for which the agency



Authorised Version C2017C00102 registered 22/03/2017

is responsible, including how (and to whom) those comments may be made;

(g) information in documents to which the agency routinely gives access in response to requests under Part III (access to documents), except information of the following kinds:

(i) personal information about any individual, if it would be unreasonable to publish the information;

(ii) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;

(iii) other information of a kind determined by the Information Commissioner under subsection (3), if it would be unreasonable to publish the information;

(h) information held by the agency that is routinely provided to the Parliament in response to requests and orders from the Parliament;

(i) contact details for an officer (or officers) who can be contacted about access to the agency's information or documents under this Act;

(j) the agency's operational information (see section 8A).

Note: If operational information is not published in accordance with this section, a person must not be subjected to any prejudice as a result (see section 10).

(3) The Information Commissioner may, by legislative instrument, make a determination for the purposes of subparagraph (2)(g)(iii).

*Other information*

(4) The agency may publish other information held by the agency.

*Functions and powers*

(5) This section applies to a function or power of an agency whether or not the agency has the function or power under an enactment.



Authorised Version C2017C00102 registered 22/03/2017

*Definition*

(6) In this section:

***enactment*** includes a Norfolk Island enactment.

Note 1: See section 8C for restrictions on the requirement to publish this information.

Note 2: The agency must have regard to the objects of this Act and guidelines issued by the Information Commissioner in performing functions, and exercising powers, under this section (see section 9A).

## 8A Information to be published—what is *operational information*?

(1) An agency's ***operational information*** is information held by the agency to assist the agency to perform or exercise the agency's functions or powers in making decisions or recommendations affecting members of the public (or any particular person or entity, or class of persons or entities).

Example: The agency's rules, guidelines, practices and precedents relating to those decisions and recommendations.

(2) An agency's ***operational information*** does not include information that is available to members of the public otherwise than by being published by (or on behalf of) the agency.

## 8B Information to be published—accuracy etc.

An agency must ensure that information published by the agency as required or permitted by this Part is accurate, up-to-date and complete.

## 8C Information to be published—restrictions

*Exempt documents*

(1) An agency is not required under this Part to publish exempt matter.



Authorised Version C2017C00102 registered 22/03/2017

*Publication prohibited or restricted by other legislation*

(2) If an enactment restricts or prohibits the publication of particular information, an agency is not required under this Part to publish the information otherwise than as permitted or required by the enactment.

*Operation of restrictions*

(3) This section applies despite section 8.

*Definition*

(4) In this section:

***enactment*** includes a Norfolk Island enactment.

## 8D Information to be published—how (and to whom) information is to be published

*Scope*

(1) An agency must publish information that is required or permitted to be published under this Part in accordance with this section.

*How (and to whom) information is to be published*

(2) The agency must publish the information:
  (a) to members of the public generally; and
  (b) if the agency considers that it is appropriate to do so—to particular classes of persons or entities.

(3) The agency must publish the information on a website by:
  (a) making the information available for downloading from the website; or
  (b) publishing on the website a link to another website, from which the information can be downloaded; or
  (c) publishing on the website other details of how the information may be obtained.



Authorised Version C2017C00102 registered 22/03/2017

*Charges*

(4) The agency may impose a charge on a person for accessing the information only if:

(a) the person does not directly access the information by downloading it from the website (or another website); and

(b) the charge is to reimburse the agency for specific reproduction costs, or other specific incidental costs, incurred in giving the person access to that particular information.

(5) If there is a charge for accessing the information, the agency must publish details of the charge in the same way as the information is published under this section.

Note 1: The agency must have regard to the objects of this Act and guidelines issued by the Information Commissioner in performing functions, and exercising powers, under this section (see section 9A).

Note 2: After access is given to a document under Part III (access to documents) in accordance with a request, the agency must publish the accessed document to members of the public generally in the same way as described in this section (although certain exceptions apply) (see section 11C).

## 8E Information to be published—Information Commissioner to assist agencies

The Information Commissioner may provide appropriate assistance to an agency in:

(a) identifying and preparing information which is required or permitted to be published under this Part; and

(b) determining how (and to whom) the information is required or permitted to be published under section 8D.



Authorised Version C2017C00102 registered 22/03/2017

## Division 3—Review of information publication scheme

### 8F Review of scheme—Information Commissioner functions

The Information Commissioner has the following functions (as conferred by this Act and the *Australian Information Commissioner Act 2010*, but without limiting any provision of either Act):

(a) reviewing the operation in each agency of the information publication scheme established by this Part, in conjunction with the agency;

(b) investigating an agency's compliance with this Part under Division 2 of Part VIIB (Information Commissioner investigations);

(c) otherwise monitoring, investigating and reporting on the operation of the scheme.

### 9 Review of scheme—by agencies

(1) An agency must, in conjunction with the Information Commissioner, complete a review of the operation, in the agency, of the information publication scheme established by this Part:

(a) as appropriate from time to time; and

(b) in any case—within 5 years after the last time a review under this section was completed.

(2) The first review under subsection (1) must be completed within 5 years after the day this section commences.

Note 1: This section commences on the day after the end of the period of 6 months beginning on the day on which the *Australian Information Commissioner Act 2010* commences.

Note 2: The agency must have regard to the objects of this Act and guidelines issued by the Information Commissioner in performing functions, and exercising powers, under this section (see section 9A).



Authorised Version C2017C00102 registered 22/03/2017

# Division 4—Guidelines

## 9A Functions and powers under this Part

In performing a function, or exercising a power, under this Part, an agency must have regard to:

(a) the objects of this Act (including all the matters set out in sections 3 and 3A); and

(b) guidelines issued by the Information Commissioner for the purposes of this paragraph under section 93A.



Authorised Version C2017C00102 registered 22/03/2017

## Division 5—Miscellaneous

### 10 Unpublished operational information

*Scope*

(1) This section applies if:

(a) part (or all) of an agency's operational information (the ***unpublished information***), in relation to a function or power of the agency, is not published by the agency in accordance with this Part; and

(b) a person engages in conduct relevant to the performance of the function or the exercise of the power; and

(c) at the time of engaging in that conduct:

(i) the person was not aware of the unpublished information; and

(ii) the agency had been in existence for more than 12 months.

Note: An agency's operational information is required to be published by the agency (see sections 8 and 8A).

*No prejudice from lack of awareness of unpublished information*

(2) The person must not be subjected to any prejudice only because of the application to that conduct of any rule, guideline or practice in the unpublished information, if the person could lawfully have avoided that prejudice had he or she been aware of the unpublished information.

### 10A Who performs functions etc. given to agencies

(1) A function or power given to an agency under this Part may be performed or exercised, on behalf of the agency, by:

(a) the principal officer of the agency; or



Authorised Version C2017C00102 registered 22/03/2017

(b) an officer of the agency acting within the scope of his or her authority in accordance with arrangements approved by the principal officer of the agency.

(2) The performance or exercise of a function or power under paragraph (1)(b) is subject to the regulations.

## 10B Transitional—Norfolk Island authorities

This Part does not apply to a Norfolk Island authority at any time during the 2-year period beginning at the commencement of this section.



Authorised Version C2017C00102 registered 22/03/2017

# Part III—Access to documents

## 11 Right of access

(1) 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.

(2) Subject to this Act, a person's right of access is not affected by:

(a) any reasons the person gives for seeking access; or

(b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

## 11A Access to documents on request

*Scope*

(1) This section applies if:

(a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:

(i) a document of the agency; or

(ii) an official document of the Minister; and

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

(2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

(a) section 12 (documents otherwise available);

(b) section 13 (documents in national institutions);

(c) section 15A (personnel records);

(d) section 22 (access to edited copies with exempt or irrelevant matter deleted).



Authorised Version C2017C00102 registered 22/03/2017

*Mandatory access—general rule*

(3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

*Exemptions and conditional exemptions*

(4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

(5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

(6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:

(a) a conditionally exempt document; and

(b) an exempt document:

(i) under Division 2 of Part IV (exemptions); or

(ii) within the meaning of paragraph (b) or (c) of the definition of ***exempt document*** in subsection 4(1).



Authorised Version C2017C00102 registered 22/03/2017

## 11B Public interest exemptions—factors

*Scope*

(1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).

(2) This section does not limit subsection 11A(5).

*Factors favouring access*

(3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:

(a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);

(b) inform debate on a matter of public importance;

(c) promote effective oversight of public expenditure;

(d) allow a person to access his or her own personal information.

*Irrelevant factors*

(4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:

(a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;

(b) access to the document could result in any person misinterpreting or misunderstanding the document;

(c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;

(d) access to the document could result in confusion or unnecessary debate.



Authorised Version C2017C00102 registered 22/03/2017

*Guidelines*

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

## 11C Publication of information in accessed documents

*Scope*

(1) This section applies to information if an agency or Minister gives a person access to a document under section 11A containing the information, except in the case of any of the following:
   (a) personal information about any person, if it would be unreasonable to publish the information;
   (b) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;
   (c) other information of a kind determined by the Information Commissioner under subsection (2), if it would be unreasonable to publish the information;
   (d) any information, if it is not reasonably practicable to publish the information under this section because of the extent of any modifications to a document (or documents) necessary to delete information mentioned in paragraphs (a) to (c).

(2) The Information Commissioner may, by legislative instrument, make a determination for the purposes of paragraph (1)(c).

*Publication*

(3) The agency, or the Minister, must publish the information to members of the public generally on a website by:
   (a) making the information available for downloading from the website; or
   (b) publishing on the website a link to another website, from which the information can be downloaded; or



Authorised Version C2017C00102 registered 22/03/2017

(c) publishing on the website other details of how the information may be obtained.

(4) The agency may impose a charge on a person for accessing the information only if:

(a) the person does not directly access the information by downloading it from the website (or another website); and

(b) the charge is to reimburse the agency for a specific reproduction cost, or other specific incidental costs, incurred in giving the person access to that particular information.

(5) If there is a charge for accessing the information, the agency or Minister must publish details of the charge in the same way as the information is published under this section.

*Time limit for publication*

(6) The agency or Minister must comply with this section within 10 working days after the day the person is given access to the document.

(7) In this section:

***working day*** means a day that is not:

(a) a Saturday; or

(b) a Sunday; or

(c) a public holiday in the place where the function of publishing the information under this section is to be performed.

## 12 Part not to apply to certain documents

(1) A person is not entitled to obtain access under this Part to:

(a) a document, or a copy of a document, which is, under the *Archives Act 1983*, within the open access period within the meaning of that Act unless the document contains personal information (including personal information about a deceased person); or



Authorised Version C2017C00102 registered 22/03/2017

(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

(ba) a document that is open to public access, as part of a land title register, in accordance with a law of a State or Territory 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.

(2) A person is not entitled to obtain access under this Part to a document or a part of a document that became a document of a Norfolk Island agency more than 5 years before the commencement of this subsection unless:

(c) the document, or that part of the document, contains information that is:

(i) personal information about that person; or

(ii) information relating to that person's business, commercial or financial affairs; or

(d) the document, or that part of the document, is a document or a part of a document access to which is reasonably necessary to enable a proper understanding of a document of a Norfolk Island agency to which that person has lawfully had access.

(3) In this section:

***enactment*** includes a Norfolk Island enactment.

## 13 Documents in certain institutions

(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 memorial collection within the meaning of the *Australian War Memorial Act 1980*; or

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

(c) material included in the historical material in the possession of the Museum of Australia; or



Authorised Version C2017C00102 registered 22/03/2017

(d) in the care (within the meaning of the *Archives Act 1983*) of the National Archives of Australia (otherwise than as a document relating to the administration of the National Archives of Australia); or

(e) a program or related material (within the meaning of the *National Film and Sound Archive of Australia Act 2008*) in the collection of the National Film and Sound Archive of Australia;

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.

(2) For the purposes of this Act, a document that has been transferred to the care (within the meaning of the *Archives Act 1983*) of the National Archives of Australia, or otherwise placed in a collection referred to in subsection (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.

(3) Despite subsections (1) and (2):

(a) records of a Royal Commission that are in the care (within the meaning of the *Archives Act 1983*) of the National Archives of Australia are, for the purposes of this Act, taken 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*; and

(b) records of the Commission of inquiry (within the meaning of the *Quarantine Act 1908*, as in force immediately before its repeal) that are in the custody of the Australian Archives are, for the purposes of this Act, taken to be documents of an agency and to be in the possession of the Agriculture Department (within the meaning of the *Biosecurity Act 2015*); and

(c) records of a Commission of inquiry (within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*) that are in the custody of the Australian Archives are, for the purposes of this Act, taken to be documents of an



Authorised Version C2017C00102 registered 22/03/2017

agency and to be in the possession of the Department administered by the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

(4) Nothing in this Act affects the provision of access to documents by the National Archives of Australia in accordance with the *Archives Act 1983*.

## 15 Requests for access

*Persons may request access*

(1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

*Requirements for request*

(2) The request must:

(a) be in writing; and

(aa) state that the request is an application for the purposes of this Act; and

(b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and

(c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).

(2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:

(a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;

(b) postage by pre-paid post to an address mentioned in paragraph (a);



Authorised Version C2017C00102 registered 22/03/2017

(c) sending by electronic communication to an electronic address specified by the agency or Minister.

*Agency required to assist*

(3) Where a person:

(a) wishes to make a request to an agency; or

(b) has made to an agency a request that does not comply with this section;

it is the duty of the agency to take reasonable steps to assist the person to make the request in a manner that complies with this section.

Note: An agency or Minister may refuse to deal with a request if satisfied that a practical refusal reason exists, after undertaking the request consultation process (see section 24).

(4) Where a person has directed to an agency a request that should have been directed to another agency or to a Minister, it is the duty of the first-mentioned agency to take reasonable steps to assist the person to direct the request to the appropriate agency or Minister.

*Timeframes for dealing with request*

(5) On receiving a request, the agency or Minister must:

(a) as soon as practicable but in any case not later than 14 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified that the request has been received; and

(b) as soon as practicable but in any case not later than the end of the period of 30 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified of a decision on the request (including a decision under section 21 to defer the provision of access to a document).

(5A) In making a decision on a request, the agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of section 93A.



Authorised Version C2017C00102 registered 22/03/2017

*Extension of processing period to comply with requirements of section 26A, 27 or 27A*

(6) Where, in relation to a request, the agency or Minister determines in writing that the requirements of section 26A, 27 or 27A make it appropriate to extend the period referred to in paragraph (5)(b):
  (a) the period is extended by a further period of 30 days; and
  (b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been so extended.

*Extension of processing period to consult foreign entity*

(7) Subsection (8) applies if, in relation to a request, the agency or Minister determines in writing that it is appropriate to extend the period referred to in paragraph (5)(b) so that the agency or Minister can:
  (a) consult one of the following:
    (i) a foreign government;
    (ii) an authority of a foreign government;
    (iii) an international organisation; and
  (b) determine whether the document that is the subject of the request is an exempt document under subparagraph 33(a)(iii) or paragraph 33(b).

(8) If this subsection applies:
  (a) the period referred to in paragraph (5)(b) is extended by a period of 30 days; and
  (b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been extended.

## 15AA Extension of time with agreement

An agency or Minister may extend the period referred to in paragraph 15(5)(b) for dealing with a request, or that period as extended under subsection 15(6) or (8) (consultation), by a further period of no more than 30 days if:
  (a) the applicant agrees in writing to the extension; and



Authorised Version C2017C00102 registered 22/03/2017

(b) the agency or Minister gives written notice of the extension to the Information Commissioner as soon as practicable after the agreement is made.

## 15AB Extension of time for complex or voluminous requests

(1) An agency or Minister may apply to the Information Commissioner for an extension of the period referred to in paragraph 15(5)(b) for dealing with a request if the agency or Minister considers that the period is insufficient to deal adequately with a request because the request is complex or voluminous.

(2) If the Information Commissioner is satisfied that the application is justified, the Information Commissioner may, by written instrument, extend the period by a further period of 30 days, or such other period as the Information Commissioner considers appropriate.

Note: For variation and revocation of the instrument, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(3) The Information Commissioner must, as soon as practicable, inform the following persons of the period for which the extension has been given:

(a) the applicant;

(b) the agency or Minister.

## 15AC Decision not made on request within time—deemed refusal

*Scope*

(1) This section applies if:

(a) a request has been made to an agency or Minister; and

(b) the period (the ***initial decision period***) covered by subsection (2) has ended since the day 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 applicant.



Authorised Version C2017C00102 registered 22/03/2017

(2) The initial decision period covered by this subsection is the period of 30 days mentioned in paragraph 15(5)(b) (or that period as extended, otherwise than under this section).

*Deemed refusal*

(3) Subject to this section:
  (a) the principal officer of the agency or the Minister is taken to have made a decision personally refusing to give access to the document on the last day of the initial decision period; and
  (b) notice of the decision is taken to have been given under section 26 to the applicant on the same day.

*Agency or Minister may apply for further time*

(4) However, the agency or Minister concerned may apply, in writing, to the Information Commissioner for further time to deal with the request.

(5) The Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency or Minister to deal with the request.

(6) If the Information Commissioner allows further time, the Information Commissioner may impose any condition that he or she considers appropriate.

(7) Subsection (3) (deemed refusal) does not apply, and is taken never to have applied, if the agency or Minister:
  (a) makes a decision on the request within the further time allowed; and
  (b) complies with any condition imposed under subsection (6).

(8) However, subsection (3) (deemed refusal) applies as if the initial decision period were extended by the time allowed by the Information Commissioner under subsection (5) if the agency or Minister:



Authorised Version C2017C00102 registered 22/03/2017

(a) does not make a decision on the request within the further time allowed; or

(b) does not comply with any condition imposed under subsection (6).

*No further time allowed*

(9) If subsection (8) (deemed refusal after allowance of further time) applies, the Information Commissioner does not have the power to allow further time under this section in relation to the decision taken to be made under subsection (3) in its operation as affected by subsection (8).

## 15A Request for access to personnel records

(1) In this section:

***personnel records***, in relation to an employee or former employee of an agency, means those documents containing personal information about him or her that are, or have been, kept by the agency for personnel management purposes.

(2) Where:

(a) there are established procedures in an agency (apart from those provided for by this Act) in accordance with which a request may be made by an employee of the agency for access to his or her personnel records; and

(b) a person who is or was an employee of the agency wishes to obtain access to his or her personnel records;

the person must not apply under section 15 for access to such records unless the person:

(c) has made a request for access to the records in accordance with the procedures referred to in paragraph (a); and

(d) either:

(i) is not satisfied with the outcome of the request; or

(ii) has not been notified of the outcome within 30 days after the request was made.



Authorised Version C2017C00102 registered 22/03/2017

## 16 Transfer of requests

(1) Where a request is made to an agency for access to a document and:

(a) the document is not in the possession of that agency but is, to the knowledge of that agency, in the possession of another agency; or

(b) 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;

the agency to which the request is made may, with the agreement of the other agency, transfer the request to the other agency.

(2) Where a request is made to an agency for access to a document that:

(a) originated with, or has been received from, a body which, or person who, is specified in Part I of Schedule 2; and

(b) is more closely connected with the functions of that body or person than with those of the agency to which the request is made;

the request shall be transferred:

(c) to the Department corresponding to the Department of State administered by the Minister who administers the enactment by or under which the body or person is established, continued in existence or appointed; or

(d) if the request relates to a document that originated with, or has been received from, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2—to that Department.

(3) Where a request is made to an agency for access to a document that:

(a) originated in, or has been received from, another agency, being an agency specified in Part II of Schedule 2 or an agency that is a body corporate established by or under an Act specified in Part III of Schedule 2; and



Authorised Version C2017C00102 registered 22/03/2017

(b) is more closely connected with the functions of the other agency in relation to documents in respect of which the other agency is exempt from the operation of this Act than with the functions of the agency to which the request is made;

the agency to which the request is made shall transfer the request to the other agency.

(3A) Where:

(a) a request is made to an agency for access to more than one document; and

(b) one or more of those documents is a document to which subsection (1), (2) or (3) applies;

this section applies to each of those documents as if separate requests for access had been made to the agency in respect of each of those documents.

(4) Where a request is transferred to an agency in accordance with this section, the agency making the transfer shall 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.

(5) Where a request is transferred to an agency in accordance with this section, the request is to be taken to be a request:

(a) made to the agency for access to the document that is the subject of the transfer; and

(b) received by the agency at the time at which it was first received by an agency.

(6) In this section, ***agency*** includes a Minister.

## 16A Requests transferred from the ACT

Where a request under the *Freedom of Information Act 1989* of the Australian Capital Territory is transferred to an agency in accordance with section 33 of that Act, it becomes a request under this Act at the time at which it is received by the agency.



Authorised Version C2017C00102 registered 22/03/2017

## 17 Requests involving use of computers etc.

(1) Where:

(a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) 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 written documents of the agency; and

(ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and

(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

(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.

(2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

## 20 Forms of access

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

(a) a reasonable opportunity to inspect the document;

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



Authorised Version C2017C00102 registered 22/03/2017

(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;

(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 subsection (3) and to section 22, where the applicant has requested access in a particular form, access shall be given in that form.

(3) If the giving of access in the form requested by the applicant:

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

(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, but for this Act, involve an infringement of copyright (other than copyright owned by the Commonwealth, an agency or a State) subsisting in matter contained in the document, being matter that does not relate to the affairs of an agency or of a Department of State;

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

(4) Subject to subsection 17(1), where a person requests access to a document in a particular form and, for a reason specified in subsection (3), access in that form is refused but access is given in another form, the applicant shall not be required to pay a charge in respect of the provision of access to the document that is greater than the charge that he or she would have been required to pay if access had been given in the form requested.



Authorised Version C2017C00102 registered 22/03/2017

## 21 Deferment of access

(1) An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned:

(a) if the publication of the document concerned is required by law—until the expiration of the period within which the document is required to be published; or

(b) if the document concerned has been prepared for presentation to Parliament or for the purpose of being made available to a particular person or body or with the intention that it should be so made available—until the expiration of a reasonable period after its preparation for it to be so presented or made available; or

(c) if the premature release of the document concerned would be contrary to the public interest—until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest; or

(d) if a Minister considers that the document concerned is of such general public interest that the Parliament should be informed of the contents of the document before the document is otherwise made public—until the expiration of 5 sitting days of either House of the Parliament.

(2) Where the provision of access to a document is deferred in accordance with subsection (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.

## 22 Access to edited copies with exempt or irrelevant matter deleted

*Scope*

(1) This section applies if:

(a) an agency or Minister decides:

(i) to refuse to give access to an exempt document; or



Authorised Version C2017C00102 registered 22/03/2017

(ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and

(b) it is possible for the agency or Minister to prepare a copy (an ***edited copy***) of the document, modified by deletions, ensuring that:

(i) access to the edited copy would be required to be given under section 11A (access to documents on request); and

(ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and

(c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:

(i) the nature and extent of the modification; and

(ii) the resources available to modify the document; and

(d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

*Access to edited copy*

(2) The agency or Minister must:

(a) prepare the edited copy as mentioned in paragraph (1)(b); and

(b) give the applicant access to the edited copy.

*Notice to applicant*

(3) The agency or Minister must give the applicant notice in writing:

(a) that the edited copy has been prepared; and

(b) of the grounds for the deletions; and

(c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.

(4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests



Authorised Version C2017C00102 registered 22/03/2017

the agency or Minister to give the applicant a notice in writing in accordance with that section.

## 23 Decisions to be made by authorised persons

(1) Subject to subsection (2), 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 or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

(2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

## 24 Power to refuse request—diversion of resources etc.

(1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:

(a) must undertake a request consultation process (see section 24AB); and

(b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.

(2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:

(a) the requests relate to the same document or documents; or



Authorised Version C2017C00102 registered 22/03/2017

(b) the requests relate to documents, the subject matter of which is substantially the same.

### 24AA When does a *practical refusal reason* exist?

(1) For the purposes of section 24, a ***practical refusal reason*** exists in relation to a request for a document if either (or both) of the following applies:

(a) the work involved in processing the request:

(i) in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations; or

(ii) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister's functions;

(b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).

(2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:

(a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;

(b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:

(i) examining the document; or

(ii) consulting with any person or body in relation to the request;

(c) making a copy, or an edited copy, of the document;

(d) notifying any interim or final decision on the request.

(3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:



Authorised Version C2017C00102 registered 22/03/2017

(a) any reasons that the applicant gives for requesting access; or
(b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
(c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

## 24AB What is a *request consultation process*?

*Scope*

(1) This section sets out what is a ***request consultation process*** for the purposes of section 24.

*Requirement to notify*

(2) The agency or Minister must give the applicant a written notice stating the following:
(a) an intention to refuse access to a document in accordance with a request;
(b) the practical refusal reason;
(c) the name of an officer of the agency or member of staff of the Minister (the ***contact person***) with whom the applicant may consult during a period;
(d) details of how the applicant may contact the contact person;
(e) that the period (the ***consultation period***) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

*Assistance to revise request*

(3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.

(4) For the purposes of subsection (3), ***reasonable steps*** includes the following:



Authorised Version C2017C00102 registered 22/03/2017

(a) giving the applicant a reasonable opportunity to consult with the contact person;
(b) providing the applicant with any information that would assist the applicant to revise the request.

*Extension of consultation period*

(5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

*Outcome of request consultation process*

(6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
(a) withdraw the request;
(b) make a revised request;
(c) indicate that the applicant does not wish to revise the request.

(7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
(a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
(b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

*Consultation period to be disregarded in calculating processing period*

(8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.



Authorised Version C2017C00102 registered 22/03/2017

*No more than one request consultation process required*

(9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.

## 24A Requests may be refused if documents cannot be found, do not exist or have not been received

*Document lost or non-existent*

(1) An agency or Minister may refuse a request for access to a document if:
  (a) all reasonable steps have been taken to find the document; and
  (b) the agency or Minister is satisfied that the document:
    (i) is in the agency's or Minister's possession but cannot be found; or
    (ii) does not exist.

*Document not received as required by contract*

(2) An agency may refuse a request for access to a document if:
  (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  (b) the agency has not received the document; and
  (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

## 25 Information as to existence of certain documents

(1) Nothing in this Act shall be taken to require an agency or Minister to give information as to the existence or non-existence of a document where information as to the existence or non-existence of that document, if included in a document of an agency, would cause the last-mentioned document to be:



Authorised Version C2017C00102 registered 22/03/2017

(a) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1); or

(b) an exempt document to the extent referred to in subsection 45A(2) or (3).

(2) If a request relates to a document that is, or if it existed would be, of a kind referred to in subsection (1), the agency or Minister dealing with the request may give notice in writing to the applicant that the agency or the Minister (as the case may be) neither confirms nor denies the existence, as a document of the agency or an official document of the Minister, of such a document but that, assuming the existence of such a document, it would be:

(a) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1); or

(b) an exempt document to the extent referred to in subsection 45A(2) or (3).

(3) If a notice is given under subsection (2) of this section:

(a) section 26 applies as if the decision to give the notice were a decision referred to in that section; and

(b) the decision is taken, for the purposes of Part VI, to be a decision refusing to grant access to the document in accordance with the request referred to in subsection (2) of this section, for the reason that the document would, if it existed, be:

(i) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1); or

(ii) an exempt document to the extent referred to in subsection 45A(2) or (3).



Authorised Version C2017C00102 registered 22/03/2017

## 26 Reasons and other particulars of decisions to be given

(1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:

(a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and

(aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

(b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and

(c) give to the applicant appropriate information concerning:

(i) his or her rights with respect to review of the decision;

(ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and

(iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii);

including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.

(1A) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in subsection (1).

(2) A notice under this section is not required to contain 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.



Authorised Version C2017C00102 registered 22/03/2017

## 26A Consultation—documents affecting Commonwealth-State relations etc.

*Scope*

(1) This section applies if:

(a) arrangements have been entered into between the Commonwealth and a State about consultation under this section; and

(b) a request is made to an agency or Minister for access to a document that:

(i) originated with, or was received from, the State or an authority of the State; or

(ii) contains information (***State-originated information***) that originated with, or was received from, the State or an authority of the State; and

(c) it appears to the agency or Minister that the State may reasonably wish to contend that:

(i) the document is conditionally exempt under section 47B (Commonwealth-State relations etc.); and

(ii) access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

*Consultation required*

(2) The agency or Minister must not decide to give the applicant access to the document unless consultation has taken place between the Commonwealth and the State in accordance with the arrangements.

*Decision to give access*

(3) If, after such consultation has taken place, the agency or Minister decides to give the applicant access to the document, the agency or



Authorised Version C2017C00102 registered 22/03/2017

Minister must give written notice of the decision to both of the following:

(a) the State;

(b) the applicant.

*Access not to be given until review or appeal opportunities have run out*

(4) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the State for review or appeal in relation to the decision to give access to the document have run out, the decision still stands, or is confirmed.

Note 1: The decision to give access to the document is subject to internal review (see Part VI), review by the Information Commissioner (see Part VII) and review by the Tribunal (see Part VIIA).

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have ***run out***, see subsection 4(1).

*Edited copies and State-originated information*

(5) This section applies:

(a) in relation to an edited copy of a document—in the same way as it applies to the document; and

(b) in relation to a document containing State-originated information—to the extent to which the document contains such information.

## 27 Consultation—business documents

*Scope*

(1) This section applies if:

(a) a request is made to an agency or Minister for access to a document containing information (***business information***) covered by subsection (2) in respect of a person, organisation or undertaking; and



Authorised Version C2017C00102 registered 22/03/2017

(b) it appears to the agency or Minister that the person, organisation or proprietor of the undertaking (the ***person or organisation concerned***) might reasonably wish to make a contention (the ***exemption contention***) that:

(i) the document is exempt under section 47 (trade secrets etc.); or

(ii) the document is conditionally exempt under section 47G (business information) and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

(2) This subsection covers the following information:

(a) in relation to a person—information about the person's business or professional affairs;

(b) in relation to an organisation or undertaking—information about the business, commercial or financial affairs of the organisation or undertaking.

(3) In determining, for the purposes of paragraph (1)(b), whether the person or organisation concerned might reasonably wish to make an exemption contention because of business information in a document, the agency or Minister must have regard to the following matters:

(a) the extent to which the information is well known;

(b) whether the person, organisation or undertaking is known to be associated with the matters dealt with in the information;

(c) the availability of the information from publicly accessible sources;

(d) any other matters that the agency or Minister considers relevant.

*Opportunity to make submissions*

(4) The agency or Minister must not decide to give access to the document unless:



Authorised Version C2017C00102 registered 22/03/2017

(a) the person or organisation concerned is given a reasonable opportunity to make submissions in support of the exemption contention; and

(b) the agency or the Minister has regard to any submissions so made.

(5) However, subsection (4) only applies if it is reasonably practicable for the agency or Minister to give the person or organisation concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances (including the application of subsections 15(5) and (6) (time limits for processing requests)).

*Notice of decision to give access*

(6) If the agency or Minister decides to give access to the document, the agency or Minister must give written notice of the decision to both of the following:

(a) the person or organisation concerned;

(b) the applicant.

*Access not to be given until review or appeal opportunities have run out*

(7) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person or organisation concerned for review or appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.

Note 1: The decision to give access to the document is subject to internal review (see Part VI), review by the Information Commissioner (see Part VII) and review by the Tribunal (see Part VIIA).

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have ***run out***, see subsection 4(1).



Authorised Version C2017C00102 registered 22/03/2017

*Notice and stay of decision not to apply unless submission made in support of exemption contention*

(8) Subsections (6) and (7) do not apply unless the person or organisation concerned makes a submission in support of the exemption contention as allowed under paragraph (4)(a).

*Edited copies and business information*

(9) This section applies:
  (a) in relation to an edited copy of a document—in the same way as it applies to the document; and
  (b) in relation to a document containing business information—to the extent to which the document contains such information.

## 27A Consultation—documents affecting personal privacy

*Scope*

(1) This section applies if:
  (a) a request is made to an agency or Minister for access to a document containing personal information about a person (including a person who has died); and
  (b) it appears to the agency or Minister that the person or the person's legal personal representative (the ***person concerned***) might reasonably wish to make a contention (the ***exemption contention***) that:
    (i) the document is conditionally exempt under section 47F; and
    (ii) access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).



Authorised Version C2017C00102 registered 22/03/2017

(2) In determining, for the purposes of paragraph (1)(b), whether the person concerned might reasonably wish to make an exemption contention because of personal information in a document, the agency or Minister must have regard to the following matters:

(a) the extent to which the information is well known;

(b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the information;

(c) the availability of the information from publicly accessible sources;

(d) any other matters that the agency or Minister considers relevant.

*Opportunity to make submissions*

(3) The agency or Minister must not decide to give the applicant access to the document unless:

(a) the person concerned is given a reasonable opportunity to make submissions in support of the exemption contention; and

(b) the agency or the Minister has regard to any submissions so made.

(4) However, subsection (3) only applies if it is reasonably practicable for the agency or Minister to give the person concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances (including the application of subsections 15(5) and (6) (time limits for processing requests)).

*Decision to give access*

(5) If the agency or Minister decides to give access to the document, the agency or Minister must give written notice of the decision to both of the following:

(a) the person concerned;

(b) the applicant.



Authorised Version C2017C00102 registered 22/03/2017

*Access not to be given until review or appeal opportunities have run out*

(6) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person concerned for review or appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.

Note 1: The decision to give access to the document is subject to internal review (see Part VI), review by the Information Commissioner (see Part VII) and review by the Tribunal (see Part VIIA).

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have ***run out***, see subsection 4(1).

*Notice and stay of decision not to apply unless submission made in support of exemption contention*

(7) Subsections (5) and (6) do not apply unless the person concerned makes a submission in support of the exemption contention as allowed under paragraph (3)(a).

*Edited copies and personal information*

(8) This section applies:
(a) in relation to an edited copy of a document—in the same way as it applies to the document; and
(b) in relation to a document containing personal information—to the extent to which the document contains such information.

## 29 Charges

(1) Where, under the regulations, an agency or Minister decides that an applicant is liable to pay a charge in respect of a request for access to a document, or the provision of access to a document, the agency or Minister must give to the applicant a written notice stating:
(a) that the applicant is liable to pay a charge; and



Authorised Version C2017C00102 registered 22/03/2017

(b) the agency's or Minister's preliminary assessment of the amount of the charge, and the basis on which the assessment is made; and

(c) that the applicant may contend that the charge has been wrongly assessed, or should be reduced or not imposed; and

(d) the matters that the agency or Minister must take into account under subsection (5) in deciding whether or not to reduce, or not impose, the charge; and

(e) the amount of any deposit that the agency or Minister has determined, under the regulations, that the applicant will be required to pay if the charge is imposed; and

(f) that the applicant must, within the period of 30 days, or such further period as the agency or Minister allows, after the notice was given, notify the agency or Minister in writing:

(i) of the applicant's agreement to pay the charge; or

(ii) if the applicant contends that the charge has been wrongly assessed, or should be reduced or not imposed, or both—that the applicant so contends, giving the applicant's reasons for so contending; or

(iii) that the applicant withdraws the request for access to the document concerned; and

(g) that if the applicant fails to give the agency or Minister such a notice within that period or further period, the request for access to the document will be taken to have been withdrawn.

(2) If the applicant fails to notify the agency or Minister in a manner mentioned in paragraph (1)(f) within the period or further period mentioned in that paragraph, the applicant is to be taken to have withdrawn the request for access to the document concerned.

(3) An agency or Minister must not impose a charge in respect of a request for access to a document, or the provision of access to a document, until:

(a) the applicant has notified the agency or Minister in a manner mentioned in paragraph (1)(f); or



Authorised Version C2017C00102 registered 22/03/2017

(b) the end of the period or further period mentioned in that paragraph.

(4) Where the applicant has notified the agency or Minister, in a manner mentioned in subparagraph (1)(f)(ii), that the applicant contends that the charge should be reduced or not imposed, the agency or Minister may decide that the charge is to be reduced or not to be imposed.

(5) Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:

(a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and

(b) whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.

(6) If the applicant has notified the agency or Minister in the manner mentioned in subparagraph (1)(f)(ii), the agency or Minister must take all reasonable steps to enable the applicant to be notified of the decision on the amount of charge payable as soon as practicable but in any case no later than 30 days after the day on which the applicant so notified the agency or Minister.

(7) If:

(a) that period of 30 days has elapsed since the day on which the agency or Minister was so notified; and

(b) the applicant has not received notice of a decision on the amount of charge payable;

the principal officer of the agency, or the Minister, as the case requires, is, for all purposes of this Act, taken to have made, on the last day of the period, a decision to the effect that the amount of charge payable is the amount equal to the agency's or Minister's preliminary assessment of the amount of the charge mentioned in paragraph (1)(b).

(8) If:



Authorised Version C2017C00102 registered 22/03/2017

(a) the applicant makes a contention about a charge as mentioned in subsection (4); and

(b) the agency or Minister makes a decision to reject the contention, in whole or in part;

the agency or Minister, as the case requires, must give the applicant written notice of the decision and of the reasons for the decision.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

(9) A notice under subsection (8) must also state the name and designation of the person making the decision and give the applicant appropriate information about:

(a) his or her rights with respect to review of the decision; and

(b) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and

(c) the procedure for the exercise of those rights;

including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.

(10) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in subsection (8).

(11) A notice under subsection (8) is not required to contain 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.

## 31 Decision to impose charge—extended period for processing request

*Scope*

(1) This section applies if:

(a) on a particular day (the ***charge notice day***) an applicant in relation to a request receives a notice under subsection 29(1) or (6) to the effect that the applicant is liable to pay a charge in respect of the request; and



Authorised Version C2017C00102 registered 22/03/2017

(b) the notice is received before the end of the period (the ***processing period***) applicable under paragraph 15(5)(b) in relation to the request (or that period as extended).

*Processing period to be calculated disregarding period when charge unpaid*

(2) In working out the length of the processing period (or that period as extended) for the purposes of paragraph 15(5)(b), disregard the number of days in the period starting on the charge notice day and ending on the earliest occurring of the following days:

(a) the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations), whether or not the decision to impose the charge has been considered under section 29, or is the subject of a review under this Act;

(b) if the amount of the charge is changed under section 29, or following a review under this Act—the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations) as changed following the review;

(c) if, under section 29, or following a review under this Act, a decision is made with the effect that the charge is not imposed—the day the applicant is notified of the decision.

Note: A decision under section 29 relating to the imposition of a charge or the amount of a charge may be the subject of an internal review (see Part VI), an IC review (see Part VII) or review by the Tribunal (see Part VIIA).



Authorised Version C2017C00102 registered 22/03/2017

# Part IV—Exempt documents

## Division 1—Preliminary

### 31A Access to exempt and conditionally exempt documents

The following table summarises how this Act applies to exempt documents and documents that are conditionally exempt:

**How this Act applies to exempt and conditionally exempt documents**

| Item | If … | then … | because of … |
|---|---|---|---|
| 1 | a document is an exempt document under Division 2 (exemptions) or under paragraph (b) or (c) of the definition of ***exempt document*** in subsection 4(1) | access to the document is not required to be given | subsection 11A(4). |
| 2 | a document is a conditionally exempt document under Division 3 (public interest conditional exemptions) | access to the document is required to be given, unless it would be contrary to the public interest | subsection 11A(5) (see also section 11B (public interest factors)). |
| 3 | a document is an exempt document as mentioned in item 1, and also a conditionally exempt document under Division 3 | access to the document is not required to be given | subsections 11A(4) and (6), and section 32 (interpretation). |
| 4 | access to a document is refused because it contains exempt matter, and the exempt matter can be deleted | (a) an edited copy deleting the exempt matter must be prepared (if practicable); and | section 22. |



Authorised Version C2017C00102 registered 22/03/2017

| How this Act applies to exempt and conditionally exempt documents | | | |
|---|---|---|---|
| **Item** | **If …** | **then …** | **because of …** |
| | | (b) access to the edited copy must be given; | |
| 5 | a document is an exempt document because of any provision of this Act | access to the document may be given apart from under this Act | section 3A (objects–information or documents otherwise accessible). |

## 31B Exempt documents for the purposes of this Part

A document is ***exempt*** for the purposes of this Part if:

(a) it is an exempt document under Division 2; or

(b) it is conditionally exempt under Division 3, and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Note 1: A document is an ***exempt document*** for the purposes of this Act (see subsection 4(1)) if:

(a) it is exempt under this section; or

(b) it is exempt because of section 7 (exemption of certain persons and bodies); or

(c) it is an official document of a Minister that contains matters not relating to the affairs of an agency or a Department of State.

Note 2: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

## 32 Interpretation

A provision of this Part by virtue of which documents referred to in the provision are exempt documents, or are conditionally exempt:

(a) shall not be construed as limited in its scope or operation in any way by any other provision of this Part by virtue of which documents are exempt documents, or are conditionally exempt; and

(b) shall not be construed as not applying to a particular document by reason that another provision of this Part of a



Authorised Version C2017C00102 registered 22/03/2017

kind mentioned in paragraph (a) also applies to that document.



Authorised Version C2017C00102 registered 22/03/2017

## Division 2—Exemptions

### 33 Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:
  (i) the security of the Commonwealth;
  (ii) the defence of the Commonwealth; or
  (iii) the international relations of the Commonwealth; or

(b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

Note: See also subsection 4(10).

### 34 Cabinet documents

*General rules*

(1) A document is an exempt document if:

(a) both of the following are satisfied:
  (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
  (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or

(b) it is an official record of the Cabinet; or

(c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or



Authorised Version C2017C00102 registered 22/03/2017

(d) it is a draft of a document to which paragraph (a), (b) or (c) applies.

(2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.

(3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

*Exceptions*

(4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

Note: However, the attachment itself may be an exempt document.

(5) A document by which a decision of the Cabinet is officially published is not an exempt document.

(6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:

(a) the disclosure of the information would reveal a Cabinet deliberation or decision; and

(b) the existence of the deliberation or decision has not been officially disclosed.

## 37 Documents affecting enforcement of law and protection of public safety

(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;



Authorised Version C2017C00102 registered 22/03/2017

(b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or

(c) endanger the life or physical safety of any person.

(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(a) prejudice the fair trial of a person or the impartial adjudication of a particular case;

(b) disclose lawful 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

(c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

(2A) For the purposes of paragraph (1)(b), a person is taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection under a program conducted under the auspices of the Australian Federal Police, or the police force of a State or Territory, for the protection of:

(a) witnesses; or

(b) people who, because of their relationship to, or association with, a witness need, or may need, such protection; or

(c) any other people who, for any other reason, need or may need, such protection.

(3) In this section, ***law*** means law of the Commonwealth or of a State or Territory.

## 38 Documents to which secrecy provisions of enactments apply

(1) Subject to subsection (1A), a document is an exempt document if:



Authorised Version C2017C00102 registered 22/03/2017

(a) disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and

(b) either:

(i) that provision is specified in Schedule 3; or

(ii) this section is expressly applied to the document, or information, by that provision, or by another provision of that or any other enactment.

(1A) A person's right of access to a document under section 11 or 22 is not affected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment concerned or any other enactment.

(2) Subject to subsection (3), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.

(3) This section applies in relation to a document so far as it contains personal information about a person if:

(a) the person requests access to the document; and

(b) disclosure of the document, or information contained in the document, is prohibited under section 503A of the *Migration Act 1958* as affected by section 503D of that Act.

(4) In this section:

***enactment*** includes a Norfolk Island enactment.

## 42 Documents subject to legal professional privilege

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

(2) A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in



Authorised Version C2017C00102 registered 22/03/2017

relation to the production of the document in legal proceedings waives that claim.

(3) A document is not an exempt document under subsection (1) by reason only that:

(a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and

(b) the information is operational information of an agency.

Note: For ***operational information***, see section 8A.

## 45 Documents containing material obtained in confidence

(1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.

(2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:

(a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or

(b) an agency or the Commonwealth.

## 45A Parliamentary Budget Office documents

*General rules*

(1) A document is an exempt document if:

(a) both of the following are satisfied:



Authorised Version C2017C00102 registered 22/03/2017

(i) the document originated from the Parliamentary Budget Officer or the Parliamentary Budget Office;

(ii) the document was prepared in response to, or otherwise relates to, a confidential request; or

(b) the document was brought into existence for the dominant purpose of providing information to the Parliamentary Budget Officer or the Parliamentary Budget Office relating to a confidential request; or

(c) the document was provided to the Parliamentary Budget Officer or the Parliamentary Budget Office in response to a request by the Parliamentary Budget Officer for more information in relation to a confidential request; or

(d) the document is a draft of a document to which paragraph (a), (b) or (c) applies.

(2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.

(3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal that a confidential request has been made to the Parliamentary Budget Officer or the Parliamentary Budget Office, unless the existence of the request has been disclosed by the Senator or Member of the House of Representatives who made the request.

*Exceptions*

(4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

Note: However, the attachment itself may be an exempt document.

(5) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information has been made publicly available by the Parliamentary Budget Officer:

(a) under section 64U of the *Parliamentary Service Act 1999*; or

(b) in a statement made under subsection 64V(4) of that Act.



Authorised Version C2017C00102 registered 22/03/2017

(6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information has been made publicly available by the Senator or Member of the House of Representatives who made the confidential request to which the document relates.

(7) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:

(a) the disclosure of the information would reveal the existence of a confidential request; and

(b) the existence of the confidential request has not been disclosed by the Senator or Member of the House of Representatives who made the request.

*Definition*

(8) In this section:

***confidential request*** means a request referred to in paragraph 64E(1)(a) or (c) of the *Parliamentary Service Act 1999* that includes a direction under paragraph 64H(3)(d) or section 64M (as the case may be) of that Act to treat the request or any other information relating to the request as confidential.

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

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



Authorised Version C2017C00102 registered 22/03/2017

Parliament or of the Legislative Assembly of the Northern Territory.

## 47 Documents disclosing trade secrets or commercially valuable information

(1) A document is an exempt document if its disclosure under this Act would disclose:

(a) trade secrets; or

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

(2) Subsection (1) does not have effect in relation to a request by a person for access to a document:

(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by:

(a) the Commonwealth or a State; or

(b) an authority of the Commonwealth or of a State; or

(c) a Norfolk Island authority; or

(d) a local government authority.



Authorised Version C2017C00102 registered 22/03/2017

## 47A Electoral rolls and related documents

(1) In this section:

***Electoral Act*** means the *Commonwealth Electoral Act 1918*.

***electoral roll*** means:

(a) a Roll of the electors of:

(i) a State or Territory; or

(ii) a Division (within the meaning of the Electoral Act); or

(iii) a Subdivision (within the meaning of the Electoral Act);

prepared under the Electoral Act; or

(b) any part of a Roll referred to in paragraph (a).

(2) Subject to this section, a document is an exempt document if it is:

(a) an electoral roll; or

(b) a print, or a copy of a print, of an electoral roll; or

(c) a microfiche of an electoral roll; or

(d) a copy on tape or disk of an electoral roll; or

(e) a document that:

(i) sets out particulars of only one elector; and

(ii) was used to prepare an electoral roll; or

(f) a document that:

(i) is a copy of a document referred to in paragraph (e); or

(ii) contains only copies of documents referred to in paragraph (e); or

(g) a document (including a habitation index within the meaning of the Electoral Act) that:

(i) sets out particulars of electors; and

(ii) was derived from an electoral roll.

(3) The part of an electoral roll that sets out the particulars of an elector is not an exempt document in relation to the elector.

(4) Any print, copy of a print, microfiche, tape or disk that sets out or reproduces only the particulars entered on an electoral roll in



Authorised Version C2017C00102 registered 22/03/2017

respect of an elector is not an exempt document in relation to the elector.

(5) A document that sets out only the particulars of one elector and:

(a) is a copy of a document referred to in paragraph (2)(e); or

(b) is a copy, with deletions, of a document referred to in paragraph (2)(e), (f) or (g);

is not an exempt document in relation to the elector.



Authorised Version C2017C00102 registered 22/03/2017

## Division 3—Public interest conditional exemptions

### 47B Public interest conditional exemptions—Commonwealth-State relations etc.

A document is conditionally exempt if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or

(b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth; or

(d) would divulge information or matter communicated in confidence by or on behalf of an authority of Norfolk Island, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or

(f) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to an authority of Norfolk Island or to a person receiving the communication on behalf of an authority of Norfolk Island.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

### 47C Public interest conditional exemptions—deliberative processes

*General rule*

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared



Authorised Version C2017C00102 registered 22/03/2017

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:

(a) an agency; or

(b) a Minister; or

(c) the Government of the Commonwealth.

*Exceptions*

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

(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;

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(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.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

## 47D Public interest conditional exemptions—financial or property interests of the Commonwealth

A document is conditionally exempt if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).



Authorised Version C2017C00102 registered 22/03/2017

## 47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

## 47F Public interest conditional exemptions—personal privacy

*General rule*

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

(a) the extent to which the information is well known;

(b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;

(c) the availability of the information from publicly accessible sources;



Authorised Version C2017C00102 registered 22/03/2017

(d) any other matters that the agency or Minister considers relevant.

(3) Subject to subsection (5), subsection (1) does 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.

*Access given to qualified person instead*

(4) Subsection (5) applies if:

(a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and

(b) 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 the applicant might be detrimental to the applicant's physical or mental health, or well-being.

(5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:

(a) carries on the same occupation, of a kind mentioned in the definition of ***qualified person*** in subsection (7), as the first-mentioned qualified person; and

(b) is to be nominated by the applicant.

(6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.



Authorised Version C2017C00102 registered 22/03/2017

(7) In this section:

***qualified person*** means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

(a) a medical practitioner;

(b) a psychiatrist;

(c) a psychologist;

(d) a counsellor;

(e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

## 47G Public interest conditional exemptions—business

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

(3) Subsection (1) does not have effect in relation to a request by a person for access to a document:



Authorised Version C2017C00102 registered 22/03/2017

(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by:

(a) the Commonwealth or a State; or

(b) an authority of the Commonwealth or of a State; or

(c) a Norfolk Island authority; or

(d) a local government authority.

(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

## 47H Public interest conditional exemptions—research

A document is conditionally exempt if:

(a) it contains information relating to research that is being, or is to be, undertaken by an officer of an agency specified in Schedule 4; and

(b) disclosure of the information before the completion of the research would be likely unreasonably to expose the agency or officer to disadvantage.



Authorised Version C2017C00102 registered 22/03/2017

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

## 47J Public interest conditional exemptions—the economy

(1) A document is conditionally exempt if its disclosure under this Act would, or could be reasonably expected to, have a substantial adverse effect on Australia's economy by:

(a) influencing a decision or action of a person or entity; or

(b) giving a person (or class of persons) an undue benefit or detriment, in relation to business carried on by the person (or class), by providing premature knowledge of proposed or possible action or inaction of a person or entity.

Note: A person includes a body corporate and a body politic (see subsection 2C(1) of the *Acts Interpretation Act 1901*). Examples of a body politic include the government of the Commonwealth, a State, a Territory or a foreign country.

(2) For the purposes of subsection (1), a substantial adverse effect on Australia's economy includes a substantial adverse effect on:

(a) a particular sector of the economy; or

(b) the economy of a particular region of Australia.

(2A) For the purposes of paragraph (2)(b), Norfolk Island is taken to be a region of Australia.

(3) The documents to which subsection (1) applies include, but are not limited to, documents containing matter relating to any of the following:

(a) currency or exchange rates;

(b) interest rates;

(c) taxes, including duties of customs or of excise;

(d) the regulation or supervision of banking, insurance and other financial institutions;

(e) proposals for expenditure;

(f) foreign investment in Australia;

(g) borrowings by the Commonwealth, a State or an authority of the Commonwealth, of Norfolk Island or of a State.



Authorised Version C2017C00102 registered 22/03/2017

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).



Authorised Version C2017C00102 registered 22/03/2017

# Part V—Amendment and annotation of personal records

## 48 Application for amendment or annotation of personal records

Where a person claims that a document of an agency or an official document of a Minister to which access has been lawfully provided to the person, whether under this Act or otherwise, contains personal information about that person:

(a) that is incomplete, incorrect, out of date or misleading; and

(b) that has been used, is being used or is available for use by the agency or Minister for an administrative purpose;

the person may apply to the agency or Minister for:

(c) an amendment; or

(d) an annotation;

of the record of that information kept by the agency or Minister.

## 49 Requirements of an application for amendment

An application for amendment must:

(a) be in writing; and

(b) as far as practicable, specify:

(i) the document or official document containing the record of personal information that is claimed to require amendment; and

(ii) the information that is claimed to be incomplete, incorrect, out of date or misleading; and

(iii) whether the information is claimed to be incomplete, incorrect, out of date or misleading; and

(iv) the applicant's reasons for so claiming; and

(v) the amendment requested by the applicant; and

(c) specify an address in Australia to which a notice under this Part may be sent to the applicant; and



Authorised Version C2017C00102 registered 22/03/2017

(d) be 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 the address of the office of the agency or Minister (as the case may be) determined in accordance with paragraph 15(2)(d).

## 50 Amendment of records

(1) Subject to section 51C, where the agency or Minister to whom such an application is made is satisfied that:

(a) the record of personal information to which the request relates is contained in a document of the agency or an official document of the Minister, as the case may be; and

(b) the information is incomplete, incorrect, out of date or misleading; and

(c) the information has been used, is being used or is available for use by the agency or Minister for an administrative purpose;

the agency or Minister may amend the record of information.

(2) The agency or Minister may make the amendment:

(a) by altering the document or official document concerned to make the information complete, correct, up to date or not misleading; or

(b) by adding to that document or official document a note:

(i) specifying the respects in which the agency or Minister is satisfied that the information is incomplete, incorrect, out of date or misleading; and

(ii) in a case where the agency or Minister is satisfied that the information is out of date—setting out such information as is required to bring the information up to date.

(3) To the extent that it is practicable to do so, the agency or Minister must, when making an amendment under paragraph (2)(a), ensure that the record of information is amended in a way that does not



Authorised Version C2017C00102 registered 22/03/2017

obliterate the text of the record as it existed prior to the amendment.

## 51 Annotations of records etc. following unsuccessful applications for amendments of records

(1) Where an agency or Minister decides not to amend a document or official documents wholly or partly in accordance with an application under section 48, the agency or Minister must:

(a) take such steps as are reasonable in the circumstances to enable the applicant to provide a statement of the kind mentioned in paragraph 51A(c); and

(b) subject to subsection (2), annotate the document or official document concerned by adding to it the statement so provided.

(2) Paragraph (1)(b) does not apply if the agency or Minister considers the statement to be irrelevant, defamatory or unnecessarily voluminous.

(3) For the purposes of this Act, the provision by the applicant of a statement under subsection (1) is taken to be an application made under section 51A on the day the statement is so provided.

## 51A Requirements of an application for annotation

An application for annotation must:

(a) be in writing; and

(b) as far as practicable, specify the document or official document containing the record of personal information that is claimed to require annotation; and

(c) be accompanied by a statement by the applicant that specifies:

(i) the information that is claimed to be incomplete, incorrect, out of date or misleading; and

(ii) whether the information is claimed to be incomplete, incorrect, out of date or misleading; and



Authorised Version C2017C00102 registered 22/03/2017

(iii) the applicant's reasons for so claiming; and

(iv) such other information as would make the information complete, correct, up to date or not misleading; and

(d) specify an address in Australia to which a notice under this Part may be sent to the applicant; and

(e) be 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 the address of the office of the agency or Minister (as the case may be) determined in accordance with paragraph 15(2)(d).

## 51B Annotation of records

(1) Subject to section 51C, where the agency or Minister to whom such an application is made is satisfied that the record of personal information to which the request relates is contained in a document of the agency or an official document of the Minister (as the case may be), the agency or Minister must annotate the document or official document by adding to it the statement provided by the applicant under paragraph 51A(c).

(2) Subsection (1) does not apply if the agency or Minister considers the statement to be irrelevant, defamatory or unnecessarily voluminous.

## 51C Transfer of requests

(1) Where an application is made under section 48 to an agency or a Minister and:

(a) the document containing the record of personal information to which the request relates is not in the possession of that agency or Minister, but is, to the knowledge of the agency or Minister, in the possession of another agency or Minister; or



Authorised Version C2017C00102 registered 22/03/2017

(b) the subject matter of that document is more closely connected with the functions of another agency or Minister than with those of the agency or Minister to whom the application is made;

the agency or Minister to whom the application is made may, with the agreement of the other agency or Minister, transfer the application to the other agency or Minister.

(2) Where an application is made under section 48 to an agency or Minister and the document containing the record of personal information to which the application relates:

(a) originated with, or has been received from, a body or person specified in Part I of Schedule 2; and

(b) is more closely connected with the functions of that body or person than with those of the agency or Minister to whom the application is made;

the agency or Minister to whom the application is made must transfer the application:

(c) to the Department corresponding to the Department of State administered by the Minister who administers the enactment by or under which the body or person is established, continued in existence or appointed; or

(d) if the application relates to a document that originated with, or has been received from, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2—to that Department.

(3) Where an application is made under section 48 to an agency or a Minister and the document containing the record of personal information to which the application relates:

(a) originated in, or has been received from, another agency, being an agency specified in Part II of Schedule 2 or an agency that is a body corporate established by or under an Act specified in Part III of Schedule 2; and

(b) is more closely connected with the functions of the other agency in relation to documents in respect of which the other agency is exempt from the operation of this Act than with the



Authorised Version C2017C00102 registered 22/03/2017

functions of the agency or Minister to whom the application is made;

the agency or Minister to whom the application is made must transfer the application to the other agency.

(4) Where:

(a) an application made under section 48 to an agency or a Minister concerns records of personal information contained in more than one document; and

(b) one or more of those documents is a document to which subsection (1), (2) or (3) applies;

this section applies to each of those documents as if separate applications had been made to the agency or Minister in respect of records of personal information contained in each of those documents.

(5) Where an application is transferred to an agency or Minister under this section, the agency or Minister making the transfer must:

(a) inform the person making the application of the transfer; and

(b) if it is necessary to do so in order to enable the other agency or Minister to deal with the application, send the document concerned to the other agency or Minister.

(6) Where an application is transferred to an agency or a Minister under this section, the application is to be taken to be an application:

(a) made to that agency or Minister under section 48; and

(b) received by the agency or Minister at the time at which it was first received by an agency or Minister.

(7) Where:

(a) an application has been transferred to an agency or Minister in accordance with this section; and



Authorised Version C2017C00102 registered 22/03/2017

(b) the agency or Minister to whom the application has been transferred decides to amend or annotate, under this Part, a record of personal information to which the application relates;

the agency or Minister must, by written notice, notify the agency or Minister who made the transfer:

(c) of that decision; and

(d) of any amendment or annotation made by the first-mentioned agency or Minister in relation to that record.

(8) Where the agency or Minister receiving a notice under subsection (7) is in possession of a document containing the record of personal information to which the application relates, the agency or Minister must, upon receiving the notice, amend or annotate the record in the same manner as the record was amended or annotated by the agency or Minister to whom the application was transferred.

## 51D Notification etc. of a decision under this Part

(1) Where an application is made to an agency or Minister under this Part, the agency or Minister must take all reasonable steps to enable the applicant to be notified of a decision on the application as soon as practicable but in any case not later than 30 days after the day on which the request is received by or on behalf of the agency or Minister.

(2) Section 23 applies in relation to a decision on an application made under section 48.

(3) Section 26 applies in relation to a decision made under this Part refusing to amend or annotate a record as if that decision were a decision made under Part III refusing to grant access to a document in accordance with a request made under subsection 15(1).

## 51DA Decision not made on request for amendment or annotation within time—deemed refusal

(1) This section applies if:



Authorised Version C2017C00102 registered 22/03/2017

(a) an application has been made to an agency or Minister under section 48; and

(b) the period of 30 days mentioned in section 51D (the ***initial decision period***) has ended since the day the application was received by, or on behalf of, the agency or Minister; and

(c) notice of a decision on the application has not been received by the applicant.

*Deemed refusal*

(2) Subject to this section:

(a) the principal officer of the agency or the Minister is taken to have made a decision personally refusing to amend or annotate the record of personal information to which the application relates on the last day of the initial decision period; and

(b) notice of the decision is taken to have been given under section 26 to the applicant on the same day.

*Agency or Minister may apply for further time*

(3) However, the agency or Minister concerned may apply, in writing, to the Information Commissioner for further time to deal with the application.

(4) The Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency or Minister to deal with the application.

(5) If the Information Commissioner allows further time, the Information Commissioner may impose any condition that he or she considers appropriate.

(6) Subsection (2) (deemed refusal) does not apply, and is taken never to have applied, if the agency or Minister:

(a) makes a decision on the application within the further time allowed; and

(b) complies with any condition imposed under subsection (5).



Authorised Version C2017C00102 registered 22/03/2017

(7) However, subsection (2) (deemed refusal) applies as if the initial decision period were extended by the time allowed by the Information Commissioner under subsection (4) if the agency or Minister:

(a) does not make a decision on the request within the further time allowed; or

(b) does not comply with any condition imposed under subsection (5).

*No further time allowed*

(8) If subsection (7) (deemed refusal after allowance of further time) applies, the Information Commissioner does not have the power to allow further time under this section in relation to the decision taken to be made under subsection (2) in its operation as affected by subsection (7).

## 51E Comments on annotations

Nothing in this Part prevents an agency or Minister adding the agency's or Minister's comments to an annotation made to a record of information under section 51 or 51B.



Authorised Version C2017C00102 registered 22/03/2017

# Part VI—Internal review of decisions

## 52 Internal review of decisions—guide

This Part provides for internal review of decisions by agencies, other than decisions made personally by the principal officer of an agency or the responsible Minister. Agencies are required to complete internal reviews within 30 days. However, this period may be extended.

Sections 53A, 53B and 53C define the terms ***access refusal decision***, ***access grant decision*** and ***affected third party***. These terms are used in this Part and in Parts VII and VIIA.

## 53 Interpretation

For the purposes of this Act, unless the contrary intention appears, a claim that a document would, if it exists, be an exempt document under section 33 or 34 is to be deemed to be a claim that the document is an exempt document under that section despite the fact that the existence or non-existence of the document is not acknowledged.

## 53A What is an *access refusal decision*?

An ***access refusal decision*** is any of the following decisions:

(a) a decision refusing to give access to a document in accordance with a request;

(b) a decision giving access to a document but not giving, in accordance with the request, access to all documents to which the request relates;

(c) a decision purporting to give, in accordance with a request, access to all documents to which the request relates, but not actually giving that access;



Authorised Version C2017C00102 registered 22/03/2017

(d) a decision to defer the provision of access to a document (other than a document covered by paragraph 21(1)(d) (Parliament should be informed of contents));

(e) a decision under section 29 relating to imposition of a charge or the amount of a charge;

(f) a decision to give access to a document to a qualified person under subsection 47F(5);

(g) a decision refusing to amend a record of personal information in accordance with an application made under section 48;

(h) a decision refusing to annotate a record of personal information in accordance with an application made under section 48.

Note: If a decision is not made on a request under section 15 within the time required by that section, a decision is taken to have been made to refuse to give access to a document in accordance with the request (see section 15AC).

## 53B What is an *access grant decision*?

(1) An ***access grant decision*** is a decision covered by the following table:

Note: The table covers documents that may be conditionally exempt under section 47B (items 1 and 1A), 47G (item 2) or 47F (items 3 and 4), or exempt under section 47 (item 2). Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

**Access grant decisions**

| Item | If, in relation to a request for access to a document ... | the *access grant decision* is ... |
|---|---|---|
| 1 | consultation with a State under section 26A (documents affecting Commonwealth-State relations etc.) is required | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because:<br>(a) the document is not conditionally exempt under section 47B (Commonwealth-State relations etc.); or |



Authorised Version C2017C00102 registered 22/03/2017

| **Access grant decisions** | | |
|---|---|---|
| **Item** | **If, in relation to a request for access to a document ...** | **the *access grant decision* is ...** |
| | | (b) access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5). |
| 2 | section 27 (business documents) applies in relation to business information in the document | a decision of an agency or Minister to give access to the document (or an edited copy of the document) because:<br>(a) the document is neither exempt under section 47, nor conditionally exempt under section 47G; or<br>(b) if the document is conditionally exempt under section 47G—access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5).<br>Note: Section 47 deals with documents disclosing trade secrets or commercially valuable information. Section 47G deals with other business documents. |
| 3 | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a living person | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because:<br>(a) the document is not conditionally exempt under section 47F (personal privacy); or |



Authorised Version C2017C00102 registered 22/03/2017

| **Access grant decisions** | | |
|---|---|---|
| **Item** | **If, in relation to a request for access to a document ...** | **the *access grant decision* is ...** |
| | | (b) access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5). |
| 4 | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a deceased person | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because:<br>(a) the document is not conditionally exempt under section 47F (personal privacy); or<br>(b) access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5). |

(2) For the purposes of table item 1, ***State*** has the same meaning as in section 26A.

## 53C Internal review—who is an *affected third party*?

(1) The following table has effect:

| **Who is an *affected third party*?** | | |
|---|---|---|
| **Item** | **If, in relation to a request for access to a document ...** | **the *affected third party* for the document is ...** |
| 1 | consultation with a State under section 26A (documents affecting Commonwealth-State relations etc.) is required | the State. |
| 2 | section 27 (business documents) applies in relation to business information in the document | the person or organisation concerned (within the meaning of section 27). |



Authorised Version C2017C00102 registered 22/03/2017

| **Who is an *affected third party*?** | | |
|---|---|---|
| **Item** | **If, in relation to a request for access to a document ...** | **the *affected third party* for the document is ...** |
| 3 | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a living person | the person. |
| 4 | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a deceased person | the legal personal representative of the deceased person. |

(2) For the purposes of table item 1, ***State*** has the same meaning as in section 26A.

## 54 Internal review—access refusal decision

(1) This section applies if an access refusal decision is made in relation to a request to an agency for access to a document, other than a decision made personally by the principal officer of the agency or the responsible Minister.

(2) The applicant in relation to the request may apply under this Part for the review (the ***internal review***) of the access refusal decision.

## 54A Internal review—access grant decision

(1) This section applies if an access grant decision is made in relation to a request to an agency for access to a document, other than a decision made personally by the principal officer of the agency or the responsible Minister.

(2) The affected third party for the document may apply under this Part for the review (the ***internal review***) of the access grant decision.

Note: For ***affected third party***, see section 53C.



Authorised Version C2017C00102 registered 22/03/2017

## 54B Internal review—application for review

(1) An application for internal review must be in writing and must be made:

(a) within 30 days, or such further period as the agency allows, after the day the decision is notified to the applicant for internal review (the ***internal review applicant***); or

(b) in the case of an access refusal decision of a kind mentioned in paragraph 53A(b), (c) or (f), within whichever of the following is the longer period:

(i) 30 days, or such further period as the agency allows, after the day the decision is notified to the internal review applicant;

(ii) 15 days after the day the access referred to in that paragraph was given (or purported to be given).

(2) A decision by an agency to allow a further period for making an application may be made whether or not the time for making such an application has already expired.

(3) The agency's power to allow a further period for making an application may be exercised by an officer of the agency who is:

(a) acting within the scope of authority exercisable by him or her; and

(b) acting in accordance with arrangements approved by the responsible Minister or principal officer of the agency.

## 54C Internal review—decision on internal review

*Scope*

(1) This section applies if an application for internal review of an access refusal decision or an access grant decision (the ***original decision***) is made in accordance with this Part.



Authorised Version C2017C00102 registered 22/03/2017

*Decision*

(2) The agency must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.

(3) The person must make a fresh decision on behalf of the agency within 30 days after the day on which the application was received by, or on behalf of, the agency.

*Notice of decision*

(4) Section 26 extends to a decision made under this section.

## 54D Internal review—deemed affirmation of original decision

(1) This section applies if:
   (a) an application for internal review has been made to an agency; and
   (b) the period (the ***initial decision period***) of 30 days (as mentioned in subsection 54C(3)) has ended since the day the application for internal review was received by the agency; and
   (c) notice of a decision on the application has not been received by the internal review applicant.

(2) Subject to this section:
   (a) the principal officer of the agency is taken to have made a decision personally affirming the original decision on the last day of the initial decision period; and
   (b) notice of the decision is taken to have been given under section 26 to the internal review applicant on the same day.

*Agency may apply for further time*

(3) However, the agency may apply, in writing, to the Information Commissioner for further time to deal with the application.



Authorised Version C2017C00102 registered 22/03/2017

(4) The Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency to deal with the application.

(5) If the Information Commissioner allows further time the Information Commissioner may impose any condition that he or she considers appropriate.

(6) Subsection (2) (deemed affirmation) does not apply, and is taken never to have applied, if the agency:

(a) makes a decision on the application within the further time allowed; and

(b) complies with any condition imposed under subsection (5).

(7) However, subsection (2) (deemed affirmation) applies as if the initial decision period were extended by the time allowed by the Information Commissioner under subsection (4) if the agency:

(a) does not make a decision on the request within the further time allowed; or

(b) does not comply with any condition imposed under subsection (5).

*No further time allowed*

(8) If subsection (7) (deemed affirmation after allowance of further time) applies, the Information Commissioner does not have the power to allow further time under this section in relation to the decision taken to be made under subsection (2) in its operation as affected by subsection (7).

## 54E Internal review—decisions to which this Part does not apply

This Part does not apply in relation to:

(a) a decision on internal review; or

(b) a decision in relation to the provision of access to a document upon a request that is taken to have been made under section 15AC or 51DA.



Authorised Version C2017C00102 registered 22/03/2017

# Part VII—Review by Information Commissioner

## Division 1—Guide to this Part

### 54F Review by the Information Commissioner—guide

This Part sets up a system for review of decisions by the Information Commissioner.

Division 2 sets out the key concepts for the Part.

Division 3 sets out the types of decisions that are reviewable.

Division 4 provides for the making of applications for review by the Information Commissioner, including the time limits within which applications must be made.

The Information Commissioner may make preliminary inquiries before deciding whether or not to conduct a review. In certain circumstances, the Information Commissioner may decide not to review a decision (or a part of a decision) (see Division 5).

Division 6 provides for the procedure in an IC review, including the parties to the proceeding, circumstances in which a hearing may be held and who bears the onus of proof.

The Information Commissioner may refer questions of law to the Federal Court of Australia at any time during the review.

The Information Commissioner must make a decision on the review in accordance with Division 7.

The Information Commissioner has powers to gather information for the purposes of an IC review (see Division 8).



Authorised Version C2017C00102 registered 22/03/2017

In certain circumstances, the Inspector-General of Intelligence and Security must be called to give evidence (see Division 9).

An application for review of a decision of the Information Commissioner may be made to the Administrative Appeals Tribunal. A review party may appeal to the Federal Court of Australia, on a question of law, from a decision of the Information Commissioner (see Division 10).



Authorised Version C2017C00102 registered 22/03/2017

## Division 2—Key concepts

### 54G Key concepts—what is an *IC review*?

An ***IC review*** is a review of an IC reviewable decision undertaken by the Information Commissioner under this Part.

Note: ***IC review*** is short for Information Commissioner review.

### 54H Key concepts—what is an *IC review application*?

An ***IC review application*** is an application made under Division 4 for the review of an IC reviewable decision.

Note: ***IC review application*** is short for Information Commissioner review application.

### 54J Key concepts—who is an *IC review applicant*?

An ***IC review applicant*** is a person who applies for an IC review under section 54L or 54M.

Note: ***IC review applicant*** is short for Information Commissioner review applicant.

### 54K Key concepts—what is an *IC reviewable decision*?

An ***IC reviewable decision*** is:

(a) a decision covered by subsection 54L(2) (access refusal decisions); or

(b) a decision covered by subsection 54M(2) (access grant decisions).

Note: ***IC reviewable decision*** is short for Information Commissioner reviewable decision.



Authorised Version C2017C00102 registered 22/03/2017

## Division 3—IC reviewable decisions

### 54L IC reviewable decisions—access refusal decisions

(1) An application may be made to the Information Commissioner for a review of a decision covered by subsection (2).

(2) This subsection covers the following decisions:
  (a) an access refusal decision;
  (b) a decision made by an agency on internal review of an access refusal decision (see section 54C);
  (c) a decision refusing to allow a further period for making an application for internal review of an access refusal decision (under section 54B).

Note 1: An application for the review of an access refusal decision made for the purposes of paragraph (a) may be made regardless of whether the decision was the subject of internal review.

Note 2: If no decision is made on internal review within 30 days, a decision to affirm the original access refusal decision is taken to have been made (see section 54D).

(3) The IC review application may be made by, or on behalf of, the person who made the request to which the decision relates.

### 54M IC reviewable decisions—access grant decisions

(1) An application may be made to the Information Commissioner for a review of a decision covered by subsection (2).

(2) This subsection covers the following decisions:
  (a) an access grant decision;
  (b) a decision made by an agency on internal review of an access grant decision (see section 54C).

Note: If no decision is made on internal review within 30 days, a decision to affirm the original access grant decision is taken to have been made (see section 54D).



Authorised Version C2017C00102 registered 22/03/2017

(3) The IC review application may be made by, or on behalf of, the following:

(a) in any case—an affected third party for the document in relation to which the decision covered by subsection (2) was made;

(b) in a case covered by paragraph (2)(b)—the person who made the request to which the decision relates.

Note: For ***affected third party***, see section 53C.



Authorised Version C2017C00102 registered 22/03/2017

# Division 4—IC review applications

## Subdivision A—Making an application

### 54N IC review applications—application

*Content of application*

(1) An IC review application must be in writing, and must:
  (a) give details of how notices under this Part may be sent to the IC review applicant (for example, by providing an electronic address to which notices may be sent by electronic communication); and
  (b) include a copy of the notice given under section 26 of the IC reviewable decision for which an IC review is sought.

Note: For who may make an IC review application, see sections 54L and 54M.

(2) The IC review application may contain particulars of the basis on which the IC review applicant disputes the IC reviewable decision.

(3) The Office of the Australian Information Commissioner must provide appropriate assistance to a person who:
  (a) wishes to make an IC review application; and
  (b) requires assistance to prepare the IC review application.

*Delivery of application*

(4) The IC review application must be sent to the Information Commissioner. The IC review application may be sent in any of the following ways:
  (a) delivery to the Information Commissioner at the address of the Information Commissioner specified in a current telephone directory;
  (b) postage by pre-paid post to an address mentioned in paragraph (a);



Authorised Version C2017C00102 registered 22/03/2017

(c) sending by electronic communication to an electronic address specified by the Information Commissioner.

## 54P IC review applications—requirement to notify affected third parties

*Scope*

(1) This section applies if:

(a) an agency or Minister decides not to give access to a document to which a consultation requirement applies under section 26A, 27 or 27A; and

(b) an IC review application is made for an IC review of that decision.

*Requirement to notify*

(2) The agency or Minister must, as soon as practicable, take all reasonable steps to notify the affected third party for the document of the application.

Note 1: For ***affected third party***, see section 53C.

Note 2: The agency or Minister is not required to give notice if the Information Commissioner orders that it is not appropriate to do so in the circumstances (see section 54Q).

(3) The agency or Minister must, as soon as practicable, give a copy of the notice to the Information Commissioner.

## 54Q IC review applications—circumstances in which not giving notice is appropriate

(1) This section applies in relation to a document to which a consultation requirement applies under section 27 or 27A.

(2) An agency or Minister is not required to notify an affected third party for the document under subsection 54P(2) if:

(a) the agency or the Minister applies to the Information Commissioner for an order that it would not be appropriate to



Authorised Version C2017C00102 registered 22/03/2017

notify the affected third party in the circumstances covered by subsection (3); and

(b) the Information Commissioner makes the order.

Note: For ***affected third party***, see section 53C.

(3) The circumstances covered by this subsection are whether notifying the affected third party would, or could reasonably be expected to, do any of the following:

(a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation;

(b) prejudice the enforcement or proper administration of the law in a particular instance;

(c) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law;

(d) endanger the life or physical safety of any person;

(e) cause damage to the security, defence or international relations of the Commonwealth.

### 54R IC review applications—withdrawal

(1) An IC review applicant may, in writing, withdraw the IC review application at any time before the Information Commissioner makes a decision under section 55K.

(2) If the IC review application is withdrawn, it is taken never to have been made.

## Subdivision B—Time limits

### 54S IC review applications—time limits

*Access refusal decisions*

(1) An IC review application in relation to a decision covered by subsection 54L(2) (access refusal decisions) must be made within



Authorised Version C2017C00102 registered 22/03/2017

60 days after the day notice of the IC reviewable decision was given under section 26.

*Access grant decisions*

(2) An IC review application in relation to a decision covered by subsection 54M(2) (access grant decisions) must be made within 30 days after:

(a) if a decision is made on internal review of the decision—the day notice of the decision under section 54C was given to the affected third party for the document in relation to which the decision is made; or

(b) otherwise—the day notice under section 26A, 27 or 27A was given to the affected third party for the document in relation to which the decision was made.

Note: For ***affected third party***, see section 53C.

## 54T IC review applications—extension of time

*Application for extension of time*

(1) A person may apply to the Information Commissioner for an extension of time for making an IC review application.

(2) The Information Commissioner may extend the time if the Information Commissioner is satisfied that it is reasonable in all the circumstances to do so.

(3) The time for making an IC review application may be extended under this section although the period mentioned in section 54S has ended.

*Requirement to notify*

(4) Before determining an application under subsection (1), the Information Commissioner may require the IC review applicant to give notice of the application to a specified person or persons that the Information Commissioner considers is affected by the application.



Authorised Version C2017C00102 registered 22/03/2017

*Person may oppose application*

(5) A person to whom notice is given under subsection (4) may notify the Information Commissioner in writing that he or she opposes the application under subsection (1). The person must do so within the time required by the Information Commissioner.

*Reasonable opportunity to be heard*

(6) If notice is given under subsection (5), the Information Commissioner must give the IC review applicant and the person to whom notice has been given under subsection (4) a reasonable opportunity to present their cases before determining the application under subsection (1).



Authorised Version C2017C00102 registered 22/03/2017

## Division 5—Decision to review

### 54U Decision to review—interpretation

This Division applies to a part of an IC review application as if a reference to an IC review application were a reference to the part of the IC review application.

### 54V Decision to review—preliminary inquiries

The Information Commissioner may make inquiries of the review parties for the purpose of determining whether or not to undertake an IC review.

### 54W Decision to review—discretion not to review

The Information Commissioner may decide not to undertake an IC review, or not to continue to undertake an IC review, if:

(a) the Information Commissioner is satisfied of any of the following:
  (i) the IC review application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith;
  (ii) the IC review applicant has failed to cooperate in progressing the IC review application, or the IC review, without reasonable excuse;
  (iii) the Information Commissioner cannot contact the IC review applicant after making reasonable attempts; or
(b) the Information Commissioner is satisfied that the interests of the administration of this Act make it desirable that the IC reviewable decision be considered by the Tribunal; or
(c) the IC review applicant fails to comply with a direction of the Information Commissioner.

Note 1: The Information Commissioner may make a decision under this section to review only part of an IC reviewable decision (see section 54U).



Authorised Version C2017C00102 registered 22/03/2017

Note 2: If the Information Commissioner makes a decision under paragraph (b), an application for review may be made to the Tribunal for review of the IC reviewable decision (see section 57A).

Note 3: Division 1 of Part VIII sets out the circumstances in which a vexatious applicant declaration may be made in relation to a person. A declaration may permit the Information Commissioner to refuse to consider an IC review application if the person makes the IC review application under this section without the written permission of the Information Commissioner.

## 54X Decision to review—notice requirement if discretion not to review exercised

(1) This section applies if the Information Commissioner decides not to undertake an IC review, or not to continue to undertake an IC review.

(2) The Information Commissioner must, as soon as practicable, notify the review parties of the decision in writing.

(3) The notice must:

(a) state the reasons for the Information Commissioner's decision; and

(b) if the Information Commissioner makes a decision under paragraph 54W(b)—state that an application for review of the relevant IC reviewable decision may be made to the Tribunal under section 57A.

Note: See section 57A for the time within which the application for review must be made to the Tribunal.

(4) However, the notice must not include:

(a) exempt matter; or

(b) information of the kind referred to in subsection 25(1).

Note: Subsection 25(1) deals with information about the existence or otherwise of certain documents.



Authorised Version C2017C00102 registered 22/03/2017

## 54Y Decision to review—actual decisions made after IC review has commenced

(1) This section applies if:

(a) an agency or Minister has been taken to have made a decision (the ***deemed decision***) under subsection 15AC(3), 51DA(2) or 54D(2); and

(b) a person makes an IC review application for review of the deemed decision; and

(c) the Information Commissioner has not made a decision under section 54W (decision not to review) or 55K (decision on review) in relation to the deemed decision; and

(d) subsection 15AC(7), 51DA(6) or 54D(6) applies in relation to a decision (the ***actual decision***) made by the agency or Minister.

(2) The Information Commissioner must deal with the IC review application for review of the deemed decision as if it were an IC review application for the review of the actual decision, subject otherwise to this Part.

Note: When making the actual decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.



Authorised Version C2017C00102 registered 22/03/2017

# Division 6—Procedure in IC review

## 54Z Procedure in IC review—general notice requirement

Before undertaking an IC review, the Information Commissioner must inform:

(a) the person, agency or Minister who made the decision; or

(b) if the IC review application is made under section 54M (access grant decisions)—the person who made the request.

## 55 Procedure in IC review—general

(1) The Information Commissioner may, for the purposes of an IC review, review an IC reviewable decision by considering the documents or other material lodged with or provided to the Information Commissioner, and without holding a hearing, if:

(a) it appears to the Information Commissioner that the issues for determination on the IC review can be adequately determined in the absence of the review parties; and

(b) the Information Commissioner is satisfied that there are no unusual circumstances that would warrant the Information Commissioner holding a hearing; and

(c) none of the review parties have applied for a hearing under section 55B.

(2) The Information Commissioner may otherwise:

(a) conduct an IC review in whatever way he or she considers appropriate; and

(b) use any technique that the Information Commissioner considers appropriate to facilitate an agreed resolution of matters at issue in the IC review (for example by using techniques that are used in alternative dispute resolution processes); and

(c) allow a person to participate in an IC review by any means of communication; and



Authorised Version C2017C00102 registered 22/03/2017

(d) obtain any information from any person, and make any inquiries, that he or she considers appropriate; and

(e) give written directions as to the procedure to be followed in relation to:

(i) IC reviews generally; or

(ii) a particular IC review.

Example 1: The Information Commissioner may allow a person under paragraph (2)(c) to participate in a hearing by telephone.

Example 2: The Information Commissioner may give written directions under subparagraph (2)(e)(ii) as to the procedure to be followed when dealing with confidential documents in a particular IC review.

(3) A direction given under paragraph (2)(e) is not a legislative instrument.

(4) Without limiting subsection (2), the Information Commissioner must, in relation to an IC review:

(a) conduct the IC review with as little formality and as little technicality as is possible given:

(i) the requirements of this Act; and

(ii) the requirements of any other law; and

(iii) a proper consideration of the matters before the Information Commissioner; and

(b) ensure that each review party is given a reasonable opportunity to present his or her case; and

(c) conduct the IC review in as timely a manner as is possible given the matters mentioned in subparagraphs (a)(i) to (iii).

(5) If the Information Commissioner holds a hearing, the Information Commissioner:

(a) must hold the hearing in public, unless the Information Commissioner is satisfied that it is not desirable to do so:

(i) because of the confidential nature of any evidence or matter relating to the proceeding; or

(ii) for any other reason; and

(b) is not bound by the rules of evidence; and



Authorised Version C2017C00102 registered 22/03/2017

(c) may hold a part of the hearing in the absence of a review party (or a review party's representative) if it is necessary to do so to prevent disclosure to the review party (or the review party's representative) of any evidence or matter relating to the proceeding that is of a confidential nature.

## 55A Procedure in IC review—parties to proceeding

*Who are the review parties?*

(1) The parties to an IC review (the ***review parties***) are as follows:
   (a) the IC review applicant;
   (b) the principal officer of the agency, or the Minister, to whom the request was made;
   (c) an affected third party (if any) required to be notified of the IC review application under section 54P (requirement to notify affected third parties);
   (d) a party to the proceeding under subsection (3).

Note: For ***affected third party***, see section 53C.

*Application to become a review party*

(2) If an IC review application is made in relation to an IC reviewable decision, a person whose interests are affected by the IC reviewable decision may apply, in writing, to the Information Commissioner to be a review party.

(3) The Information Commissioner may, by notice in writing, make a person who applies under subsection (2) an IC review party.

## 55B Procedure in IC review—application for hearing

(1) At any time during an IC review, a review party may apply to the Information Commissioner requesting that the Information Commissioner hold a hearing for the purposes of the IC review.

(2) The Information Commissioner must notify the other review parties of the application.



Authorised Version C2017C00102 registered 22/03/2017

(3) The Information Commissioner must:
  (a) give all review parties a reasonable opportunity to make submissions on the application; and
  (b) decide whether or not to hold a hearing.

## 55C Procedure in IC review—representation

At the hearing of a proceeding before the Information Commissioner, a review party may:
  (a) appear in person; or
  (b) be represented by another person.

## 55D Procedure in IC review—onus

(1) Subject to subsection (2), in an IC review in relation to a request or an application under section 48, the agency or Minister concerned has the onus of establishing that:
  (a) a decision given in respect of the request or application is justified; or
  (b) the Information Commissioner should give a decision adverse to the IC review applicant.

(2) In an IC review of a decision for which an IC review application is made under section 54M (access grant decisions), the affected third party for the document in relation to which the decision was made has the onus of establishing that:
  (a) a decision refusing the request is justified; or
  (b) the Information Commissioner should give a decision adverse to the person who made the request.

Note: For ***affected third party***, see section 53C.

## 55DA Decision-maker must assist Information Commissioner

In an IC review, the agency or Minister who made the IC reviewable decision must use the agency's or the Minister's best endeavours to assist the Information Commissioner to make his or her decision in relation to the IC review.



Authorised Version C2017C00102 registered 22/03/2017

## 55E Procedure in IC review—inadequate reasons from decision maker

(1) This section applies if:
  (a) an IC review application is made in relation to an IC reviewable decision made by an agency or a Minister; and
  (b) the agency or Minister was required to provide a statement of reasons under section 26 for the decision to the person who made the request; and
  (c) the Information Commissioner believes that:
    (i) no statement has been provided; or
    (ii) the statement that has been provided is inadequate.

(2) The Information Commissioner may, by notice in writing, require the agency or Minister to provide an adequate statement of reasons as mentioned in subsection 26(1).

(3) If the Information Commissioner gives notice under subsection (2), the agency or Minister must provide the adequate statement of reasons to the IC review applicant and the Information Commissioner within:
  (a) the period specified in the notice; or
  (b) if no period is specified in the notice—28 days after the day the notice was given to the agency or Minister.

## 55F Procedure in IC review—review parties reach agreement

(1) This section applies if, at any stage of an IC review:
  (a) the review parties reach agreement as to the terms of a decision on an IC review:
    (i) on the IC review application; or
    (ii) in relation to a part of the IC review application; or
    (iii) in relation to a matter arising out of the IC review application; and
  (b) the agreement is acceptable to all of the review parties; and



Authorised Version C2017C00102 registered 22/03/2017

(c) the terms of the agreement are reduced to writing, signed by, or on behalf of, the review parties and given to the Information Commissioner; and

(d) the Information Commissioner is satisfied that a decision in those terms or consistent with those terms would be within the powers of the Information Commissioner.

(2) The Information Commissioner may, if satisfied that it is appropriate:

(a) in the case of an agreement as to the terms of a decision of the Information Commissioner on the IC review—make a decision in accordance with those terms without completing the IC review; or

(b) in the case of an agreement that relates to a part of the proceeding or a matter arising out of the proceeding—in the Information Commissioner's decision on the IC review, give effect to the terms of the agreement without completing the IC review with respect to the part.

## 55G Procedure in IC review—revocation or variation of access refusal decision

(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the ***original decision***) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the ***revised decision***) would have an effect of:

(a) giving access to a document in accordance with the request; or

(b) relieving the IC review applicant from liability to pay a charge; or

(c) requiring a record of personal information to be amended or annotated in accordance with the application.

Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.



Authorised Version C2017C00102 registered 22/03/2017

(2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):

(a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and

(b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

## 55H Procedure in IC review—reference of questions of law to Federal Court of Australia

(1) The Information Commissioner may, at any time during an IC review, refer a question of law arising in an IC review to the Federal Court of Australia for decision.

(2) The Information Commissioner may refer the question of law:

(a) on the application of a review party; or

(b) on the Information Commissioner's initiative.

(3) The Federal Court of Australia has jurisdiction to hear and determine a question of law referred to it.

(4) The jurisdiction of the Federal Court of Australia may be exercised by a single judge of the Court.

(5) If a question of law is referred, the Information Commissioner must not, for the purposes of the IC review:

(a) give a decision to which the question is relevant before the Federal Court of Australia makes a decision in relation to the reference; or

(b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the Federal Court of Australia on the question.



Authorised Version C2017C00102 registered 22/03/2017

## 55J Procedure in IC review—sending of documents to, and disclosure of documents by, the Federal Court of Australia

If a question of law is referred under section 55H:

(a) the Information Commissioner must cause all documents and information in the possession of the Information Commissioner that relate to the IC review and to the reference to be sent to the Federal Court of Australia; and

(b) at the conclusion of the proceeding before the Federal Court of Australia, the Court must cause the documents to be returned to the Information Commissioner.



Authorised Version C2017C00102 registered 22/03/2017

## Division 7—Decision on IC review

### 55K Decision on IC review—decision of Information Commissioner

(1) After undertaking an IC review, the Information Commissioner must make a decision in writing:

(a) affirming the IC reviewable decision; or

(b) varying the IC reviewable decision; or

(c) setting aside the IC reviewable decision and making a decision in substitution for that decision.

(2) For the purposes of implementing a decision on an IC review, the Information Commissioner may perform the functions, and exercise the powers, of the person who made the IC reviewable decision.

(3) A decision of the Information Commissioner on an IC review has the same effect as a decision of the agency or Minister who made the IC reviewable decision.

*Content of the decision*

(4) A decision on an IC review must include the following:

(a) a statement of reasons for the decision;

(b) a statement of the rights of the review parties to apply to the Tribunal for review of the decision under section 57A.

(5) However, a decision on an IC review must not include:

(a) information of the kind referred to in subsection 25(1); or

(b) exempt matter.

Note: Subsection 25(1) deals with information about the existence or otherwise of certain documents.

*Providing copy of decision*

(6) The Information Commissioner must give a copy of a decision on an IC review to each review party.



Authorised Version C2017C00102 registered 22/03/2017

*Copy of decision prima facie evidence*

(7) A document is prima facie evidence of a decision on an IC review if:

(a) the document purports to be a copy of the decision; and

(b) the document purports to be certified by, or on behalf of, the Information Commissioner to be a true copy of the decision.

*Publication requirement*

(8) The Information Commissioner must publish a decision on an IC review to members of the public generally.

## 55L Decision on IC review—no power to give access to exempt documents

(1) This section applies if it is established in proceedings on an IC review that a document is an exempt document.

(2) The Information Commissioner does not have power to decide that access to the document is to be given, so far as it contains exempt matter.

## 55M Decision on IC review—limitation on amending records

(1) The Information Commissioner may, in a decision under section 55K, make a decision that requires, or has the effect of requiring, that an amendment be made to a record that relates to a record of an opinion only if he or she is satisfied of either (or both) of the following:

(a) the opinion was based on a mistake of fact;

(b) the author of the opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion.

(2) The Information Commissioner must not, in a decision under section 55K, make a decision that requires, or has the effect of requiring, that an amendment be made to a record if he or she is satisfied of either of the following:



Authorised Version C2017C00102 registered 22/03/2017

(a) the record is a record of a decision, under an enactment, by a court, tribunal, authority or person;
(b) the decision whether to amend the record involves the determination of a question that the person seeking amendment of the record is, or has been, entitled to have determined by the agency (on internal review), the Information Commissioner, a court or tribunal.

(3) In this section:

***enactment*** includes a Norfolk Island enactment.

## 55N Decision on IC review—obligation to comply with decision

A principal officer of an agency or a Minister must comply with a decision of the Information Commissioner under section 55K on an IC review.

## 55P Decision on IC review—enforcement of decision against agency

(1) If the principal officer of an agency or a Minister fails to comply with section 55N, an application may be made to the Federal Court of Australia for an order directing the principal officer or Minister to comply.

(2) The application may be made by:
(a) the Information Commissioner; or
(b) the IC review applicant.

(3) The court may make any other orders that it thinks fit to secure compliance by the principal officer or the Minister.

(4) An application under subsection (1) may only be made if:
(a) the time has ended for making an application to the Tribunal under section 57A for review of the Information Commissioner's decision; and
(b) such an application is not made before the end of the time.



Authorised Version C2017C00102 registered 22/03/2017

## 55Q Decision on IC review—correction of errors

(1) The Information Commissioner may correct an obvious error in a decision under section 55K of the Information Commissioner on an IC review.

Example: The following are examples of obvious errors:

(a) an obvious clerical or typographical error in the text of the decision or statement of reasons;

(b) an inconsistency between the decision and the statement of reasons.

(2) The Information Commissioner may correct an obvious error:

(a) on an application by a review party; or

(b) on the Information Commissioner's initiative.



Authorised Version C2017C00102 registered 22/03/2017

## Division 8—Information gathering powers

### 55R Information gathering powers—obliging production of information and documents

*Scope*

(1) This section applies if the Information Commissioner has reason to believe that a person has information, or a document, relevant to an IC review.

(2) This section applies subject to sections 55T (exempt documents generally) and 55U (particular exempt documents).

*Notice to produce*

(3) The Information Commissioner may, by written notice, require a person to, for the purposes of an IC review:
  (a) give the Information Commissioner information of a kind specified by the notice; or
  (b) produce to the Information Commissioner a document specified by the notice.

(4) The notice must:
  (a) be in writing; and
  (b) specify the place at which the person must comply with the notice; and
  (c) state that the person must comply with the notice:
    (i) within a specified period that is not less than 14 days after the day on which the person is given the notice; or
    (ii) at a specified time that is not less than 14 days after the time at which the person is given the notice.

*Offence for failure to comply*

(5) A person commits an offence if:



Authorised Version C2017C00102 registered 22/03/2017

(a) the person is subject to a requirement specified in a notice under subsection (3); and
(b) the person engages in conduct; and
(c) the person's conduct breaches the requirement.

Penalty for a contravention of this subsection: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## 55S Information gathering powers—dealings with documents

*What the Information Commissioner may do with documents*

(1) The Information Commissioner may do any of the following in relation to any documents produced in accordance with a notice under subsection 55R(3):
(a) take possession of the documents;
(b) make copies of the documents;
(c) take extracts from the documents;
(d) hold the documents for a period that is necessary for the purposes of the IC review.

*Information Commissioner must permit access by those entitled*

(2) For the purposes of an IC review, the Information Commissioner must permit a person to inspect a document that the person would be entitled to inspect if the document were not held by the Information Commissioner.

(3) The Information Commissioner must permit the person to inspect the document at any reasonable time.



Authorised Version C2017C00102 registered 22/03/2017

## 55T Information gathering powers—production of exempt documents generally

*Scope*

(1) This section applies to an IC review of a decision in relation to a document if:

(a) the principal officer of an agency or a Minister claims that the document is an exempt document; and

(b) section 55U does not apply to the document.

Note: Section 55U deals with the production of documents that are claimed to be exempt documents under section 33 (national security etc.), 34 (Cabinet documents) or 45A (Parliamentary Budget Office documents).

*Exempt document produced under obligation*

(2) The Information Commissioner may, for the purposes of deciding whether the document is an exempt document, require the document to be produced.

(3) If the Information Commissioner is satisfied that the document is an exempt document, the Information Commissioner must return the document to the person by whom it was produced.

*Production to determine whether access can be given to part of document*

(4) The Information Commissioner may require the production of an exempt document for the purpose of determining whether it is practicable for an agency or a Minister to give access to an edited copy of the document.

(5) If the document is produced to the Information Commissioner (whether under this section or voluntarily), only the following persons may have access to the document, or to the contents of the document:

(a) the Information Commissioner;



Authorised Version C2017C00102 registered 22/03/2017

(b) a member of the staff of the Information Commissioner in the course of the performance of his or her duties as a member of that staff.

## 55U Information gathering powers—production of national security, Cabinet or Parliamentary Budget Office documents

(1) This section applies to an IC review of a decision in relation to a document that is claimed to be an exempt document under section 33 (national security documents), 34 (Cabinet documents) or 45A (Parliamentary Budget Office documents).

(2) The Information Commissioner may only require the production of the document in accordance with this section.

(3) If the Information Commissioner is not satisfied by evidence on affidavit or otherwise that the document is an exempt document under section 33, 34 or 45A, the Information Commissioner may require the document to be produced for inspection by the Information Commissioner.

(4) If the Information Commissioner is satisfied that the document is an exempt document, the Information Commissioner must return the document to the person by whom it was produced without permitting a person to have access to the document or disclosing the contents of the document to a person, unless the person is:

(a) the Information Commissioner; or

(b) a member of the staff of the Information Commissioner in the course of the performance of his or her duties as a member of that staff; or

(c) in the circumstances permitted under paragraph 55ZD(3)(a)—the Inspector-General of Intelligence and Security.



Authorised Version C2017C00102 registered 22/03/2017

## 55V Information gathering powers—further searches for a document

(1) This section applies to an IC review in relation to a request for access to a document if:

(a) access to the document is refused under section 24A (document cannot be found etc.); or

(b) access is purportedly given to the document (amongst others to which the request relates), but is not actually given.

(2) The Information Commissioner may require the agency or Minister concerned to conduct further searches for the document.

## 55W Information gathering powers—obliging persons to appear

*Notice to appear*

(1) The Information Commissioner may, by written notice, require a person to appear before the Information Commissioner to answer questions for the purposes of an IC review.

(2) The notice must:

(a) be in writing; and

(b) state that the person must comply with the notice at a specified time that is not less than 14 days after the time at which the person is given the notice; and

(c) specify the place at which the person must comply with the notice.

*Offence for failure to comply*

(3) A person commits an offence if:

(a) the person is subject to a requirement specified in a notice under subsection (1); and

(b) the person engages in conduct; and

(c) the person's conduct breaches the requirement.



Authorised Version C2017C00102 registered 22/03/2017

Penalty for a contravention of this subsection: 6 months imprisonment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## 55X Information gathering powers—administration of oath or affirmation

(1) If, by a notice under subsection 55W(1), the Information Commissioner requires a person to appear before him or her, the Information Commissioner may:

(a) administer an oath or affirmation to the person; and

(b) examine the person on oath or affirmation.

(2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

(3) A person commits an offence if:

(a) the person is required under this section to be examined on oath or affirmation; and

(b) the person engages in conduct; and

(c) the person's conduct breaches that requirement.

Penalty for a contravention of this subsection: 6 months imprisonment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## 55Y Information gathering powers—no loss of legal professional privilege

Information or a document does not cease to be the subject of legal professional privilege merely because it is given, provided, produced or referred to for the purposes of this Part.



Authorised Version C2017C00102 registered 22/03/2017

## 55Z Information gathering powers—protection from liability

(1) This section applies if a person does any of the following in good faith for the purposes of an IC review:
  (a) gives information;
  (b) produces a document;
  (c) answers a question.

(2) If this section applies, then:
  (a) civil proceedings do not lie against a person because the person does any of the matters mentioned in paragraphs (1)(a) to (c); and
  (b) the person is not liable for a penalty under a provision of any law because the person does any of those matters.

(3) This section applies whether or not the person is required to do a thing mentioned in subsection (1) in accordance with this Division.



Authorised Version C2017C00102 registered 22/03/2017

# Division 9—Evidence by Inspector-General of Intelligence and Security

## 55ZA Evidence by Inspector-General of Intelligence and Security—scope

This Division applies in an IC review of a decision in relation to a document that is claimed to be an exempt document under section 33 (national security documents).

## 55ZB Evidence by Inspector-General of Intelligence and Security—request to give evidence

(1) Before determining that a document is not an exempt document under section 33, the Information Commissioner must request the Inspector-General of Intelligence and Security to appear personally and give evidence on:

(a) the damage that would, or could reasonably be expected to, be caused to:

(i) the security of the Commonwealth; or

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth;

if access to the document were given in accordance with the request; or

(b) whether giving access to the document in accordance with the request would divulge any information or matter communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

(2) Before determining that an agency or Minister must grant access to a copy of the document with deletions, the Information



Authorised Version C2017C00102 registered 22/03/2017

Commissioner must request the Inspector-General to appear personally and give evidence on:

(a) the damage that would, or could reasonably be expected to, be caused to:

(i) the security of the Commonwealth; or

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth;

if the proposed deletions were not made; or

(b) whether giving access to the document without the proposed deletions would divulge any information or matter communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

(3) Before hearing the evidence of the Inspector-General, the Information Commissioner must hear any evidence to be given or submissions to be made by, or on behalf of, the agency to which, or the Minister to whom, the request was made for access to the document.

(4) The Information Commissioner is not bound by any opinion of the Inspector-General expressed while giving evidence under this Division.

### 55ZC Evidence by Inspector-General of Intelligence and Security—compliance with request

The Inspector-General of Intelligence and Security must comply with a request under section 55ZB unless, in the opinion of the Inspector-General, the Inspector-General is not appropriately qualified to give evidence on the matters in relation to which the Inspector-General has been requested to give evidence.



Authorised Version C2017C00102 registered 22/03/2017

## 55ZD Evidence by Inspector-General of Intelligence and Security—procedural matters

(1) This section applies for the purposes of enabling the Inspector-General of Intelligence and Security to comply with a request under section 55ZB.

(2) The Information Commissioner must allow the Inspector-General to take possession of, and make copies of or take extracts from, any document given to the Information Commissioner for the purposes of the proceeding.

(3) The Inspector-General may require the production of the following:

(a) the document that is claimed to be an exempt document under section 33 by the agency to which or the Minister to whom the request was made for access to the document;

(b) any document of an agency or official document of a Minister that relates to the document mentioned in subsection (2) by the agency or Minister.

(4) The Inspector-General may make copies of, or take extracts from, the documents mentioned in subsection (3).

(5) After the period that is reasonably necessary for the purposes of giving evidence to the Information Commissioner, the Inspector-General must:

(a) return the original of any document to the Information Commissioner or to the agency or Minister; and

(b) destroy any copies of or extracts taken from any document.

(6) The Inspector-General must permit a person to inspect a document that the person would be entitled to inspect if the document were not held by the Inspector-General.

(7) The Inspector-General must permit the person to inspect the document at all reasonable times.



Authorised Version C2017C00102 registered 22/03/2017

(8) The Information Commissioner must allow the Inspector-General a period within which to consider the documents mentioned in subsections (2) to (4) that is reasonable having regard to:

(a) the nature of the evidence that the Inspector-General has been requested to give; and

(b) the time required by the Inspector-General to perform the Inspector-General's other functions.



Authorised Version C2017C00102 registered 22/03/2017

# Division 10—Appeals

## 56 Appeals—appeals to Federal Court of Australia on questions of law

(1) A review party may appeal to the Federal Court of Australia, on a question of law, from a decision of the Information Commissioner on an IC review.

(2) An appeal under this section must be instituted:

(a) either:

(i) not later than 28 days after the day a decision under section 55K of the Information Commissioner on an IC review is given to the review party; or

(ii) within the further time that the Federal Court of Australia allows; and

(b) in any way that is prescribed by rules of court made under the *Federal Court of Australia Act 1976*.

(3) The Federal Court of Australia has jurisdiction to hear and determine appeals instituted under this section.

(4) The jurisdiction of the Federal Court of Australia under subsection (3) includes jurisdiction to make findings of fact under section 56A.

(5) The Federal Court of Australia:

(a) must hear and determine the appeal; and

(b) may make any order or orders that it thinks appropriate by reason of its decision.

(6) Without limiting subsection (5), the orders that the Federal Court of Australia may make include the following:

(a) an order affirming the decision of the Information Commissioner;



Authorised Version C2017C00102 registered 22/03/2017

(b) an order setting aside the decision of the Information Commissioner and making a decision in substitution for the decision;

(c) an order remitting the case to be considered and decided again by the Information Commissioner in accordance with the directions of the Court:

(i) with or without the holding of a hearing; and

(ii) with or without the hearing of further evidence.

## 56A Appeals—Federal Court of Australia may make findings of fact

(1) If a review party appeals to the Federal Court of Australia under section 56, the Court may make findings of fact if:

(a) the findings of fact are not inconsistent with findings of fact made by the Information Commissioner (other than findings made by the Information Commissioner as the result of an error of law); and

(b) it appears to the Court that it is convenient for the Court to make the findings of fact, having regard to all of the following:

(i) the extent (if any) to which it is necessary for facts to be found;

(ii) the means by which those facts might be established;

(iii) the expeditious and efficient resolution of the whole of the matter to which the IC review relates;

(iv) the relative expense to the parties of the Court, rather than the Information Commissioner, making the findings of fact;

(v) the relative delay to the parties of the Court, rather than the Information Commissioner, making the findings of fact;

(vi) whether any of the parties considers that it is appropriate for the Court, rather than the Information Commissioner, to make the findings of fact;

(vii) such other matters (if any) as the Court considers relevant.



Authorised Version C2017C00102 registered 22/03/2017

(2) For the purposes of making findings of fact under subsection (1), the Federal Court of Australia may:

(a) have regard to the evidence given in the IC review; and

(b) receive further evidence.

(3) Subsection (2) does not limit the Federal Court of Australia's power under subsection 56(6) to make an order remitting the case to be heard and decided again by the Information Commissioner.



Authorised Version C2017C00102 registered 22/03/2017

# Part VIIA—Review by the Tribunal

## Division 1—Guide to this Part

### 57 Review by the Tribunal—guide

An application may be made to the Administrative Appeals Tribunal for the review of certain decisions (see section 57A).

Division 3 sets out the powers of the Tribunal in a review.

Division 4 deals with the procedure to be followed in a review by the Tribunal.

Division 5 deals with ensuring that exempt matter that comes before the Tribunal is protected from disclosure.

Division 6 deals with the circumstances in which the Tribunal may make recommendations as to costs.

Division 7 deals with the stay of decisions pending appeal to the Federal Court of Australia.



Authorised Version C2017C00102 registered 22/03/2017

## Division 2—Tribunal reviewable decisions

### 57A Tribunal reviewable decisions—which decisions are reviewable?

(1) An application may be made to the Tribunal for review of the following decisions:

(a) a decision of the Information Commissioner under section 55K on an IC review;

(b) if the Information Commissioner makes a decision under paragraph 54W(b) (matters inappropriate for IC review)—the IC reviewable decision in relation to which the Information Commissioner makes the decision.

Note 1: An application for the review of a decision may be made by a person whose interests are affected by the decision (see section 27 of the *Administrative Appeals Tribunal Act 1975*).

Note 2: Subsection 29(2) of the *Administrative Appeals Tribunal Act 1975* sets out the time within which the application for review must be made.

*Time for applying to Tribunal if Information Commissioner declines to review decision*

(2) Despite subsection 29(2) of the *Administrative Appeals Tribunal Act 1975*, for the purposes of paragraph 29(1)(d) of that Act, the prescribed time for a person to lodge an application for review of an IC reviewable decision mentioned in paragraph (1)(b) of this section is the period:

(a) starting on the day on which the decision by the Information Commissioner under paragraph 54W(b) of this Act is made; and

(b) ending on the 28th day after the day on which notice of the decision under paragraph 54W(b) was given to the person under section 54X of this Act.



Authorised Version C2017C00102 registered 22/03/2017

## Division 3—Powers of Tribunal

### 58 Powers of Tribunal

(1) Subject to this section, 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 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.

(2) Where, in proceedings under this Act, 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.

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

### 58A Powers of Tribunal—requiring further searches

(1) This section applies to a review on an application to the Tribunal under section 57A if:

(a) access to the document is refused under section 24A (document cannot be found etc.); or

(b) access is purportedly given to the document (amongst others to which the request relates), but is not actually given.

(2) For the purposes of the review, the Tribunal may require the agency or Minister concerned to conduct further searches for the document.

### 58AA Powers of Tribunal—limitation on amending records

(1) The Tribunal may, in a decision on an application to the Tribunal under section 57A, make a decision that requires, or that has the effect of requiring, that an amendment be made to a record that



Authorised Version C2017C00102 registered 22/03/2017

relates to a record of an opinion only if the Tribunal is satisfied of either (or both) of the following:

(a) the opinion was based on a mistake of fact;

(b) the author of the opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion.

(2) The Tribunal must not, in a decision on an application under section 57A, make a decision that requires, or that has the effect of requiring, that an amendment be made to a record if it is satisfied of either of the following:

(a) the record is a record of a decision, under an enactment, by a court, tribunal, authority or person;

(b) the decision whether to amend the record involves the determination of a question that the person seeking amendment of the record is, or has been, entitled to have determined by the agency (on internal review), the Information Commissioner, a court or tribunal.

(3) In this section:

***enactment*** includes a Norfolk Island enactment.



Authorised Version C2017C00102 registered 22/03/2017

## Division 4—Procedure in Tribunal

### 58B Constitution of Tribunal for proceedings about certain exempt documents

(1) If an application is made to the Tribunal for review in relation to a decision refusing to grant access to a document in accordance with a request, being a document that is claimed to be an exempt document under section 33, 34 or 45A, then the Tribunal must be constituted in accordance with subsection (2) for the purposes of any proceeding in relation to the application.

(2) For the purposes of a proceeding referred to in subsection (1), the Tribunal shall be constituted by:
  (a) 3 presidential members; or
  (b) a presidential member alone.

(3) Despite paragraph 19A(1)(b) of the *Administrative Appeals Tribunal Act 1975*, if the Tribunal is constituted by 3 presidential members, the person who is to preside at a hearing of the proceeding is:
  (a) if the President of the Tribunal is one of the members—the President; or
  (b) if the President of the Tribunal is not one of the members but one or more Judges is—the most senior (or only) Judge; or
  (c) if paragraphs (a) and (b) do not apply—the Deputy President of the Tribunal whom the President of the Tribunal directs to preside.

### 58D Modification of section 42 of the *Administrative Appeals Tribunal Act 1975*

Despite section 42 of the *Administrative Appeals Tribunal Act 1975*, if:
  (a) the Tribunal is constituted for the purposes of a proceeding referred to in subsection 58B(1); and



Authorised Version C2017C00102 registered 22/03/2017

(b) the members disagree about a question of law arising in the proceeding;

the disagreement is to be settled:

(c) if only one presidential member is a Judge—according to the opinion of that member; or

(d) if 2 presidential members are Judges—according to the opinion of the majority of the members; or

(e) if 3 presidential members are Deputy Presidents—according to the opinion of the majority of the members.

## 58E Production to the Tribunal of certain exempt documents

(1) In any proceedings before the Tribunal under this Act in relation to a document that is claimed to be an exempt document under section 33, 34 or 45A, the Tribunal is entitled to require the production of the document in accordance with this section and not in accordance with section 64, section 37 or 38AA of the *Administrative Appeals Tribunal Act 1975* or otherwise.

(2) If the Tribunal is not satisfied by evidence on affidavit or otherwise that the document is an exempt document under section 33, 34 or 45A, the Tribunal may require the document to be produced for inspection by the Tribunal as constituted for the purposes of the proceeding.

(3) If, after an inspection of a document under this section, the Tribunal is satisfied that the document is an exempt document, the Tribunal must return the document to the person by whom it was produced without permitting a person to have access to the document or disclosing the contents of the document to a person, unless the person is:

(a) a member of the Tribunal as constituted for the purposes of the proceeding; or

(b) a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of that staff; or

(c) in the circumstances permitted under paragraph 60A(6)(a)—the Inspector-General of Intelligence and Security.



Authorised Version C2017C00102 registered 22/03/2017

## 60 Procedure in Tribunal—parties

(1) This section applies for the purposes of this Part and of the application of the *Administrative Appeals Tribunal Act 1975* in relation to proceedings under this Part.

(2) A decision given by a person on behalf of an agency is taken to have been given by the agency.

(3) The parties to a proceeding before the Tribunal for a review of a decision are as follows:

(a) the person who applied to the Tribunal for a review of the decision under section 57A;

(b) the person who made the request or application in respect of which the decision was made;

(c) the principal officer of the agency, or the Minister, to whom the request or application was made;

(d) any other person who is made a party to the proceeding by the Tribunal under subsection 30(1A) of the *Administrative Appeals Tribunal Act 1975*.

## 60AA Procedure in Tribunal—requirement to notify affected third parties

*Scope*

(1) This section applies if an application is made to the Tribunal under section 57A for the review of a decision not to give access to a document to which a consultation requirement applies under section 26A, 27 or 27A (whether the decision is made by the Information Commissioner, an agency or a Minister).

*Requirement to notify*

(2) The agency to which, or the Minister to whom, the request was made for access to the document must, as soon as practicable, take all reasonable steps to notify the affected third party for the document of the application to the Tribunal.



Authorised Version C2017C00102 registered 22/03/2017

Note 1: For ***affected third party***, see section 53C.

Note 2: Notice is not required to be given in certain circumstances (see section 60AB).

Note 3: The affected third party may apply to be made a party to the proceeding by the Tribunal under subsection 30(1A) of the *Administrative Appeals Tribunal Act 1975*.

## 60AB Procedure in Tribunal—circumstances in which not giving notice is appropriate

(1) This section applies in relation to a document to which a consultation requirement applies under section 27 or 27A.

(2) An agency or Minister is not required to notify an affected third party for the document under subsection 60AA(2) if:

(a) the agency or the Minister applies to the Tribunal for an order that it would not be appropriate to notify the affected third party in the circumstances covered by subsection (3); and

(b) the Tribunal makes the order.

Note: For ***affected third party***, see section 53C.



Authorised Version C2017C00102 registered 22/03/2017

(3) The circumstances covered by this subsection are whether notifying the affected third party would, or could reasonably be expected to, do any of the following:

(a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation;

(b) prejudice the enforcement or proper administration of the law in a particular instance;

(c) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law;

(d) endanger the life or physical safety of any person;

(e) cause damage to the security, defence or international relations of the Commonwealth.

## 60A Inspector-General of Intelligence and Security must be requested to give evidence in certain proceedings

(1) This section applies in any proceedings before the Tribunal under this Act in relation to a document that is claimed to be an exempt document under section 33.

(2) Before determining that the document is not an exempt document under section 33, the Tribunal must request the Inspector-General of Intelligence and Security to appear personally and give evidence on:

(a) the damage that would, or could reasonably be expected to, be caused to:

(i) the security of the Commonwealth; or

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth;

if access to the document were given in accordance with the request; or

(b) whether giving access to the document in accordance with the request would divulge any information or matter communicated in confidence by or on behalf of a foreign



Authorised Version C2017C00102 registered 22/03/2017

government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

(3) Before determining that an agency or Minister must grant access to a copy of the document with deletions, the Tribunal must request the Inspector-General to appear personally and give evidence on:

(a) the damage that would, or could reasonably be expected to, be caused to:

(i) the security of the Commonwealth; or

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth;

if the proposed deletions were not made; or

(b) whether giving access to the document without the proposed deletions would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

(4) Before hearing the evidence of the Inspector-General, the Tribunal must hear any evidence to be given or submissions to be made by or on behalf of the agency to which or the Minister to whom the request was made for access to the document.

(5) The Inspector-General must comply with a request under subsection (2) or (3) unless, in the opinion of the Inspector-General, the Inspector-General is not appropriately qualified to give evidence on the matters in relation to which the Inspector-General has been requested to give evidence.

(6) For the purposes of enabling the Inspector-General to comply with a request under subsection (2) or (3):



Authorised Version C2017C00102 registered 22/03/2017

(a) the Tribunal must allow the Inspector-General to take possession of, and make copies of or take extracts from, any document given to the Tribunal for the purposes of the proceeding; and

(b) the Inspector-General may require the production of the document that is claimed to be an exempt document under section 33 by the agency to which or the Minister to whom the request was made for access to the document; and

(c) the Inspector-General may require the production of any document of an agency or official document of a Minister that relates to the document mentioned in paragraph (b) by the agency or Minister; and

(d) the Inspector-General may make copies of, or take extracts from, the documents mentioned in paragraphs (b) and (c); and

(e) after such period as is reasonably necessary for the purposes of giving evidence to the Tribunal, the Inspector-General must:

(i) return the original of any document to the Tribunal or to the agency or Minister; and

(ii) destroy any copies of or extracts taken from any document.

(7) The Inspector-General must permit a person who would be entitled to inspect a document mentioned in paragraphs (6)(a) to (d) if it were not in the possession of the Inspector-General to inspect the document at all reasonable times as the person would be so entitled.

(8) The Tribunal is not bound by any opinion of the Inspector-General expressed while giving evidence under this section.

(9) The Tribunal must allow the Inspector-General a period within which to consider the documents mentioned in paragraphs (6)(a) to (d) that is reasonable having regard to:

(a) the nature of the evidence that the Inspector-General has been requested to give; and



Authorised Version C2017C00102 registered 22/03/2017

(b) the time required by the Inspector-General to perform the Inspector-General's other functions.

(10) The fact that a person is obliged to produce a document under subsection (6) does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that document.

## 61 Onus

(1) In proceedings under this Part for review of a decision in relation to a request, or in relation to an application under section 48 (a ***personal records application***):

(a) if an agency or a Minister applied for the review—the agency or Minister has the onus of establishing that the decision is not justified, or that the Tribunal should give a decision adverse to the applicant in relation to the request or the personal records application; or

(b) if the applicant in relation to the request or the personal records application applied for the review—the agency to which, or the Minister to whom, the request or personal records application was made has the onus of establishing that the decision is justified, or that the Tribunal should give a decision adverse to the applicant.

(2) However, in proceedings under this Part that relate to a decision to give access to a document to which a consultation requirement applies under section 26A, 27 or 27A, an affected third party for the document in relation to which the decision was made has, if the affected third party is a party to the proceeding, the onus of establishing that:

(a) a decision refusing to give access to the document is justified; or

(b) the Tribunal should give a decision adverse to the person who made the relevant request.

Note: For ***affected third party***, see section 53C.



Authorised Version C2017C00102 registered 22/03/2017

## 61A Modification of the *Administrative Appeals Tribunal Act 1975*

(1) The *Administrative Appeals Tribunal Act 1975* applies to proceedings under this Part in the way set out in the following table:

**Modification of the *Administrative Appeals Tribunal Act 1975***

| Item | A reference to ... | in the following provision of the *Administrative Appeals Tribunal Act 1975*: | is taken to be a reference to ... |
|---|---|---|---|
| 2 | the person who made the decision | (a) subsection 33(1AA) (requirement to assist Tribunal);<br>(b) paragraph 33(2A)(b) (procedural directions) | the agency or Minister who made the IC reviewable decision. |
| 3 | the person who made the decision that is the subject of the application for a review by the Tribunal | subsection 37(1) or (1AF) (lodging material with Tribunal) | the agency or Minister who made the IC reviewable decision. |
| 4 | the person who made the decision | subsection 37(1A) or (1B) (deadlines for lodging documents) | the agency or Minister who made the IC reviewable decision. |
| 5 | the person who made the decision to which the relevant proceeding relates | subsection 41(4) (stay of decisions being reviewed) | each of the review parties. |
| 6 | the person who made the decision | subsection 41(5) (stay of decisions being reviewed) | each of the review parties. |
| 7 | the person who made the decision | subsection 42A(2) (dismissal for failure to appear) | the agency or Minister who made the IC reviewable decision. |
| 8 | the person who made | section 67A (giving of | the person who made |



Authorised Version C2017C00102 registered 22/03/2017

| **Modification of the *Administrative Appeals Tribunal Act 1975*** | | | |
|---|---|---|---|
| **Item** | **A reference to ...** | **in the following provision of the *Administrative Appeals Tribunal Act 1975*:** | **is taken to be a reference to ...** |
| | a decision | notices) | the decision or an agency. |

(2) The agency or Minister who made the IC reviewable decision is taken to have complied with the obligation under paragraph 37(1)(a) of the *Administrative Appeals Tribunal Act 1975* if the agency or Minister gives the AAT the number of copies prescribed by the regulations of the decision under section 55K in relation to which an application has been made to the Tribunal.

(3) Subsection (2) does not limit the powers of the Tribunal under section 38 or 38AA of the *Administrative Appeals Tribunal Act 1975*.

## 62 Application of section 28 of Administrative Appeals Tribunal Act etc.

(1) Where, in relation to a decision in respect of a request, the applicant has been given a notice in writing under section 26, section 28 of the *Administrative Appeals Tribunal Act 1975* does not apply to that decision.

(2) If the Tribunal, upon application for a declaration under this subsection made to it by a person to whom a notice has been furnished in pursuance of subsection 26(1), considers that the notice does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for the decision, the Tribunal may make a declaration accordingly, and, where the Tribunal makes such a declaration, the person responsible for furnishing the notice shall, as soon as practicable but in any case within 28 days after the



Authorised Version C2017C00102 registered 22/03/2017

Tribunal makes the declaration, furnish to the applicant an additional notice or additional notices containing further and better particulars in relation to matters specified in the declaration with respect to those findings, that evidence or other material or those reasons.



Authorised Version C2017C00102 registered 22/03/2017

## Division 5—Protection of information in Tribunal

### 63 Tribunal to ensure non-disclosure of certain matters

(1) In determining whether the Tribunal is satisfied that it is desirable to make an order or orders under subsection 35(2), (3) or (4) of the *Administrative Appeals Tribunal Act 1975*, the Tribunal must:

(a) have regard to:

(i) the necessity of avoiding the disclosure to the applicant of exempt matter contained in a document to which the proceedings relate; and

(ii) the necessity of avoiding the disclosure to the applicant of information of the kind referred to in subsection 25(1); and

(b) where the proceedings relate to a document that is claimed to be an exempt document under section 33—give particular weight to a submission made by an agency or a Minister that it is desirable to make the order or orders under subsection 35(2), (3) or (4) of the *Administrative Appeals Tribunal Act 1975* because disclosure of the document:

(i) would, or could reasonably be expected to, cause damage to the security, defence or international relations of the Commonwealth; or

(ii) would divulge information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

(2) Notwithstanding anything contained in the *Administrative Appeals Tribunal Act 1975*:

(a) the Tribunal shall not, in its decision, or reasons for a decision, in a matter arising under this Act, include any



Authorised Version C2017C00102 registered 22/03/2017

matter or information of a kind referred to in paragraph (1)(a); and

(b) the Tribunal may receive evidence, or hear argument, in the absence of the applicant or his or her representative where it is necessary to do so in order to prevent the disclosure to the applicant of matter or information of a kind referred to in paragraph (1)(a).

## 64 Production of exempt documents

(1) Sections 37 and 38AA of the *Administrative Appeals Tribunal Act 1975* do not apply in relation to a document that is claimed to be an exempt document, but in proceedings before the Tribunal in relation to such a document, the Tribunal may, for the purpose of deciding whether the document is an exempt document, require the document to be produced for inspection by members of the Tribunal only.

(1AA) If, upon the inspection, the Tribunal is satisfied that the document is an exempt document, the Tribunal must return the document to the person by whom it was produced without permitting a person to have access to the document, or disclosing the contents of the document to a person, unless the person is:

(a) a member of the Tribunal as constituted for the purposes of the proceeding; or

(b) a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of that staff; or

(c) in the circumstances permitted under paragraph 60A(6)(a)—the Inspector-General of Intelligence and Security.

(1A) If, for the purposes of proceedings before the Tribunal under this Act in relation to a document that is claimed to be an exempt document, the document is voluntarily produced to the Tribunal, then only:

(a) the members of the Tribunal as constituted for the purposes of the review; or

(b) a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of that staff;



Authorised Version C2017C00102 registered 22/03/2017

may inspect, or have access to, the document.

(2) The Tribunal may require the production, for inspection by members of the Tribunal only, of an exempt document for the purpose 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 a person to have access to the document, or disclosing the contents of the document to a person, unless the person is:

(a) a member of the Tribunal as constituted for the purposes of the proceeding; or

(b) a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of that staff; or

(c) in the circumstances permitted under paragraph 60A(6)(a)—the Inspector-General of Intelligence and Security.

Note: The Tribunal is not entitled, under this section, to require production of documents that are exempt under section 33, 34 or 45A, but is entitled to do so under section 58E if the Tribunal is not satisfied by evidence on affidavit or otherwise that the document is an exempt document.

(4A) In making an order for the purposes of subsection (1) or (2), the Tribunal may require the relevant document to be produced at any time later than 28 days after the decision-maker was given notice of the application, even if that time is before the Tribunal has begun to hear argument or otherwise deal with the matter.

(5) Subsections (1), (1A) 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 subsections to an exempt document were references to a document in the possession of a Minister that is not an official document of the Minister.



Authorised Version C2017C00102 registered 22/03/2017

(6) Subsection (1), (1A) or (2) does not operate so as to prevent the Tribunal from causing a document produced in accordance with that subsection 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 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 or her duties as a member of that staff.

(7) Subsection (6) does not prevent the Federal Court of Australia from causing the document concerned to be sent to the Federal Circuit Court of Australia as mentioned in subparagraph 46(1)(c)(i) of the *Administrative Appeals Tribunal Act 1975*.

(8) If a document produced in accordance with subsection (1), (1A) or (2) is sent to the Federal Circuit Court of Australia as mentioned in subparagraph 46(1)(c)(i) of the *Administrative Appeals Tribunal Act 1975*, the Federal Circuit Court of Australia must do all things necessary to ensure that the contents of the document are not disclosed (otherwise than in accordance with this Act) to any person other than:

(a) the Judge who constitutes the Federal Circuit Court of Australia for the purposes of the proceeding before the Federal Circuit Court of Australia; or

(b) a member of the staff of the Federal Circuit Court of Australia in the course of the performance of his or her duties as a member of that staff.



Authorised Version C2017C00102 registered 22/03/2017

## Division 6—Recommendations as to costs

### 66 Tribunal may make recommendation that costs be available in certain circumstances

(1) Where:

(a) a person applies, under section 57A, to the Tribunal for review of a decision of the Information Commissioner on an IC review; and

(b) the person is successful, or substantially successful, in his or her application for review;

the Tribunal may, in its discretion, recommend to the responsible Minister that the costs of the applicant in relation to the proceedings be paid by the Commonwealth.

(2) Without limiting the generality of the matters to which the Tribunal may have regard in deciding whether to make a recommendation under subsection (1), the Tribunal shall have regard to:

(a) the question whether payment of the costs or any part of the costs would cause financial hardship to the applicant;

(b) the question whether the decision of the Tribunal on review will be of benefit to the general public;

(c) the question whether the decision of the Tribunal on review will be of commercial benefit to the person making application to the Tribunal; and

(d) the reasonableness of the decision reviewed by the Tribunal.

(3) The responsible Minister may, pursuant to a recommendation of the Tribunal under subsection (1), authorize the payment of costs to an applicant.



Authorised Version C2017C00102 registered 22/03/2017

## Division 7—Automatic stay of certain decisions

### 67 Automatic stay of certain decisions on appeal

(1) This section applies if:

(a) a person applies, under section 57A, to the Tribunal for review in relation to a decision by an agency or Minister refusing to grant access to a document in accordance with a request, being a document that is claimed to be an exempt document; and

(b) the Tribunal decides that a person may have access to the document; and

(c) the agency or the Minister institutes an appeal to the Federal Court of Australia from the decision of the Tribunal.

(2) If this section applies to a decision of the Tribunal, the operation of the decision is stayed by force of this section from the time at which the appeal is instituted.

(3) If the agency or the Minister appeals to the Federal Court of Australia from the decision of the Tribunal and the appeal in relation to the decision is determined by the Federal Court of Australia, the stay continues to have effect until the earlier of:

(a) the time at which the decision of the Federal Court of Australia on the appeal takes effect; and

(b) the time otherwise determined by the Federal Court of Australia.

(4) If the agency or the Minister appeals to the Federal Court of Australia from the decision of the Tribunal and the appeal in relation to the decision is determined by the Federal Circuit Court of Australia, the stay continues to have effect until the earlier of:

(a) the time at which the decision of the Federal Circuit Court of Australia on the appeal takes effect; and

(b) the time otherwise determined by the Federal Circuit Court of Australia.



Authorised Version C2017C00102 registered 22/03/2017

(5) Nothing in this section affects the power of the Federal Court of Australia or the Federal Circuit Court of Australia to make orders under section 44A of the *Administrative Appeals Tribunal Act 1975* in relation to matters other than staying the decision of the Tribunal.



Authorised Version C2017C00102 registered 22/03/2017

# Part VIIB—Investigations and complaints

## Division 1—Guide to this Part

### 68 Investigations and complaints—guide

This Part is about investigations by the Information Commissioner and by the Ombudsman.

Division 2 sets up a system for investigations by the Information Commissioner.

The Information Commissioner may investigate an action taken by an agency in the performance of functions or the exercise of powers under this Act on a complaint from a person, or on the Information Commissioner's initiative.

If a person disputes the merits of an access refusal decision or an access grant decision, this Act provides elsewhere for the review of that decision (see Parts VI, VII and VIIA).

However, this does not prevent a person from making a complaint to the Information Commissioner about the way in which the agency has handled the decision.

The Information Commissioner has powers to obtain documents, to question persons and to enter premises (see Subdivision D of Division 2).

At the conclusion of the investigation, the Information Commissioner must give a notice to the complainant and to the respondent agency about the Information Commissioner's findings, with any recommendations that the Information Commissioner believes the agency ought to implement (see section 86).

If the Information Commissioner is not satisfied that the agency has taken adequate and appropriate action to implement the



Authorised Version C2017C00102 registered 22/03/2017

recommendations, the Information Commissioner may take further steps (see sections 89, 89A and 89B).

Division 3 deals with the investigation of complaints by the Ombudsman about action taken under this Act.



Authorised Version C2017C00102 registered 22/03/2017

# Division 2—Information Commissioner investigations

## Subdivision A—Power to investigate

### 69 Information Commissioner investigations—power to investigate

*Obligation to investigate*

(1) The Information Commissioner must, subject to this Division, investigate a complaint made under section 70.

*Discretion to investigate*

(2) The Information Commissioner may, at the Information Commissioner's initiative, investigate an action taken by an agency (the ***respondent agency***) in the performance of functions, or the exercise of powers, under this Act.

## Subdivision B—Making complaints

### 70 Information Commissioner investigations—making complaints

(1) A person (the ***complainant***) may complain to the Information Commissioner about an action taken by an agency in the performance of functions, or the exercise of powers, under this Act.

(2) A complaint must:
  (a) be in writing; and
  (b) identify the agency (also the ***respondent agency***) in respect of which the complaint is made.

(3) The Office of the Australian Information Commissioner must provide appropriate assistance to a person who:
  (a) wishes to make a complaint; and
  (b) requires assistance to formulate the complaint.



Authorised Version C2017C00102 registered 22/03/2017

## Subdivision C—Decision to investigate

### 71 Information Commissioner investigations—interpretation

This Subdivision applies to a part of a complaint as if:

(a) a reference to a complaint were a reference to the part of the complaint; and

(b) a reference to an action were a reference to an action to which the part of the complaint relates.

### 72 Information Commissioner investigations—preliminary inquiries

The Information Commissioner may make inquiries of the respondent agency for the purpose of determining whether or not to investigate a complaint made (or purported to be made) under section 70.

### 73 Information Commissioner investigations—discretion not to investigate

The Information Commissioner may decide not to investigate, or not to continue to investigate, a complaint about an action made under section 70 if the Information Commissioner is satisfied of any of the following:

(a) that the action is not taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act;

(b) that:

(i) the complainant has or had a right to cause the action to be reviewed by the respondent agency, the Information Commissioner, a court or a tribunal; and

(ii) the complainant has not exercised, or did not exercise, the right; and

(iii) it would be, or would have been, reasonable for the complainant to exercise the right;

(c) that:



Authorised Version C2017C00102 registered 22/03/2017

(i) the complainant has or had a right to complain about the action to another body; and

(ii) the complainant has not exercised, or did not exercise the right; and

(iii) it would be, or would have been, reasonable for the complainant to exercise the right;

(d) that the complainant has complained to the respondent agency, and the respondent agency:

(i) has dealt, or is dealing, adequately with the complaint; or

(ii) has not yet had an adequate opportunity to deal with the complaint;

(e) that the complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith;

(f) that the complainant does not have a sufficient interest in the subject matter of the complaint.

Note: The Information Commissioner may make a decision under this section to investigate only part of a complaint (see section 71).

## 74 Information Commissioner investigations—transfer to Ombudsman

*Scope*

(1) This section applies if the Information Commissioner is satisfied that a complaint about an action could be more effectively or appropriately dealt with:

(a) by the Ombudsman under the *Ombudsman Act 1976*; or

(b) by the Ombudsman under a particular Norfolk Island enactment.

Example 1: A complaint about the way in which the Information Commissioner has dealt with an IC review.

Example 2: A complaint relates to an action under this Act, but is part of a complaint that relates to other matters that can be more appropriately dealt with by the Ombudsman.



Authorised Version C2017C00102 registered 22/03/2017

*Transfer of complaints to Ombudsman*

(2) The Information Commissioner:
  (a) must consult the Ombudsman about the complaint with a view to avoiding inquiries being conducted into that matter by both the Information Commissioner and the Ombudsman; and
  (b) may decide not to investigate the action, or not to continue to investigate the action.

(3) If the Information Commissioner decides not to investigate, or not to continue to investigate, the action under paragraph (2)(b), the Information Commissioner must:
  (a) transfer the complaint to the Ombudsman; and
  (b) give the Ombudsman any information or documents that relate to the complaint in the possession, or under the control, of the Information Commissioner; and
  (c) notify the complainant in writing that the complaint has been transferred.

(4) A notice under paragraph (3)(c) must state the reasons for the Information Commissioner's decision.

(5) If paragraph (1)(a) applies, a complaint transferred under subsection (3) is taken to be a complaint made to the Ombudsman under the *Ombudsman Act 1976*.

(6) If paragraph (1)(b) applies, a complaint transferred under subsection (3) is taken to be a complaint made to the Ombudsman under the Norfolk Island enactment concerned.

Note: The Information Commissioner may make a decision under this section to investigate only part of a complaint (see section 71).

## 75 Information Commissioner investigations—notice requirements

*Notice to respondent agency before commencing investigation*

(1) Before beginning an investigation, the Information Commissioner must notify the respondent agency in writing.



Authorised Version C2017C00102 registered 22/03/2017

*Notice of decision not to investigate, or not to continue to investigate*

(2) Subsection (3) applies if the Information Commissioner decides:
  (a) not to investigate, or not to continue to investigate, a complaint made under section 70; or
  (b) not to continue an investigation commenced at the Information Commissioner's initiative.

(3) The Information Commissioner must, as soon as practicable, notify the complainant (if any) and the respondent agency of the decision in writing.

(4) A notice under subsection (3) must state the reasons for the Information Commissioner's decision.

## Subdivision D—Investigation procedure

### 76 Information Commissioner investigations—conduct of investigation

(1) An investigation must be conducted in private and in a way the Information Commissioner thinks fit.

(2) For the purposes of an investigation, the Information Commissioner may obtain information from any officer of an agency, and make any inquiry, that he or she thinks is relevant to the investigation.

### 77 Information Commissioner investigations—general power to enter premises

(1) If a consenting person consents to entry under paragraph (2)(a), an authorised person may, at any reasonable time of day arranged with the consenting person:
  (a) enter and remain at the place; or
  (b) carry on the investigation at that place; or



Authorised Version C2017C00102 registered 22/03/2017

(c) inspect any documents relevant to the investigation kept at the place.

Note: For ***consenting person***, see subsection (3).

*Authority to enter premises*

(2) The authorised person may enter a place that:
(a) is occupied by an agency; or
(b) is occupied by a contracted service provider and used by the contracted service provider predominantly for the purposes of a Commonwealth contract.

(3) The authorised person may enter a place only if:
(a) consent to the entry has been given by the person (the ***consenting person***) who is:
(i) in the case of an agency—the principal officer of the agency; or
(ii) in the case of a contracted service provider—the person in charge (however described) of the contracted service provider; and
(b) before giving the consent, the authorised person informed the consenting person that he or she may refuse consent.

(4) The authorised person must leave the premises if the consenting person asks the authorised person to do so.

(5) This section is subject to section 78.

*Who is an **authorised person**?*

(6) An ***authorised person*** is:
(a) an information officer (within the meaning of the *Australian Information Commissioner Act 2010*); or
(b) an APS employee who:
(i) is performing the duties of an Executive Level 2, or equivalent, position (or a higher position) in the Office of the Australian Information Commissioner; and



Authorised Version C2017C00102 registered 22/03/2017

(ii) is authorised by the Information Commissioner for the purposes of this section.

## 78 Information Commissioner investigations—places for which approval required before entry

*Specific places and areas*

(1) Subsection (2) applies if an authorised person proposes to enter, or carry on an investigation, at any of the following:

(a) a place referred to in paragraph 80(c) of the *Crimes Act 1914*;

(b) a place that is a prohibited area for the purposes of the *Defence (Special Undertakings) Act 1952* because of section 7 of that Act;

(c) an area of land or water or an area of land and water that is declared under section 14 of the *Defence (Special Undertakings) Act 1952* to be a restricted area for the purposes of that Act.

(2) If this subsection applies, the authorised person must not enter, or carry on an investigation, unless:

(a) the Minister administering that Act, or another Minister acting for and on behalf of the Minister, has, in writing, approved the entry or carrying on of the investigation; and

(b) the authorised person complies with any conditions specified in the approval.

*Places in respect of which Attorney-General makes declaration*

(3) The Attorney-General may, by notice in writing to the Information Commissioner, declare a place to be a prohibited place if the Attorney-General is satisfied that the carrying on of an investigation at the place might prejudice the security or defence of the Commonwealth.

(4) If a declaration under subsection (3) is in force, an authorised person must not enter, or carry on an investigation at, the prohibited place unless:



Authorised Version C2017C00102 registered 22/03/2017

(a) a Minister specified in the declaration, or another Minister acting for and on behalf of the Minister, has, in writing, approved the entry or carrying on of the investigation; and

(b) the authorised person complies with any conditions specified in the approval.

## 79 Information Commissioner investigations—obliging production of information and documents

*Scope*

(1) This section applies if the Information Commissioner has reason to believe that a person has information, or a document, relevant to an investigation under this Part.

(2) This section applies subject to section 81 (production of exempt documents).

*Notice to produce*

(3) The Information Commissioner may, by written notice, require a person, for the purposes of the investigation:

(a) to give the Information Commissioner information of the kind referred to in the notice; or

(b) to produce to the Information Commissioner the document referred to in the notice.

(4) The notice must:

(a) be in writing; and

(b) specify the place at which the person must comply with the notice; and

(c) state that the person must comply with the notice:

(i) within a specified period that is not less than 14 days after the day on which the person is given the notice; or

(ii) at a specified time that is not less than 14 days after the time at which the person is given the notice.



Authorised Version C2017C00102 registered 22/03/2017

*Offence for failure to comply*

(5) A person commits an offence if:
  (a) the person is subject to a requirement specified in a notice under subsection (3); and
  (b) the person engages in conduct; and
  (c) the person's conduct breaches the requirement.

Penalty for a contravention of this subsection: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## 80 Information Commissioner investigations—dealings with documents

*What the Information Commissioner may do with documents*

(1) The Information Commissioner may do one or more of the following with respect to any documents produced in accordance with a notice under subsection 79(3):
  (a) take possession of the documents;
  (b) make copies of the documents;
  (c) take extracts from the documents;
  (d) hold the documents for a period that is necessary for the purposes of the investigation.

*Information Commissioner must permit access by those entitled*

(2) During an investigation the Information Commissioner must permit a person to inspect a document that the person would be entitled to inspect if the document were not held by the Information Commissioner.

(3) The Information Commissioner must permit the person to inspect the document at any reasonable time.



Authorised Version C2017C00102 registered 22/03/2017

## 81 Information Commissioner investigations—exempt documents

Sections 55T and 55U apply to an investigation under this Part as if a reference in those sections to an IC review of a decision were a reference to an investigation of a complaint made under section 70.

Note: Sections 55T and 55U deal with access by the Information Commissioner to exempt documents.

## 82 Information Commissioner investigations—obliging persons to appear

*Notice to require person to appear*

(1) The Information Commissioner may, by written notice, require a person to appear before the Information Commissioner to answer questions for the purposes of an investigation.

(2) The notice must:
  (a) be in writing; and
  (b) state that the person must comply with the notice at a specified time that is not less than 14 days after the time at which the person is given the notice; and
  (c) specify the place at which the person must comply with the notice.

*Offence for failure to comply*

(3) A person commits an offence if:
  (a) the person is subject to a requirement specified in a notice under subsection (1); and
  (b) the person engages in conduct; and
  (c) the person's conduct breaches the requirement.

Penalty for a contravention of this subsection: 6 months imprisonment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.



Authorised Version C2017C00102 registered 22/03/2017

## 83 Information Commissioner investigations—administration of oath or affirmation

(1) If, by a notice under subsection 82(1), the Information Commissioner requires a person to appear before him or her, the Information Commissioner may:

(a) administer an oath or affirmation to the person; and

(b) examine the person on oath or affirmation.

(2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

(3) A person commits an offence if:

(a) the person is required under this section to be examined on oath or affirmation; and

(b) the person engages in conduct; and

(c) the person's conduct breaches that requirement.

Penalty for a contravention of this subsection: 6 months imprisonment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## 84 Information Commissioner investigations—no loss of legal professional privilege

Information or a document does not cease to be the subject of legal professional privilege merely because it is given, provided, produced or referred to for the purposes of this Part.

## 85 Information Commissioner investigations—protection from liability

(1) This section applies if a person does any of the following in good faith for the purposes of an investigation:

(a) gives information;

(b) produces a document;



Authorised Version C2017C00102 registered 22/03/2017

(c) answers a question.

(2) If this section applies, then:
(a) civil proceedings do not lie against a person because the person does any of the matters mentioned in paragraphs (1)(a) to (c); and
(b) the person is not liable for a penalty under a provision of any law because the person does any of those matters.

(3) This section applies whether or not the person is required to do a thing mentioned in subsection (1) in accordance with this Division.

## Subdivision E—Outcome of investigation

### 86 Information Commissioner investigations—notice on completion

*Requirement to notify respondent agency*

(1) If the Information Commissioner completes an investigation, the Information Commissioner must, as soon as practicable, notify the respondent agency.

(2) The notice must state the following:
(a) the investigation results (see section 87);
(b) the investigation recommendations (if any) (see section 88);
(c) the reasons for the investigation results and the making of the investigation recommendations.

(3) The respondent agency may give to the Information Commissioner any comments about the notice that the agency wishes to make.

*Requirement to notify complainant (if any)*

(4) The Information Commissioner must give a copy (or a copy prepared in accordance with subsection (5)) of the notice to the complainant (if any).

(5) However, if the copy of the notice would contain matters of the kind mentioned in subsection 89C(2), the Information



Authorised Version C2017C00102 registered 22/03/2017

Commissioner must prepare a copy of the report to give to the complainant that excludes those matters.

Note: Section 89D sets out further limitations on recommendations to amend records.

## 87 Information Commissioner investigations—what are the *investigation results*?

The ***investigation results***, in relation to the investigation, are the following:

(a) the matters that the Information Commissioner has investigated;

(b) any opinions that the Information Commissioner has formed in relation to those matters;

(c) any conclusions that the Information Commissioner has reached in relation to those matters;

(d) any suggestions to the respondent agency the implementation of which the Information Commissioner believes might improve the processes of the agency;

(e) any other information of which the Information Commissioner believes the respondent agency ought to be aware.

## 88 Information Commissioner investigations—what are the *investigation recommendations*?

The ***investigation recommendations***, in relation to the investigation, are the formal recommendations to the respondent agency that the Information Commissioner believes that the respondent agency ought to implement.

## 89 Information Commissioner investigations—failure to implement investigation recommendation

*Scope*

(1) This section applies if:



Authorised Version C2017C00102 registered 22/03/2017

(a) the Information Commissioner completes an investigation; and
(b) the Information Commissioner gives an agency a notice under section 86; and
(c) the Information Commissioner is not satisfied that the agency has taken action that is adequate and appropriate in the circumstances to implement the investigation recommendations for the investigation.

*Giving implementation notices*

(2) The Information Commissioner may, by notice in writing (an ***implementation notice***), require the respondent agency to:
(a) give to the Information Commissioner particulars of any action that the agency proposes to take to implement the investigation recommendations for the investigation; and
(b) give the particulars within the time specified in the notice.

(3) The respondent agency must comply with the implementation notice.

## 89A Information Commissioner investigations—failure to take action in response to implementation notice

*Scope*

(1) This section applies if:
(a) the Information Commissioner gives an implementation notice to a respondent agency; and
(b) the Information Commissioner is satisfied that:
(i) the agency has not responded to the implementation notice within the time specified in the notice; or
(ii) the agency has not taken action that is adequate and appropriate in the circumstances to implement the investigation recommendations for the investigation.



Authorised Version C2017C00102 registered 22/03/2017

*Report to responsible Minister*

(2) The Information Commissioner may give a written report to the responsible Minister that contains the matters set out in section 89B.

Note: For ***responsible Minister***, see subsection 4(1).

*Report to Minister*

(3) If the Information Commissioner gives a report to the responsible Minister under subsection (2), the Information Commissioner must give a copy (or a copy prepared in accordance with subsection (4)) of the report to the Minister (the ***FOI Minister***) responsible for the administration of this Act.

(4) However, if the copy of the report would contain matters of the kind mentioned in subsection 89C(2), the Information Commissioner must prepare a copy of the report to give to the FOI Minister that excludes those matters.

(5) The FOI Minister must cause the copy of the report to be laid before each House of the Parliament.

Note: Section 89D sets out further limitations on recommendations to amend records.

## 89B Information Commissioner investigations—requirements for report

A report under subsection 89A(2) must:

(a) include a copy of the notice given to the respondent agency under subsection 86(2) (notice on completion) and the implementation notice; and

(b) give details of the respondent agency's response (if any) to the implementation notice; and

(c) state that the Information Commissioner is not satisfied that the agency has taken action that is adequate and appropriate in the circumstances to implement the investigation recommendations for the investigation; and



Authorised Version C2017C00102 registered 22/03/2017

(d) state the action that the Information Commissioner believes, if taken by the agency, would be adequate and appropriate in the circumstances to implement the investigation recommendations for the investigation.

## 89C Information Commissioner investigations—ensuring non-disclosure of certain matters

(1) This section applies to the following documents:
   (a) a notice to a complainant under section 86 (notice on completion);
   (b) a report to the FOI Minister under subsection 89A(3) (failure to take action).

(2) The Information Commissioner must not include in the document:
   (a) exempt matter; or
   (b) information of the kind referred to in subsection 25(1).

Note: Subsection 25(1) deals with information about the existence or otherwise of certain documents.

## 89D Information Commissioner investigations—limitation on amending records

*Scope*

(1) This section applies to the following documents:
   (a) a notice to a complainant under section 86 (notice on completion);
   (b) a report to the FOI Minister under subsection 89A(3) (failure to take action).

*Restrictions on amendments*

(2) The Information Commissioner may, in the document, recommend that an amendment be made to a record that relates to a record of an opinion only if he or she is satisfied of either (or both) of the following:



Authorised Version C2017C00102 registered 22/03/2017

(a) the opinion was based on a mistake of fact;

(b) the author of the opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion.

(3) The Information Commissioner must not, in the document, recommend that an amendment be made to a record if he or she is satisfied of either of the following:

(a) the record is a record of a decision, under an enactment, by a court, tribunal, authority or person;

(b) the decision whether to amend the record involves the determination of a question that the person seeking amendment of the record is, or has been, entitled to have determined by the agency (on internal review), the Information Commissioner, a court or tribunal.

(4) In this section:

***enactment*** includes a Norfolk Island enactment.

## 89E Information Commissioner investigations—protection from civil action

(1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because the first-mentioned person complains about an action under section 70.

(2) Subsection (1) only applies if the complaint is made in good faith.



Authorised Version C2017C00102 registered 22/03/2017

## Division 3—Complaints to Ombudsman

### 89F Complaints to Ombudsman—powers not affected

This Part does not prevent the Ombudsman from exercising powers or performing functions under the *Ombudsman Act 1976* in accordance with that Act.

### 89G Complaints to Ombudsman—report must not contain certain information

A report under subsection 12(3) or section 15 or 17 of the *Ombudsman Act 1976* in relation to an action taken under this Act must not include:

(a) exempt matter; or

(b) information of the kind referred to in subsection 25(1).

Note: Subsection 25(1) deals with information about the existence or otherwise of certain documents.

### 89H Complaints to Ombudsman—certain rights not affected by certificates

(1) This section applies if:

(a) the Ombudsman has commenced an investigation of a decision made under this Act not to grant a request for access to a document; and

(b) the Attorney-General furnishes a certificate to the Ombudsman under paragraph 9(3)(a), (c) or (d) of the *Ombudsman Act 1976* in relation to that investigation.

(2) The certificate does not affect the Ombudsman's right to:

(a) seek from any person the reasons for a decision made under this Act not to give access to an exempt document; or

(b) require any person to give any information or to answer any questions concerning the decision.



Authorised Version C2017C00102 registered 22/03/2017

## 89J Complaints to Ombudsman—limitation on amending records in reports under the *Ombudsman Act 1976*

(1) The Ombudsman may, in a report under section 15 of the *Ombudsman Act 1976*, recommend that an amendment be made to a record that relates to a record of an opinion only if he or she is satisfied of either (or both) of the following:

(a) the opinion was based on a mistake of fact;

(b) the author of the opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion.

(2) The Ombudsman must not, in a report under section 15 of the *Ombudsman Act 1976*, recommend that an amendment be made to a record if he or she is satisfied of either of the following:

(a) the record is a record of a decision, under an enactment, by a court, tribunal, authority or person;

(b) the decision whether to amend the record involves determination of a question that the person seeking amendment of the record is, or has been, entitled to have determined by the agency (on internal review), the Information Commissioner, a court or tribunal.

(3) In this section:

***enactment*** includes a Norfolk Island enactment.



Authorised Version C2017C00102 registered 22/03/2017

# Part VIII—Miscellaneous

## Division 1—Vexatious applicants

### 89K Vexatious applicants—declaration

(1) The Information Commissioner may, by written instrument (a ***vexatious applicant declaration***), declare a person to be a vexatious applicant.

Note 1: Section 89L sets out the grounds on which a declaration may be made.

Note 2: For variation and revocation of the instrument, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) The Information Commissioner may make a declaration:
(a) on the application of an agency or Minister; or
(b) on the Information Commissioner's initiative.

(3) If an agency or Minister has applied for a declaration, the agency or Minister has the onus of establishing that the Information Commissioner should make the declaration.

(4) The Information Commissioner must, as soon as practicable, give written notice to the person in relation to whom the vexatious applicant declaration is made.

### 89L Vexatious applicants—grounds for declaration

(1) The Information Commissioner may make a vexatious applicant declaration in relation to a person only if the Information Commissioner is satisfied of any of the following:
(a) that:
(i) the person has repeatedly engaged in access actions; and
(ii) the repeated engagement involves an abuse of the process for the access action;



Authorised Version C2017C00102 registered 22/03/2017

(b) a particular access action in which the person engages involves, or would involve, an abuse of the process for that access action;

(c) a particular access action in which the person engages would be manifestly unreasonable.

(2) A person engages in an ***access action*** if the person does any of the following:

(a) makes a request;

(b) makes an application under section 48;

(c) makes an application for internal review;

(d) makes an IC review application.

(3) The Information Commissioner must not make a declaration in relation to a person without giving the person an opportunity to make written or oral submissions.

(4) In this section:

***abuse of the process for an access action*** includes, but is not limited to, the following:

(a) harassing or intimidating an individual or an employee of an agency;

(b) unreasonably interfering with the operations of an agency;

(c) seeking to use the Act for the purpose of circumventing restrictions on access to a document (or documents) imposed by a court.

## 89M Vexatious applicants—effect of declaration

(1) A vexatious applicant declaration has effect in accordance with the terms and conditions stated in the declaration.

(2) Without limiting subsection (1), a vexatious applicant declaration in relation to a person may provide that:

(a) an agency or Minister may refuse to consider any of the following if made by the person without the written permission of the Information Commissioner:



Authorised Version C2017C00102 registered 22/03/2017

(i) a request;
(ii) an application under section 48 (amendment of records);
(iii) an application for internal review; and

(b) the Information Commissioner may refuse to consider an IC review application made by the person.

(3) If a decision is made as mentioned in subsection (2), the agency, Minister or the Information Commissioner (as the case requires) must, as soon as practicable, notify the vexatious applicant of the decision.

## 89N Vexatious applicants—review by Tribunal

An application may be made to the Tribunal for a review of a decision under section 89K of the Information Commissioner to make a vexatious applicant declaration.

Note 1: An application for the review of a decision may be made by a person whose interests are affected by the decision (see section 27 of the *Administrative Appeals Tribunal Act 1975*).

Note 2: Subsection 29(2) of the *Administrative Appeals Tribunal Act 1975* sets out the time within which the application for review must be made.

Note 3: Section 30 of the *Administrative Appeals Tribunal Act 1975* sets out who the parties are to a proceeding before the Tribunal.



Authorised Version C2017C00102 registered 22/03/2017

## Division 2—General

### 89P Staff to hold appropriate security clearance

The Information Commissioner must take all reasonable steps to ensure that a member of the staff of the Office of the Australian Information Commissioner who performs functions or exercises powers for the purposes of this Act is given a security clearance at an appropriate level.

Note: Security clearances are given in accordance with the Australian Government Protective Security Manual.

### 90 Protection against civil liability—general

(1) No action for defamation, breach of confidence or infringement of copyright lies against the Commonwealth, a Minister, an agency or an officer of an agency because the Minister, or an officer of the agency:

(a) publishes a document in good faith, in the belief that the publication is required or permitted under Part II (information publication scheme) or section 11C (publication of information in accessed documents); or

(b) gives access to a document in good faith, in the belief that the access is required or permitted to be given in response to a request; or

(c) publishes, or gives access to, a document in good faith, in the belief that the publication or access is required or permitted otherwise than under this Act (whether or not under an express legislative power).

(2) No action for defamation, or breach of confidence, in respect of the publication of a document covered by subsection (3), lies against a person (including the author of the document) because the person supplied the document to a Minister or an agency.

(3) The publication of a document is covered by this subsection if:

(a) it is published as mentioned in paragraph (1)(a) or (c); or



Authorised Version C2017C00102 registered 22/03/2017

(b) its publication is involved in, or results from, the giving of access to the document (or another document) as mentioned in paragraph (1)(b) or (c).

## 91 Protection against civil liability—particular situations

(1A) Section 90 applies in relation to the giving of access to a document even if, in giving access, there has been a failure to comply with section 26A, 27 or 27A.

(1B) No action lies against the Commonwealth, an agency, a Minister or an officer merely because of a failure to comply with section 26A, 27 or 27A in relation to giving access to a document.

(1C) If a document has been shown to a person, organisation or proprietor for any of the following purposes:

(a) consultation with a State under subsection 26A(2);

(b) enabling the person, organisation or proprietor to make a submission under subsection 27(4);

(c) enabling the person or the person's legal personal representative to make a submission under subsection 27A(3);

then:

(d) no action for defamation, breach of confidence or infringement of copyright lies against the Commonwealth, an agency, a Minister or an officer because of the showing of the document; and

(e) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the showing of the document lies against the author of the document or any other person because of that author or other person having shown the document.

(2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken to constitute an authorization or approval:



Authorised Version C2017C00102 registered 22/03/2017

(a) for the purposes of the law relating to defamation or breach of confidence—of the publication of the document or its contents by the person to whom access is given;

(b) for the purposes of the law of copyright—of the doing, by the person to whom access is given, of any act comprised within the copyright in:

(i) any literary, dramatic, musical or artistic work;

(ii) any sound recording, cinematograph film, television broadcast or sound broadcast; or

(iii) a published edition of a literary, dramatic, musical or artistic work;

contained in the document.

(2A) If a document has been shown to a person, organisation or proprietor for any of the following purposes:

(a) consultation with a State under subsection 26A(1);

(b) enabling the person, organisation or proprietor to make a submission under subsection 27(1);

(c) enabling the person or the person's legal personal representative to make a submission under subsection 27A(1);

the showing of the document is not taken to constitute an authorisation or approval:

(d) for the purposes of the law relating to defamation or breach of confidence—of the publication of the document or its contents by the person, organisation or proprietor to whom the document is shown; and

(e) for the purposes of the law of copyright—of the doing, by the person, organisation or proprietor to whom the document is shown, of any act comprised within the copyright in:

(i) any literary, dramatic, musical or artistic work; or

(ii) any sound recording, cinematograph film, television broadcast or sound broadcast; or

(iii) a published edition of a literary, dramatic, musical or artistic work;

contained in the document.



Authorised Version C2017C00102 registered 22/03/2017

(3) Expressions used in paragraph (2)(b) or (2A)(e) have the same meaning as in the *Copyright Act 1968*.

(4) For the purposes of paragraphs (1C)(a) and (2A)(a), ***State*** has the same meaning as in section 26A.

## 92 Protection against criminal liability

(1) A Minister, or an officer of an agency, does not commit a criminal offence only because the Minister or officer:

(a) publishes a document in good faith, in the belief that the publication is required or permitted under Part II (information publication scheme) or section 11C (publication of information in accessed documents); or

(b) gives access to a document in good faith, in the belief that the access is required or permitted to be given in response to a request; or

(c) publishes, or gives access to, a document in good faith, in the belief that the publication or access is required or permitted otherwise than under this Act (whether or not under an express legislative power).

(2) A person does not commit a criminal offence only because the person shows a document, or is concerned in the showing of a document, to another person or organisation for any of the following purposes:

(a) consultation with a State under subsection 26A(2);

(b) enabling the other person or the organisation to make a submission under subsection 27(4);

(c) enabling the other person to make a submission under subsection 27A(3).

(3) For the purposes of paragraph (2)(a), ***State*** has the same meaning as in section 26A.

## 93 Agencies to provide information to Information Commissioner

(1) This section applies to:



Authorised Version C2017C00102 registered 22/03/2017

(a) an agency, in relation to documents of the agency; and
(b) each Minister, in relation to his or her official documents.

(2) The agency or Minister must give to the Information Commissioner the information that the Information Commissioner requires to prepare reports mentioned in section 30 of the *Australian Information Commissioner Act 2010*.

(3) The agency or Minister must comply with any requirements prescribed by the regulations regarding:
(a) the giving of the information; and
(b) the keeping of records for the purposes of this section.

## 93A Guidelines

(1) The Information Commissioner may, by instrument in writing, issue guidelines for the purposes of this Act.

Note: For variation and revocation of the instrument, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) For the purposes of the performance of a function, or the exercise of a power, under this Act, regard must be had to any guidelines issued by the Information Commissioner under this section including, but not limited to, guidelines issued for the purposes of the following provisions:
(a) paragraph 9A(b) (information publication scheme);
(b) subsection 11B(5) (public interest factors);
(c) subsection 15(5A) (decisions on requests).

(3) Guidelines are not legislative instruments.

## 93B Review of operation of Act

(1) The Minister must cause a review of the operation of this Act to be undertaken.

(2) The review must:
(a) start 2 years after the commencement of this section; and



Authorised Version C2017C00102 registered 22/03/2017

(b) be completed within 6 months.

Note: This section commences immediately after the commencement of section 3 of the *Australian Information Commissioner Act 2010*.

(3) The Minister must cause a written report about the review to be prepared.

(4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

## 94 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act 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:

(a) the making of charges of amounts, or at rates, fixed by or in accordance with the regulations in respect of requests for access to documents or in respect of the provision of access to documents (including the provision of copies or transcripts) in accordance with this Act, including requiring deposits on account of such charges; and

(b) the officers who may give decisions on behalf of an agency.

(2) Without limiting the generality of subsection (1), regulations under that subsection making provision for or in relation to the making of charges:

(a) shall not be such that the amount or rate of charge varies according to whether a document is a document of one agency or of an agency included in one class of agency or is a document of another agency or of an agency included in another class of agency;

(b) shall, if a charge is made for time that is spent by an agency or a Minister in undertaking any of the following activities:

(i) searching for or retrieving a document;



Authorised Version C2017C00102 registered 22/03/2017

(ii) making, or doing things related to making, a decision on a request for access;

provide for the charge in respect of that activity to be calculated at a single hourly rate that shall be applied by the agency or Minister in respect of any request, regardless of the classification or designation of the officer who undertakes the work involved; and

(d) may provide for a charge to be made that takes into account the direct costs incurred by an agency or a Minister in making available an officer to supervise the inspection by a person of any document for which a request for access has been made under this Act.

(3) Where, as a result of a request, access is given to a document in respect of which the applicant would not be entitled to access under this Act, regulations under this Act relating to charges apply as if the applicant had been given access to that document in accordance with an entitlement under this Act.



Authorised Version C2017C00102 registered 22/03/2017

# Schedule 1—Courts and tribunals exempt in respect of non-administrative matters

Section 6

Australian Industrial Relations Commission
Australian Fair Pay Commission
Industrial Registrar and Deputy Industrial Registrars



Authorised Version C2017C00102 registered 22/03/2017

# Schedule 2

Section 7

# Part I—Exempt agencies

## Division 1

Aboriginal Land Councils and Land Trusts
Auditor-General
Australian Secret Intelligence Service
Australian Security Intelligence Organisation
Inspector-General of Intelligence and Security
National Workplace Relations Consultative Council
Office of National Assessments
Parliamentary Budget Office
Parliamentary Budget Officer



Authorised Version C2017C00102 registered 22/03/2017

## Division 2

Australian Geospatial-Intelligence Organisation
Australian Signals Directorate
Defence Intelligence Organisation



Authorised Version C2017C00102 registered 22/03/2017

# Part II—Agencies exempt in respect of particular documents

## Division 1

Attorney-General's Department, in relation to:

(a) documents in respect of commercial activities it undertakes; and

(b) documents in respect of activities undertaken by the Australian Government Solicitor; and

(c) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and

(d) exempt internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

Australian Communications and Media Authority, in relation to:

(a) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and

(b) exempt internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

Australian Broadcasting Corporation, in relation to its program material and its datacasting content

Australian Postal Corporation, in relation to documents in respect of its commercial activities

Australian Trade and Investment Commission, in relation to documents concerning the carrying out, in whole or in part, of overseas development projects

Australian Transaction Reports and Analysis Centre, in relation to documents concerning information communicated to it under section 16 of the *Financial Transaction Reports Act 1988* or section 41 or 49 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*



Authorised Version C2017C00102 registered 22/03/2017

Children's e-Safety Commissioner, in relation to:

(a) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and

(b) exempt internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

Classification Board, in relation to:

(a) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and

(b) exempt internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

Classification Review Board, in relation to:

(a) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and

(b) exempt internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

Comcare, in relation to documents in respect of its commercial activities

Commonwealth Scientific and Industrial Research Organisation, in relation to documents in respect of its commercial activities

Department of Defence, in relation to documents in respect of:

(a) the collection, reporting or analysis of operational intelligence; or

(b) special access programs, under which a foreign government provides restricted access to technologies.

Department of the Treasury in relation to documents in respect of activities of the Australian Loan Council and in respect of the commercial activities of the Royal Australian Mint

Export Finance and Insurance Corporation, in relation to documents concerning anything done by it under Part 4 or 5 of the *Export Finance and Insurance Corporation Act 1991*

Human Services Department, in relation to documents in respect of commercial activities relating to the functions of the Chief Executive Medicare

Indigenous Business Australia, in relation to documents in respect of its commercial activities



Authorised Version C2017C00102 registered 22/03/2017

National Health and Medical Research Council, in relation to documents in the possession of members of the Council of the National Health and Medical Research Council who are not persons appointed or engaged under the *Public Service Act 1999*

NBN Co, in relation to documents in respect of its commercial activities

Reserve Bank of Australia, in relation to documents in respect of its banking operations (including individual open market operations and foreign exchange dealings) and in respect of exchange control matters

Special Broadcasting Service Corporation, in relation to its program material and its datacasting content



Authorised Version C2017C00102 registered 22/03/2017

## Division 2

Australian Statistician, in relation to documents containing information collected under the *Census and Statistics Act 1905*



Authorised Version C2017C00102 registered 22/03/2017

# Part III—Legislation relating to agencies exempt in respect of documents in relation to their commercial activities

*Australian Grape and Wine Authority Act 2013*
*Dairy Produce Act 1986*
*Primary Industries Research and Development Act 1989*



Authorised Version C2017C00102 registered 22/03/2017

# Schedule 3—Secrecy provisions

Section 38

*Aged Care Act 1997*, subsection 86-2(1) and sections 86-5, 86-6 and 86-7.

*Australian Immunisation Register Act 2015*, section 23

*Australian Institute of Health Act 1987*, subsections 29(1) and (3)

*Australian Security Intelligence Organisation Act 1979*, subsections 92(1) and (1A)

*Banking Act 1959*, subsection 69A(2)

*Broadcasting Act 1942*, paragraph 125(2)(a)

*Child Support (Registration and Collection) Act 1988*, paragraph 16(2)(b)

*Child Support (Assessment) Act 1989*, paragraph 150(2)(b)

*Civil Aviation Act 1988*, subsections 32AP(1) and (2)

*Crimes (Taxation Offences) Act 1980*, section 4

*Designs Act 2003*, paragraph 61(1)(a) and sections 108 and 109

*Disability Services Act 1986*, subsections 28(2) and (6)

*Epidemiological Studies (Confidentiality) Act 1981*, sections 4 and 6

*Gene Technology Act 2000*, subsections 187(1) and (2)

*Health Insurance Act 1973*, subsections 130(1), (4) and (9)

*Inspector-General of Taxation Act 2003*, section 37

*Inspector of Transport Security Act 2006*, subsections 35(7), 36(7), 37(8), 49(2), 56(1), 56(3), 60(5), 63(3), 63(4), 63(5) and 67(1), paragraph 67(7)(a), subsections 68(2), 69(2) and 75(2), paragraph 75(8)(a) and subsection 77(9)

*Intelligence Services Act 2001*, subsection 41(1)

*Life Insurance Act 1995*, subsection 216A(2)

*Migration Act 1958*, section 503A as affected by section 503D of that Act

*National Cancer Screening Register Act 2016, section 18*

*National Health Act 1953*, subsections 135A(1), (4) and (9)

*Patents Act 1990*, paragraph 56(1)(a) and subsection 173(2)

*Private Health Insurance Act 2007*, sections 323-1 and 323-40

*Taxation Administration Act 1953*, sections 355-25, 355-155 and 355-265 in Schedule 1.



Authorised Version C2017C00102 registered 22/03/2017

*Taxation Administration Act 1953*, paragraph 8WB(1)(c)

*Telecommunications (Interception and Access) Act 1979*, sections 63 and 133

*Transport Safety Investigation Act 2003*, subsections 53(1) and (2) and 60(1), (2) and (3)

Defence (Inquiry) Regulations, subregulation 63(2).



Authorised Version C2017C00102 registered 22/03/2017

# Schedule 4—Research institutions

Section 47H

Commonwealth Scientific and Industrial Research Organisation

The Australian National University.



Authorised Version C2017C00102 registered 22/03/2017

# Endnotes

## Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

**Abbreviation key—Endnote 2**
The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can



Authorised Version C2017C00102 registered 22/03/2017

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced



Authorised Version C2017C00102 registered 22/03/2017

# Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Freedom of Information Act 1982 | 3, 1982 | 9 Mar 1982 | 1 Dec 1982 (s 2 and gaz 1982, No G48, p 2) | |
| Australian Broadcasting Corporation (Transitional Provisions and Consequential Amendments) Act 1983 | 7, 1983 | 1 June 1983 | s 66: 1 July 1983 (s 2(2)) | — |
| Freedom of Information Amendment Act 1983 | 81, 1983 | 3 Nov 1983 | 1 Jan 1984 (s 2 and gaz 1983, No S344) | s 46 |
| Public Service Reform Act 1984 | 63, 1984 | 25 June 1984 | s 151(9) and Sch 4: 1 July 1984 (s 2(4) and gaz 1984, No. S245)<br>s 154: 1 Jan 1986 (s 2(4) and gaz 1985, No S563) | s 151(9) |
| Australian Trade Commission (Transitional Provisions and Consequential Amendments) Act 1985 | 187, 1985 | 16 Dec 1985 | Sch 4: 6 Jan 1986 (s 2(1)) | — |
| Intelligence and Security (Consequential Amendments) Act 1986 | 102, 1986 | 17 Oct 1986 | s 16 and 17: 1 Feb 1987 (s 2) | — |
| Freedom of Information Laws Amendment Act 1986 | 111, 1986 | 4 Nov 1986 | s 4–20: 18 Nov 1986 (s 2) | s 20 |
| Australian Airlines (Conversion to Public Company) Act 1988 | 6, 1988 | 9 Mar 1988 | Sch 2: 30 Apr 1988 (s 2(2) and gaz 1988, No S117) | — |



Authorised Version C2017C00102 registered 22/03/2017

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Industrial Relations (Consequential Provisions) Act 1988 | 87, 1988 | 8 Nov 1988 | Sch 2: 1 Mar 1989 (s 2(2)) | — |
| A.C.T. Self-Government (Consequential Provisions) Act 1988 | 109, 1988 | 6 Dec 1988 | Sch 5: 11 May 1989 (s 2(3) and gaz 1989, No S164) | — |
| Privacy Act 1988 | 119, 1988 | 14 Dec 1988 | s 101(2) and Sch 1: 1 Jan 1989 (s 2 and gaz 1988, No S399) | s 101(2) |
| Telecommunications Amendment Act 1988 | 121, 1988 | 14 Dec 1988 | Sch 2: 1 Jan 1989 (s 2(2) and gaz 1988, No S402) | — |
| Postal Services Amendment Act 1988 | 126, 1988 | 14 Dec 1988 | Sch 2: 1 Jan 1989 (s 2(2) and gaz 1988, No S402) | — |
| ANL (Conversion into Public Company) Act 1988 | 127, 1988 | 14 Dec 1988 | Sch: 1 July 1989 (s 2(3) and gaz 1989, No S210) | — |
| OTC (Conversion into Public Company) Act 1988 | 129, 1988 | 14 Dec 1988 | Sch: 1 Apr 1989 (s 2(3) and gaz 1989, No S92) | — |
| Snowy Mountains Engineering Corporation (Conversion into Public Company) Act 1989 | 66, 1989 | 19 June 1989 | Sch: 1 July 1989 (s 2(4) and gaz 1989, No S223) | — |
| Aboriginal and Torres Strait Islander Commission Act 1989 | 150, 1989 | 27 Nov 1989 | s 229: 5 Mar 1990 (s 2(1) and gaz 1990, No S48) | — |
| Federal Airports Corporation Amendment Act 1990 | 26, 1990 | 24 May 1990 | s 44: 1 July 1990 (s 2(1) and gaz 1990, No S154) | — |
| Defence Legislation Amendment Act 1990 | 75, 1990 | 22 Oct 1990 | Sch 3: 22 Oct 1990 (s 2(1)) | — |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Commonwealth Serum Laboratories (Conversion into Public Company) Act 1990 | 77, 1990 | 22 Oct 1990 | Sch: 1 Apr 1991 (s 2(5) and gaz 1991, No S75) | — |
| Commonwealth Banks Restructuring Act 1990 | 118, 1990 | 28 Dec 1990 | Sch: 17 Apr 1991 (s 2(3) and gaz 1991, No S72) | — |
| Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991 | 99, 1991 | 27 June 1991 | Sch 2: 1 Feb 1992 (s 2(3)) | — |
| Freedom of Information Amendment Act 1991 | 137, 1991 | 27 Sept 1991 | 25 Oct 1991 | s 29(2) |
| Export Finance and Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991 | 149, 1991 | 21 Oct 1991 | Sch 1: 1 Nov 1991 (s 2) | — |
| Special Broadcasting Service Act 1991 | 180, 1991 | 25 Nov 1991 | Sch: 23 Dec 1991 (s 2(1)) | — |
| Sales Tax Amendment (Transitional) Act 1992 | 118, 1992 | 30 Sept 1992 | Sch: 28 Oct 1992 (s 2) | — |
| Law and Justice Legislation Amendment Act (No. 4) 1992 | 143, 1992 | 7 Dec 1992 | Sch: 7 Dec 1992 (s 2(1)) | — |
| Law and Justice Legislation Amendment Act (No. 3) 1992 | 165, 1992 | 11 Dec 1992 | Sch: 11 Dec 1992 (s 2(1)) | — |
| Qantas Sale Act 1992 | 196, 1992 | 21 Dec 1992 | Sch (Pt 1): 10 Mar 1993 (s 2(2), (3)(a) and gaz 1993, No GN17)<br>Sch (Pt 5): 30 Aug 1995 (s 2(2), (3)(c) and gaz 1995, No S324) | — |



Authorised Version C2017C00102 registered 22/03/2017

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| **as amended by** | | | | |
| Qantas Sale Amendment Act 1993 | 60, 1993 | 3 Nov 1993 | 10 Mar 1993 (s 2) | — |
| Qantas Sale Amendment Act 1994 | 168, 1994 | 16 Dec 1994 | Sch (item 17): 16 Dec 1994 (s 2(1)) | — |
| Electoral and Referendum Amendment Act 1992 | 219, 1992 | 24 Dec 1992 | s 36: 24 Dec 1992 (s 2(1)) | — |
| Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994 | 33, 1994 | 15 Mar 1994 | s 12 and 13: 15 Mar 1994 (s 2(1)) | s 13 |
| Transport and Communications Legislation Amendment Act 1994 | 64, 1994 | 30 May 1994 | Sch 3: 30 May 1994 (s 2(1)) | — |
| Law and Justice Legislation Amendment Act 1994 | 84, 1994 | 23 June 1994 | s 48–70 and 72–85: 23 June 1994 (s 2(1)) | s 49, 52, 53, 56, 59, 60, 66, 67, 72, 74, 75, 78, 79, 81, 82 and 84 |
| Employment Services (Consequential Amendments) Act 1994 | 177, 1994 | 19 Dec 1994 | s 9, 11 and 12: 1 Jan 1995 (s 2(3)) | s 9 |
| Taxation Laws Amendment Act (No. 4) 1994 | 181, 1994 | 19 Dec 1994 | Sch 5 (items 1, 40): 19 Dec 1994 (s 2(1)) | Sch 5 (item 1) |
| Commonwealth Bank Sale Act 1995 | 161, 1995 | 16 Dec 1995 | Sch (item 52): 19 July 1996 (s 2(2)) | — |
| Transport Legislation Amendment Act (No. 3) 1995 | 174, 1995 | 16 Dec 1995 | Sch 3 (items 2, 3): 16 Dec 1995 (s 2(1)) | — |
| Statute Law Revision Act 1996 | 43, 1996 | 25 Oct 1996 | Sch 5 (items 62–64): 25 Oct 1996 (s 2(1)) | — |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| AIDC Sale Act 1997 | 67, 1997 | 5 June 1997 | Sch 2 (item 5): 22 Apr 2011 (s 2(2) and F2011L00637) | — |
| Australian National Railways Commission Sale Act 1997 | 96, 1997 | 30 June 1997 | Sch 4 (item 3): 1 Nov 2000 (s 2(5) and gaz 2000, No S562) | — |
| Aged Care (Consequential Provisions) Act 1997 | 114, 1997 | 7 July 1997 | Sch 5 (item 3): 1 Oct 1997 (s 2(1)) | — |
| Judiciary Amendment Act 1999 | 7, 1999 | 31 Mar 1999 | Sch 3 (items 18–20): 1 Sept 1999 (s 2(2) and gaz 1999, No S395) | — |
| Statute Stocktake Act 1999 | 118, 1999 | 22 Sept 1999 | Sch 2 (items 22, 23): 22 Sept 1999 (s 2(1)) | — |
| Public Employment (Consequential and Transitional) Amendment Act 1999 | 146, 1999 | 11 Nov 1999 | Sch 1 (item 493): 5 Dec 1999 (s 2(1), (2) and gaz 1999, No S584) | — |
| Australian Security Intelligence Organisation Legislation Amendment Act 1999 | 161, 1999 | 10 Dec 1999 | Sch 3 (items 1, 26–28): 10 Dec 1999 (s 2(2)) | — |
| A New Tax System (Indirect Tax and Consequential Amendments) Act 1999 | 176, 1999 | 22 Dec 1999 | Sch 8 (item 15): 1 July 2000 (s 2(17)) | — |
| Federal Magistrates (Consequential Amendments) Act 1999 | 194, 1999 | 23 Dec 1999 | Sch 15: 23 Dec 1999 (s 2(1)) | — |
| Ministers of State and Other Legislation Amendment Act 2000 | 1, 2000 | 29 Feb 2000 | Sch 4: 10 Mar 2000 (s 2(1) and gaz 2000, No S112) | — |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000 | 108, 2000 | 3 Aug 2000 | Sch 3 (item 2): 1 Jan 2001 (s 2(2) and gaz 2000, No GN50) | — |
| Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000 | 163, 2000 | 21 Dec 2000 | Sch 2 (items 1, 2): 1 Feb 2001 (s 2(2)) | — |
| Gene Technology (Consequential Amendments) Act 2000 | 170, 2000 | 21 Dec 2000 | Sch 1 (item 13): 22 June 2001 (s 2) | — |
| Pig Industry Act 2001 | 30, 2001 | 28 Apr 2001 | Sch 1 (item 1): 1 July 2001 (s 2(2)) | — |
| Intelligence Services (Consequential Provisions) Act 2001 | 153, 2001 | 1 Oct 2001 | Sch 3 (item 3) 29 Oct 2001 (s 2) | — |
| Workplace Relations Legislation Amendment Act 2002 | 127, 2002 | 11 Dec 2002 | Sch 2 (item 18): 11 Dec 2002 (s 2(1) item 6) | — |
| Transport Safety Investigation (Consequential Amendments) Act 2003 | 19, 2003 | 11 Apr 2003 | Sch 1 (items 6, 6A, 7): 1 July 2003 (s 2(1) item 2) | — |
| Inspector-General of Taxation Act 2003 | 28, 2003 | 15 Apr 2003 | Sch 1 (item 1): 16 Apr 2003 (s 2) | — |
| Migration Legislation Amendment (Protected Information) Act 2003 | 75, 2003 | 15 July 2003 | Sch 2: 16 July 2003 (s 2(1) item 8) | Sch 2 (item 4) |
| Communications Legislation Amendment Act (No. 1) 2003 | 114, 2003 | 27 Nov 2003 | Sch 2: 27 Mar 2003 (s 2(1) item 3) | — |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Defence Legislation Amendment Act 2003 | 135, 2003 | 17 Dec 2003 | Sch 2 (items 30–32): 17 June 2004 (s 2(1) item 11) | — |
| Designs (Consequential Amendments) Act 2003 | 148, 2003 | 17 Dec 2003 | Sch 2 (item 12): 17 June 2004 (s 2(1) item 2) | — |
| Law and Justice Legislation Amendment Act 2004 | 62, 2004 | 26 May 2004 | Sch 1 (items 23–37): 27 May 2004 (s 2(1) item 8) | — |
| Administrative Appeals Tribunal Amendment Act 2005 | 38, 2005 | 1 Apr 2005 | Sch 1 (items 210–217): 16 May 2005 (s 2(1) item 6) | Sch 1 (item 212) |
| Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005 | 45, 2005 | 1 Apr 2005 | Sch 1 (item 65): 1 July 2005 (s 2(1) item 2) | — |
| Human Services Legislation Amendment Act 2005 | 111, 2005 | 6 Sept 2005 | Sch 2 (items 90, 91, 729): 1 Oct 2005 (s 2(1) item 7) | Sch 2 (item 729) |
| Telstra (Transition to Full Private Ownership) Act 2005 | 118, 2005 | 23 Sept 2005 | Sch 1 (item 47): 24 Nov 2006 (s 2(1) item 3) | — |
| Intelligence Services Legislation Amendment Act 2005 | 128, 2005 | 4 Nov 2005 | Sch 7: 2 Dec 2005 (s 2(1) item 2) | — |
| Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005 | 129, 2005 | 8 Nov 2005 | Sch 9 (items 1, 2): 8 Nov 2005 (s 2(1) item 5)<br>Sch 9 (items 3, 4): 9 Nov 2005 (s 2(1) item 6) | Sch 9 (item 2) |



Authorised Version C2017C00102 registered 22/03/2017

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Telecommunications (Interception) Amendment Act 2006 | 40, 2006 | 3 May 2006 | Sch 1 (item 20): 13 June 2006 (s 2(1) item 2) | — |
| National Health and Medical Research Council Amendment Act 2006 | 50, 2006 | 9 June 2006 | Sch 1 (item 113): 1 July 2006 (s 2(1) item 2) | — |
| Fuel Tax (Consequential and Transitional Provisions) Act 2006 | 73, 2006 | 26 June 2006 | Sch 5 (item 153): 1 July 2006 (s 2(1) item 21) | — |
| Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006 | 101, 2006 | 14 Sept 2006 | Sch 5 (items 113–118) and Sch 6 (items 5–11): 14 Sept 2006 (s 2(1) item 4) | Sch 6 (items 5–11) |
| Inspector of Transport Security (Consequential Provisions) Act 2006 | 150, 2006 | 7 Dec 2006 | Sch 1: 7 June 2007 (s 2(1) item 2) | — |
| Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006 | 170, 2006 | 12 Dec 2006 | Sch 1 (item 148): 13 Dec 2006 (s 2(1) item 2) | — |
| Statute Law Revision Act 2007 | 8, 2007 | 15 Mar 2007 | Sch 3 (items 23, 24): 15 Mar 2007 (s 2(1) item 44) | — |
| Classification (Publications, Films and Computer Games) Amendment Act 2007 | 27, 2007 | 15 Mar 2007 | Sch 1 (items 14, 15, 22): 1 July 2007 (s 2(1) item 2) | Sch 1 (item 22) |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007 | 32, 2007 | 30 Mar 2007 | Sch 2 (item 12): 1 Apr 2007 (s 2(1) item 7) | — |
| Tax Laws Amendment (2007 Measures No. 1) Act 2007 | 56, 2007 | 12 Apr 2007 | Sch 1 (items 2, 5): 12 Apr 2007 (s 2) | Sch 1 (item 5) |
| Communications Legislation Amendment (Content Services) Act 2007 | 124, 2007 | 20 July 2007 | Sch 1 (items 89–94): 20 Jan 2008 (s 2(1) item 1) | — |
| Quarantine Amendment (Commission of Inquiry) Act 2007 | 158, 2007 | 24 Sept 2007 | 24 Sept 2007 (s 2) | — |
| Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008 | 66, 2008 | 30 June 2008 | Sch 2 (item 11): 1 July 2008 (s 2(1) item 2) | — |
| Archives Amendment Act 2008 | 113, 2008 | 31 Oct 2008 | 1 Nov 2008 (s 2) | — |
| Freedom of Information (Removal of Conclusive Certificates and Other Measures) Act 2009 | 99, 2009 | 6 Oct 2009 | Sch 1: 7 Oct 2009 (s 2) | Sch 1 (items 34, 35) |
| Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Act 2009 | 102, 2009 | 8 Oct 2009 | Sch 1 (items 62J–62L): 9 Oct 2009 (s 2(1) item 4) | — |



Authorised Version C2017C00102 registered 22/03/2017

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Statute Law Revision Act 2010 | 8, 2010 | 1 Mar 2010 | Sch 5 (items 58, 59): 1 Mar 2010 (s 2(1) item 31)<br>Sch 5 (item 137(a), (c)): 1 Mar 2010 (s 2(1) item 38) | — |
| Freedom of Information Amendment (Reform) Act 2010 | 51, 2010 | 31 May 2010 | Sch 1, Sch 3 (items 7–14, 16–34, 39), Sch 4 (items 1–57, 65), Sch 6 (items 1–41) and Sch 7: s 2(1) items 2, 4, 6, 7)<br>Sch 2 and Sch 3 (item 15): 1 May 2011 (s 2(1) items 3, 5) | Sch 2 (item 4), Sch 3 (item 39), Sch 4 (item 65), Sch 6 (items 40, 41) and Sch 7 |
| **as amended by** | | | | |
| Statute Law Revision Act 2012 | 136, 2012 | 22 Sept 2012 | Sch 2 (items 16–18): 1 Nov 2010 (s 2(1) items 16, 17)<br>Sch 2 (item 42): 1 Jan 2011 (s 2(1) item 32) | — |
| Territories Law Reform Act 2010 | 139, 2010 | 10 Dec 2010 | Sch 1 (item 66): 11 Dec 2010 (s 2(1) item 2)<br>Sch 1 (items 155–175, 183–239): 1 Jan 2011 (s 2(1) items 6, 8)<br>Sch 1 (items 176–182): 1 May 2011 (s 2(1) item 7) | — |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| **as amended by** | | | | |
| Statute Law Revision Act 2012 | 136, 2012 | 22 Sept 2012 | Sch 2 (item 42): 1 Jan 2011 (s 2(1) item 32) | — |
| Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010 | 145, 2010 | 16 Dec 2010 | Sch 2 (items 22–28, 123(3)): 17 Dec 2010 (s 2(1) item 2) | Sch 2 (item 123(3)) |
| Financial Framework Legislation Amendment Act 2010 | 148, 2010 | 17 Dec 2010 | Sch 4 (item 12): 18 Dec 2010 (s 2(1) item 4) | — |
| Screen Australia (Transfer of Assets) Act 2011 | 20, 2011 | 12 Apr 2011 | Sch 1 (items 1, 2): 1 July 2011 (s 2(1) item 2) | — |
| Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Act 2011 | 23, 2011 | 12 Apr 2011 | Sch 1 (items 115–122): 11 June 2011 (s 2(1) item 5) | — |
| Human Services Legislation Amendment Act 2011 | 32, 2011 | 25 May 2011 | Sch 4 (items 108–113): 1 July 2011 (s 2(1) item 3) | Sch 4 (item 113) |
| Acts Interpretation Amendment Act 2011 | 46, 2011 | 27 June 2011 | Sch 2 (item 635) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12) | Sch 3 (items 10, 11) |
| Parliamentary Service Amendment (Parliamentary Budget Officer) Act 2011 | 170, 2011 | 4 Dec 2011 | Sch 3 (items 1–3): 15 Feb 2012 (s 2(1) item 2) | — |
| Statute Law Revision Act 2012 | 136, 2012 | 22 Sept 2012 | Sch 1 (items 57–59): 22 Sept 2012 (s 2(1) item 2) | — |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Freedom of Information Amendment (Parliamentary Budget Office) Act 2012 | 177, 2012 | 4 Dec 2012 | Sch 1 (items 1–12): 4 Dec 2012 (s 2) | Sch 1 (item 12) |
| Courts Legislation Amendment (Judicial Complaints) Act 2012 | 187, 2012 | 11 Dec 2012 | Sch 1 (items 34, 35): 12 Apr 2013 (s 2(1) item 2) | — |
| Privacy Amendment (Enhancing Privacy Protection) Act 2012 | 197, 2012 | 12 Dec 2012 | Sch 5 (item 36) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16) | Sch 6 (items 1, 15–19) |
| Federal Circuit Court of Australia (Consequential Amendments) Act 2013 | 13, 2013 | 14 Mar 2013 | Sch 1 (item 318): 12 Apr 2013 (s 2(1) item 2) Sch 2 (item 2) and Sch 3 (items 81, 82): 12 Apr 2013 (s 2(1) items 2, 3, 15) | — |
| Royal Commissions Amendment Act 2013 | 24, 2013 | 28 Mar 2013 | Sch 1 (item 1A): 28 Mar 2013 (s 2) | — |
| Grape and Wine Legislation Amendment (Australian Grape and Wine Authority) Act 2013 | 136, 2013 | 13 Dec 2013 | Sch 1 (item 14): 1 July 2014 (s 2(1) item 3) | — |
| Rural Research and Development Legislation Amendment Act 2013 | 146, 2013 | 13 Dec 2013 | Sch 2 (item 3): 13 Dec 2013 (s 2(1) item 2) | — |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014 | 62, 2014 | 30 June 2014 | Sch 9 (item 90) and Sch 14: 1 July 2014 (s 2(1) items 6, 14) | Sch 14 |
| **as amended by** | | | | |
| Public Governance and Resources Legislation Amendment Act (No. 1) 2015 | 36, 2015 | 13 Apr 2015 | Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2) | Sch 7 |
| **as amended by** | | | | |
| Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2) | — |
| Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (item 495): 5 Mar 2015 (s 2(1) item 2) | — |
| National Security Legislation Amendment Act (No. 1) 2014 | 108, 2014 | 2 Oct 2014 | Sch 7 (items 103–110, 144, 145): 3 Oct 2014 (s 2(1) items 3, 5) | Sch 7 (items 144, 145) |
| Albury-Wodonga Development Corporation (Abolition) Act 2014 | 117, 2014 | 11 Nov 2014 | Sch 1 (items 2, 8-25): 1 Jan 2015 (s 2(1) item 2) | Sch 1 (items 8-25) |



Authorised Version C2017C00102 registered 22/03/2017

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| **as amended by** | | | | |
| Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (item 17): 5 Mar 2016 (s 2(1) item 2) | — |
| Enhancing Online Safety for Children (Consequential Amendments) Act 2015 | 25, 2015 | 24 Mar 2015 | Sch 2 (item 15) and Sch 3: 1 July 2015 (s 2(1) items 4, 6) | Sch 3 |
| Norfolk Island Legislation Amendment Act 2015 | 59, 2015 | 26 May 2015 | Sch 1 (items 106–128) and Sch 2 (items 356–396): 18 June 2015 (s 2(1) items 2, 6)<br>Sch 1 (items 184–195, 197–203): 27 May 2015 (s 2(1) item 3)<br>Sch 2 (items 163–208): 1 July 2016 (s 2(1) item 5) | Sch 1 (items 184–203) and Sch 2 (items 356–396) |
| **as amended by** | | | | |
| Territories Legislation Amendment Act 2016 | 33, 2016 | 23 Mar 2016 | Sch 2: 24 Mar 2016 (s 2(1) item 2) | — |
| Tribunals Amalgamation Act 2015 | 60, 2015 | 26 May 2015 | Sch 8 (items 22–26, 55, 56) and Sch 9: 1 July 2015 (s 2(1) items 19, 21, 22) | Sch 9 |
| Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015 | 62, 2015 | 16 June 2015 | Sch 2 (items 24, 25) and Sch 4: 16 June 2016 (s 2(1) items 2, 4)<br>Sch 3: 16 June 2015 (s 2(1) item 3) | Sch 3 and Sch 4 |

## Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Judiciary Amendment Act 2015 | 64, 2015 | 16 June 2015 | Sch 2 (items 7, 8) and Sch 3: 1 July 2015 (s 2(1) item 2) | Sch 3 |
| Banking Laws Amendment (Unclaimed Money) Act 2015 | 129, 2015 | 16 Sept 2015 | Sch 1 (item 10): 31 Dec 2015 (s 2(1) item 1) | — |
| Civil Law and Justice (Omnibus Amendments) Act 2015 | 132, 2015 | 13 Oct 2015 | Sch 1 (item 55): 14 Oct 2015 (s 2(1) item 2) | — |
| Australian Immunisation Register (Consequential and Transitional Provisions) Act 2015 | 139, 2015 | 12 Nov 2015 | Sch 1 (item 3): 1 Jan 2016 (s 2(1) item 2) | — |
| Defence Legislation Amendment (First Principles) Act 2015 | 164, 2015 | 2 Dec 2015 | Sch 2 (item 55) and Sch 2 (item 80): 1 July 2016 (s 2(1) item 2) | Sch 2 (item 80) |
| Statute Law Revision Act (No. 1) 2016 | 4, 2016 | 11 Feb 2016 | Sch 4 (item 390): 10 Mar 2016 (s 2(1) item 6) | — |
| Trade Legislation Amendment Act (No. 1) 2016 | 31, 2016 | 23 Mar 2016 | Sch 2 (item 20): 1 May 2016 (s 2(1) item 3) | — |
| National Cancer Screening Register (Consequential and Transitional Provisions) Act 2016 | 66, 2016 | 20 Oct 2016 | Sch 1 (items 2, 4–6): 21 Oct 2016 (s 2(1) item 2) | Sch 1 (items 4–6) |
| Independent Parliamentary Expenses Authority (Consequential Amendments) Act 2017 | 3, 2017 | 22 Feb 2017 | Sch 1: awaiting commencement (s 2(1) item 2) | — |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Statute Update (A.C.T. Self-Government (Consequential Provisions) Regulations) Act 2017 | 13, 2017 | 22 Feb 2017 | Sch 1 (item 21): 22 Mar 2017 (s 2(1) item 2) | — |

| Number and year | Registration | Commencement | Application, saving and transitional provisions |
|---|---|---|---|
| 2006 No. 50 | 17 Mar 2006 (F2006L00820) | Sch 36: 27 Mar 2006 (r 2(b)) | — |



Authorised Version C2017C00102 registered 22/03/2017

# Endnote 4—Amendment history

| Provision affected | How affected |
|---|---|
| **Part I** | |
| s 3 | am No 137, 1991 |
| | rs No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s. 3A | ad. No. 51, 2010 |
| s 4 | am No 81, 1983; No 63, 1984; No 111, 1986; No 109, 1988; No 137, 1991; No 196, 1992; No 33, 1994; No 84, 1994; No 177, 1994; No 43, 1996; No 1, 2000; No 114, 2003; No 135, 2003; No 62, 2004; No 128, 2005; No 124, 2007; No 158, 2007; No 113, 2008; No 99, 2009; No 102, 2009; No 8, 2010; No 51, 2010; No 139, 2010; No 23, 2011; No 32, 2011; No 170, 2011; No 197, 2012; No 108, 2014; No 59, 2015; No 62, 2015; No 164, 2015 |
| s. 4A | ad. No. 109, 1988 |
| s. 4B | ad. No. 139, 2010 |
| s. 5 | am. No. 43, 1996; No. 139, 2010; No. 187, 2012; No. 13, 2013 |
| s. 6 | am. No. 43, 1996 |
| s. 6A | ad. No. 63, 1984 |
| | am. No. 43, 1996 |
| s. 6B | ad. No. 177, 1994 |
| | rep. No. 51, 2010 |
| s. 6C | ad. No. 51, 2010 |
| s. 7 | am. No. 81, 1983; No. 102, 1986; No. 75, 1990; No. 137, 1991; No. 165, 1992; No. 84, 1994; No. 161, 1999; No. 128, 2005; No. 99, 2009; No. 51, 2010; No. 23, 2011; No. 24, 2013; No 108, 2014 |
| **Part II** | |
| Part II | rs. No. 51, 2010 |
| **Division 1** | |
| s. 7A | ad. No. 51, 2010 |
| **Division 2** | |
| s. 8 | am. No. 111, 1986; No. 84, 1994 |



Authorised Version C2017C00102 registered 22/03/2017

| Provision affected | How affected |
|---|---|
| | rs. No. 51, 2010 |
| | am. No. 139, 2010; No 59, 2015 |
| ss. 8A, 8B | ad. No. 51, 2010 |
| s. 8C | ad. No. 51, 2010 |
| | am. No. 139, 2010 |
| ss. 8D, 8E | ad. No. 51, 2010 |
| **Division 3** | |
| s. 8F | ad. No. 51, 2010 |
| s. 9 | am. No. 81, 1983; No. 111, 1986; No. 137, 1991; No. 43, 1996 |
| | rs. No. 51, 2010 |
| **Division 4** | |
| s. 9A | ad. No. 51, 2010 |
| **Division 5** | |
| s. 10 | am. No. 81, 1983; No. 137, 1991; No. 43, 1996 |
| | rs. No. 51, 2010 |
| s. 10A | ad. No. 51, 2010 |
| s. 10B | ad. No. 139, 2010 |
| **Part III** | |
| s. 11 | am. No. 137, 1991 |
| s. 11A | ad. No. 51, 2010 |
| s 11B | ad No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s. 11C | ad. No. 51, 2010 |
| s. 12 | am. No. 81, 1983; No. 137, 1991; No. 165, 1992; No. 43, 1996; No. 99, 2009; Nos. 51 and 139, 2010; No 59, 2015 |
| s. 13 | am. No. 81, 1983; No. 158, 2007; No. 113, 2008; No. 102, 2009; No. 51, 2010; No. 20, 2011; No 62, 2015 |
| s. 14 | rep. No. 51, 2010 |
| | am. No. 139, 2010 |
| s 15 | am No. 111, 1986; No 137, 1991; No 51, 2010; No 139, 2010; No 59, 2015 |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 4—Amendment history

| Provision affected | How affected |
|---|---|
| ss. 15AA–15AC | ad. No. 51, 2010 |
| s. 15A | ad. No. 137, 1991 |
| s. 16 | am. No. 81, 1983; No. 137, 1991; No. 165, 1992; No. 128, 2005 |
| s 16A | ad No 13, 2017 |
| s. 17 | am. No. 111, 1986; No. 137, 1991; No. 51, 2010 |
| s. 18 | am. No. 111, 1986 |
| | rep. No. 51, 2010 |
| s. 19 | am. No. 81, 1983; No. 111, 1986; No. 119, 1988 |
| | rep. No. 137, 1991 |
| s 20 | am No 43, 1996; No 139, 2010; No 59, 2015 |
| s. 21 | am. Nos. 51 and 139, 2010; No 59, 2015 |
| s. 22 | am. No. 137, 1991; No. 43, 1996 |
| | rs. No. 51, 2010 |
| s. 23 | am. No. 81, 1983; No. 43, 1996 |
| s. 24 | rs. No. 137, 1991; No. 51, 2010 |
| ss. 24AA, 24AB | ad. No. 51, 2010 |
| s. 24A | ad. No. 137, 1991 |
| | rs. No. 51, 2010 |
| s. 25 | am. No. 81, 1983; No. 51, 2010; No. 177, 2012 |
| s. 26 | am. No. 81, 1983; No. 43, 1996; No. 51, 2010 |
| s. 26A | ad. No. 81, 1983 |
| | am. No. 137, 1991 |
| | rs. No. 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s 26AA | ad No 139, 2010 |
| | am No 59, 2015 |
| | rep No 59, 2015 |
| s. 27 | am. No. 137, 1991 |
| | rs. No. 51, 2010 |
| s. 27A | ad. No. 119, 1988 |
| | am. No. 137, 1991; No. 84, 1994 |



Authorised Version C2017C00102 registered 22/03/2017

| Provision affected | How affected |
|---|---|
| | rs. No. 51, 2010 |
| s. 28 | am. No. 43, 1996 |
| | rep. No. 51, 2010 |
| s. 29 | am. No. 111, 1986 |
| | rs. No. 137, 1991 |
| | am. No. 84, 1994; No. 51, 2010 |
| s. 30 | am. No. 111, 1986 |
| | rep. No. 137, 1991 |
| s. 30A | ad. No. 111, 1986 |
| | am. No. 137, 1991; No. 84, 1994 |
| | rep. No. 51, 2010 |
| s. 31 | am. No. 81, 1983; No. 137, 1991; No. 43, 1996 |
| | rs. No. 51, 2010 |
| **Part IV** | |
| **Division 1** | |
| Division 1 heading | ad. No. 51, 2010 |
| ss. 31A, 31B | ad. No. 51, 2010 |
| s. 32 | am. No. 51, 2010 (as am. by No. 136, 2012) |
| **Division 2** | |
| Division 2 heading | ad. No. 51, 2010 |
| s. 33 | am. No. 81, 1983; No. 137, 1991; No. 43, 1996; No. 99, 2009; No. 51, 2010 |
| s. 33A | ad. No. 81, 1983 |
| | am. No. 137, 1991; No. 43, 1996; No. 99, 2009 |
| | rep. No. 51, 2010 |
| s. 34 | am. No. 81, 1983; No. 137, 1991; No. 99, 2009 |
| | rs. No. 51, 2010 |
| s. 35 | am. No. 81, 1983; No. 137, 1991; No. 99, 2009 |
| | rep. No. 51, 2010 |
| s. 36 | am. No. 43, 1996; No. 99, 2009 |
| | rep. No. 51, 2010 |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 4—Amendment history

| Provision affected | How affected |
|---|---|
| s. 36A | ad. No. 137, 1991 |
| | rep. No. 99, 2009 |
| s. 37 | am. No. 81, 1983; No. 137, 1991; No. 84, 1994 |
| s. 38 | am. No. 119, 1988; No. 137, 1991; No. 75, 2003; No. 139, 2010 |
| ss. 39, 40 | rs. No. 81, 1983 |
| | rep. No. 51, 2010 |
| s. 41 | am. No. 137, 1991 |
| | rep. No. 51, 2010 |
| s. 42 | am. No. 51, 2010 |
| s. 43 | am. No. 81, 1983; No. 137, 1991; No. 43, 1996 |
| | rep. No. 51, 2010 |
| s. 43A | ad. No. 137, 1991 |
| | rep. No. 51, 2010 |
| s. 44 | rep. No. 51, 2010 |
| s 45 | am No 81, 1983; No 111, 1986; No 137, 1991; No 43, 1996; No 62, 2004; No 51, 2010; No 139, 2010; No 59, 2015 |
| s. 45A | ad. No. 177, 2012 |
| s 46 | am No 59, 2015 |
| s 47 | am No 81, 1983; No 143, 1992 |
| | rs No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s. 47A | ad. No. 219, 1992 |
| | am. No. 139, 2010; No 59, 2015 |
| **Division 3** | |
| Division 3 | ad. No. 51, 2010 |
| s 47B | ad No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s 47C | ad No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s 47D | ad No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |



Authorised Version C2017C00102 registered 22/03/2017

| Provision affected | How affected |
|---|---|
| s 47E | ad No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s. 47F | ad. No. 51, 2010 |
| s 47G | ad No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s. 47H | ad. No. 51, 2010 |
| s 47J | ad No 51, 2010 |
| | am No 139, 2010; No 46, 2011; No 59, 2015 |
| **Part V** | |
| Part V | rs. No. 137, 1991 |
| s. 48 | am. No. 119, 1988 |
| | rs. No. 137, 1991 |
| s. 49 | am. No. 81, 1983 |
| | rs. No. 137, 1991 |
| s. 50 | rs. No. 137, 1991 |
| s. 51 | am. No. 81, 1983 |
| | rs. No. 137, 1991 |
| ss. 51A, 51B | ad. No. 137, 1991 |
| s. 51C | ad. No. 137, 1991 |
| | am. No. 165, 1992; No. 128, 2005 |
| s. 51D | ad. No. 137, 1991 |
| s. 51DA | ad. No. 51, 2010 |
| s. 51E | ad. No. 137, 1991 |
| Part VA | ad. No. 81, 1983 |
| | rep. No. 137, 1991 |
| **Part VI** | |
| Part VI heading | rs. No. 51, 2010 |
| s. 52 | rep. No. 137, 1991 |
| | ad. No. 51, 2010 |
| ss. 52A–52F | ad. No. 81, 1983 |
| | rep. No. 137, 1991 |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 4—Amendment history

| Provision affected | How affected |
|---|---|
| s. 53 | am. No. 81, 1983 |
| | rs. No. 99, 2009 |
| | am. No. 51, 2010 |
| s. 53A | ad. No. 51, 2010 |
| s 53B | ad No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s 53C | ad No 51, 2010 |
| | am No 139, 2010; No 136, 2012; No 59, 2015 |
| s. 54 | am. No. 81, 1983; No. 111, 1986; No. 137, 1991; No. 84, 1994 |
| | rs. No. 51, 2010 |
| ss. 54A–54E | ad. No. 51, 2010 |
| **Part VII** | |
| Part VII | rep. No. 81, 1983 |
| | ad. No. 51, 2010 |
| **Division 1** | |
| s. 54F | ad. No. 51, 2010 |
| **Division 2** | |
| ss. 54G, 54H | ad. No. 51, 2010 |
| ss. 54J, 54K | ad. No. 51, 2010 |
| **Division 3** | |
| ss. 54L, 54M | ad. No. 51, 2010 |
| **Division 4** | |
| **Subdivision A** | |
| s. 54N | ad. No. 51, 2010 |
| s 54P | ad No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| ss. 54Q, 54R | ad. No. 51, 2010 |
| **Subdivision B** | |
| s 54S | ad No. 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s. 54T | ad. No. 51, 2010 |



Authorised Version C2017C00102 registered 22/03/2017

| Provision affected | How affected |
|---|---|
| **Division 5** | |
| s. 54U | ad. No. 51, 2010 |
| s. 54V | ad. No. 51, 2010 |
| s. 54W | ad. No. 51, 2010 |
| s. 54X | ad. No. 51, 2010 |
| s 54Y | ad No 51, 2010 |
| | am No. 139, 2010; No 136, 2012; No 59, 2015 |
| **Division 6** | |
| s. 54Z | ad. No. 51, 2010 |
| s. 55 | am. No. 81, 1983; No. 111, 1986; No. 137, 1991; No. 84, 1994; No. 43, 1996 |
| | rs. No. 51, 2010 |
| ss. 55A–55D | ad. No. 51, 2010 |
| s. 55DA | ad. No. 51, 2010 |
| s. 55E | ad. No. 51, 2010 |
| s. 55F | ad. No. 51, 2010 |
| s 55G | ad No. 51, 2010 |
| | am No. 139, 2010; No 136, 2012; No 59, 2015 |
| s. 55H | ad. No. 51, 2010 |
| s. 55J | ad. No. 51, 2010 |
| **Division 7** | |
| ss. 55K, 55L | ad. No. 51, 2010 |
| s. 55M | ad. No. 51, 2010 |
| | am. No. 139, 2010 |
| s. 55N | ad. No. 51, 2010 |
| ss. 55P, 55Q | ad. No. 51, 2010 |
| **Division 8** | |
| s. 55R | ad. No. 51, 2010 |
| s. 55S | ad. No. 51, 2010 |
| s. 55T | ad. No. 51, 2010 |
| Note to s. 55T(1) | am. No. 177, 2012 |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 4—Amendment history

| Provision affected | How affected |
|---|---|
| Heading to s. 55U | rs. No. 177, 2012 |
| s. 55U | ad. No. 51, 2010 |
| | am. No. 177, 2012 |
| s. 55V | ad. No. 51, 2010 |
| s. 55W | ad. No. 51, 2010 |
| s. 55X | ad. No. 51, 2010 |
| s. 55Y | ad. No. 51, 2010 |
| s. 55Z | ad. No. 51, 2010 |
| **Division 9** | |
| ss. 55ZA–55ZD | ad. No. 51, 2010 |
| **Division 10** | |
| s. 56 | am. No. 81, 1983; No. 137, 1991; No. 143, 1992; No. 43, 1996 |
| | rs. No. 51, 2010 |
| s. 56A | ad. No. 51, 2010 |
| **Part VIIA** | |
| Heading to Part VIIA | ad. No. 51, 2010 |
| **Division 1** | |
| Heading to Div. 1 of Part VIIA | ad. No. 51, 2010 |
| s. 57 | rep. No. 81, 1983 |
| | ad. No. 137, 1991 |
| | rs. No. 51, 2010 |
| **Division 2** | |
| Heading to Div. 2 of Part VIIA | ad. No. 51, 2010 |
| s. 57A | ad. No. 51, 2010 |
| **Division 3** | |
| Heading to Div. 3 of Part VIIA | ad. No. 51, 2010 |
| s. 58 | am. No. 81, 1983; No. 143, 1992; No. 99, 2009; No. 51, 2010 |
| s. 58A | ad. No. 81, 1983 |



Authorised Version C2017C00102 registered 22/03/2017

| Provision affected | How affected |
|---|---|
| | am. No. 137, 1991; No. 165, 1992; No. 43, 1996 |
| | rep. No. 99, 2009 |
| | ad. No. 51, 2010 |
| s. 58AA | ad. No. 51, 2010 |
| | am. No. 139, 2010 |
| **Division 4** | |
| Heading to Div. 4 of Part VIIA | ad. No. 51, 2010 |
| Heading to s. 58B | rs. No. 99, 2009 |
| s. 58B | ad. No. 81, 1983 |
| | am. No. 43, 1996; No. 99, 2009; No. 51, 2010; No. 177, 2012; No 60, 2015 |
| s. 58C | ad. No. 81, 1983 |
| | am. No. 143, 1992; No. 43, 1996 |
| | rep. No. 99, 2009 |
| s. 58D | ad. No. 81, 1983 |
| | am. No. 38, 2005; No. 51, 2010 |
| | rs No 60, 2015 |
| s. 58E | ad. No. 81, 1983 |
| | am. No. 43, 1996 |
| | rs. No. 99, 2009 |
| | am. No. 177, 2012; No 60, 2015 |
| s. 58F | ad. No. 81, 1983 |
| | am. No. 137, 1991; No. 84, 1994 |
| | rep. No. 51, 2010 |
| s. 59 | am. No. 137, 1991; No. 84, 1994; No. 99, 2009 |
| | rep. No. 51, 2010 |
| s. 59A | ad. No. 119, 1988 |
| | am. No. 137, 1991; No. 84, 1994; No. 99, 2009 |
| | rep. No. 51, 2010 |
| s. 60 | am. No. 81, 1983; No. 99, 2009 |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 4—Amendment history

| Provision affected | How affected |
|---|---|
| | rs. No. 51, 2010 |
| s 60AA | ad No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s. 60AB | ad. No. 51, 2010 |
| s. 60A | ad. No. 99, 2009 |
| s 61 | am No 137, 1991 |
| | rs No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s 61A | ad No 51, 2010 |
| | am No 60, 2015; No 132, 2015 |
| s. 62 | am. No. 81, 1983 |
| **Division 5** | |
| Division 5 heading | ad. No. 51, 2010 |
| s. 63 | am. No. 81, 1983; No. 43, 1996; No. 99, 2009; No 60, 2015 |
| s. 64 | am. No. 81, 1983; No. 137, 1991; No. 43, 1996; No. 194, 1999; No. 38, 2005; No. 99, 2009; No. 177, 2012; No. 13, 2013; No 60, 2015 |
| s. 65 | am. No. 81, 1983 |
| | rep. No. 99, 2009 |
| **Division 6** | |
| Division 6 heading | ad. No. 51, 2010 |
| s 66 | rs No 81, 1983 |
| | am No 43, 1996; No 51, 2010; No 139, 2010; No 59, 2015 |
| **Division 7** | |
| Division 7 heading | ad. No. 51, 2010 |
| s. 67 | rep. No. 81, 1983 |
| | ad. No. 99, 2009 |
| | am. No. 51, 2010; No. 13, 2013 |
| **Part VIIB** | |
| Part VIIB | ad. No. 51, 2010 |
| **Division 1** | |
| s. 68 | rep. No. 81, 1983 |



Authorised Version C2017C00102 registered 22/03/2017

| Provision affected | How affected |
|---|---|
| | ad. No. 51, 2010 |
| **Division 2** | |
| **Subdivision A** | |
| s. 69 | rep. No. 81, 1983 |
| | ad. No. 51, 2010 |
| **Subdivision B** | |
| s. 70 | rep. No. 81, 1983 |
| | ad. No. 51, 2010 |
| **Subdivision C** | |
| ss. 71–73 | rep. No. 81, 1983 |
| | ad. No. 51, 2010 |
| s. 74 | rep. No. 81, 1983 |
| | ad. No. 51, 2010 |
| | am. No. 139, 2010 |
| s. 75 | rep. No. 81, 1983 |
| | ad. No. 51, 2010 |
| **Subdivision D** | |
| ss. 76–85 | rep. No. 81, 1983 |
| | ad. No. 51, 2010 |
| **Subdivision E** | |
| ss. 86–89 | rep. No. 81, 1983 |
| | ad. No. 51, 2010 |
| ss. 89A–89C | ad. No. 51, 2010 |
| s. 89D | ad. No. 51, 2010 |
| | am. No. 139, 2010 |
| s. 89E | ad. No. 51, 2010 |
| **Division 3** | |
| ss. 89F–89H | ad. No. 51, 2010 |
| s. 89J | ad. No. 51, 2010 |
| | am. No. 139, 2010 |
| **Part VIII** | |



Authorised Version C2017C00102 registered 22/03/2017

## Endnote 4—Amendment history

| Provision affected | How affected |
|---|---|
| **Division 1** | |
| Division 1 | ad. No. 51, 2010 |
| ss. 89K–89N | ad. No. 51, 2010 |
| **Division 2** | |
| Division 2 heading | ad. No. 51, 2010 |
| s. 89P | ad. No. 51, 2010 |
| s 90 | rep No 81, 1983 |
| | ad No 51, 2010 |
| | am No 139, 2010; No 59, 2015 |
| s 91 | am No 81, 1983; No 137, 1991; No 84, 1994; No 51, 2010; No 139, 2010; No 59, 2015 |
| s. 92 | am. No. 81, 1983; No. 84, 1994 |
| | rs. No. 51, 2010 |
| | am No 139, 2010; No 4, 2016 |
| s. 92A | ad. No. 84, 1994 |
| | rep. No. 51, 2010 |
| s. 93 | am. No. 81, 1983; No. 111, 1986; No. 137, 1991; No. 43, 1996 |
| | rs. No. 51, 2010 |
| | am No 62, 2014 |
| ss. 93A, 93B | ad. No. 51, 2010 |
| s. 94 | am. No. 81, 1983; No. 111, 1986; No. 51, 2010 |
| **Schedule 1** | |
| Schedule 1 | am. No. 87, 1988; No. 62, 2004; SLI 2006 No. 50 |
| **Schedule 2** | |



Authorised Version C2017C00102 registered 22/03/2017

| Provision affected | How affected |
|---|---|
| Schedule 2 | am. No. 7, 1983; No. 187, 1985; Nos. 102 and 111, 1986; Nos. 6, 121, 126, 127 and 129, 1988; Nos. 66 and 150, 1989; Nos. 26, 75 and 118, 1990; Nos. 99, 137, 149 and 180, 1991; No. 165, 1992; Nos. 64 and 84, 1994; No. 161, 1995; Nos. 67 and 96, 1997; Nos. 7, 146 and 161, 1999; Nos. 108 and 163, 2000; No. 30, 2001; No. 127, 2002; No. 114, 2003; No. 62, 2004; Nos. 45, 111, 118, 128 and 129, 2005; Nos. 50 and 170, 2006; Nos. 27 and 124, 2007; No. 66, 2008; Nos. 8, 51 and 148, 2010; No 23, 2011; No 32, 2011; No 170, 2011; No 136, 2013; No 146, 2013; No 108, 2014; No 117, 2014; No 25, 2015; No 64, 2015; No 31, 2016; No 3, 2017 |
| **Schedule 3** | |
| Schedule 3 | ad. No. 137, 1991 |
| | am No 118, 1992; No 181, 1994; No 174, 1995; No 114, 1997; No 118, 1999; No 161, 1999; No 176, 1999; No 170, 2000; No 153, 2001; No 19, 2003; No 28, 2003; No 75, 2003; No 148, 2003; No. 62, 2004; No 40, 2006; No 73, 2006; No 101, 2006; No 150, 2006; No 8, 2007; No 32, 2007; No 56, 2007; No 145, 2010; No 129, 2015; No 139, 2015; No 66, 2016 |
| **Schedule 4** | |
| Schedule 4 | ad. No. 137, 1991 |
| | am. No. 84, 1994; No. 51, 2010 |



Authorised Version C2017C00102 registered 22/03/2017