



Freedom of Information Amendment Act 1983

No. 81 of 1983

An Act to amend the *Freedom of Information Act 1982*, and for related purposes

[Assented to 3 November 1983]

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

Short title, &c.

1. (1) This Act may be cited as the *Freedom of Information Amendment Act 1983*.

(2) The *Freedom of Information Act 1982*¹ is in this Act referred to as the Principal Act.

Commencement

2. The provisions of this Act shall come into operation on such day as is, or such respective days as are, fixed by Proclamation.

Interpretation

3. Section 4 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “Department” and substituting the following definition:

“‘Department’ means a Department of the Australian Public Service that corresponds to a Department of State of the Commonwealth;”;

- (b) by omitting from sub-section (1) the definition of “Document Review Tribunal”;
- (c) by omitting “or regulations made in accordance with that section” from paragraph (b) of the definition of “exempt document” in sub-section (1);
- (d) by omitting “in the possession of a Minister, or in the possession of the Minister concerned, as the case requires,” from the definition of “official document of a Minister” or “official document of the Minister” in sub-section (1) and substituting “that is in the possession of a Minister, or that is in the possession of the Minister concerned, as the case requires, in his capacity as a Minister, being a document”;
- (e) by inserting after the definition of “responsible Minister” in sub-section (1) the following definition:
 - “‘State’ includes the Northern Territory;”;and
- (f) by adding at the end thereof the following sub-sections:
 - “(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
 - (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;
 - (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 deposited with the Australian Archives—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.”.

Exemption of certain bodies

4. Section 7 of the Principal Act is amended by inserting after sub-section (2) the following sub-section:

“(2A) An agency is exempt from the operation of this Act in relation to a document that has originated with, or has been received from, the Australian Secret Intelligence Service, the Australian Security Intelligence Organization or the Office of National Assessments, or the Defence Signals Directorate or the Joint Intelligence Organization of the Department of Defence.”.

Certain documents to be available for inspection and purchase

5. Section 9 of the Principal Act is amended—

- (a) by omitting paragraph (2) (c) and substituting the following paragraph:
 - “(c) within 3 months, if practicable, and, in any case, not later than 12 months, after the publication of the last preceding statement published under paragraph (b) or this paragraph, cause to be published in the *Gazette* a statement bringing up to date the information contained in that last preceding statement.”;
- (b) by omitting from sub-section (5) “an agency” and substituting “the Commissioner of Taxation”;
- (c) by omitting from sub-section (5) “the responsible Minister of the agency” and substituting “the Minister who is the responsible Minister in relation to the Commissioner of Taxation”;
- (d) by omitting from sub-section (5) “the agency” (second occurring) and substituting “the Commissioner of Taxation”;
- (e) by omitting from sub-section (6) “responsible Minister of the agency concerned” and substituting “Minister who is the responsible Minister in relation to the Commissioner of Taxation”;
- (f) by omitting from sub-section (6) “an agency” and substituting “the Commissioner of Taxation”;

- (g) by omitting from sub-section (6) “the agency” (second and third occurring) and substituting “the Commissioner of Taxation”;
- (h) by omitting from sub-section (6) “its” (wherever occurring) and substituting “his”; and
- (j) by omitting sub-section (8) and substituting the following sub-section:

“(8) Where a person makes a request to inspect or to purchase a document of an agency concerning a particular enactment or scheme, being a document of a kind to which this section applies, the principal officer of the agency shall take all reasonable steps to ensure that the attention of that person is drawn to any document of the agency concerning that enactment or scheme that is relevant to the request and has become a document to which this section applies since the last occasion on which a statement in respect of documents of the agency was published in the *Gazette* in pursuance of sub-section (2).”.

Unpublished documents not to prejudice public

6. Section 10 of the Principal Act is amended by inserting in paragraph (2) (a) “the agency is the Commissioner of Taxation and” after “or, if”.

Part not to apply to certain documents

7. Section 12 of the Principal Act is amended—
- (a) by omitting from paragraph (1) (a) “to which sub-section 32 (1) of the *Archives Act* 1982 applies” and substituting “which is, under the *Archives Act* 1983, within the open access period within the meaning of that Act unless the document contains information relating to the personal affairs of a person (including a deceased person)”;
 - (b) by inserting in sub-section (2) “more than 5 years” after “official document of a Minister” (first occurring); and
 - (c) by omitting from paragraph (2) (a) “and the document became a document of the agency or an official document of the Minister not earlier than 5 years before the date of commencement of this Part”.

Documents in certain institutions

8. Section 13 of the Principal Act is amended by omitting from sub-section (4) “1982” and substituting “1983”.

Transfer of requests

9. Section 16 of the Principal Act is amended—
- (a) by omitting from paragraph (2) (a) “is not an agency but would be an agency but for section 7, or regulations made under that section” and substituting “is specified in Part I of Schedule 2”;
 - (b) by inserting in paragraph (3) (a) “, being an agency specified in Part II of Schedule 2” after “agency”; and

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- (c) by omitting paragraph (3) (b) and substituting the following paragraph:
 - “(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,”.

Time within which formal requests to be decided

10. Section 19 of the Principal Act is amended—

- (a) by omitting paragraph (1) (c) and substituting the following paragraph:
 - “(c) is sent by post to the agency or Minister, or delivered to an officer of the agency or a member of the staff of the Minister, at the appropriate address in relation to the agency or the Minister,”;
- (b) by inserting in sub-section (1) “that the request has been received, 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, and” after “notified”;
- (c) by omitting from sub-section (1) “as soon as practicable but in any case not later than 60 days” and substituting “(including a decision under section 21 to defer the provision of access to a document) as soon as practicable but in any case not later than the expiration of the relevant period”; and
- (d) by omitting sub-section (2) and substituting the following sub-sections:
 - “(2) In sub-section (1), ‘the appropriate address’, in relation to an agency or to a Minister, means an address of that agency or of that Minister that is—
 - (a) specified in a notice (being a notice that is in force at the time of the request) published in the *Gazette* by the responsible Minister of the agency or by the Minister, as the case may be, as an address to which requests made in pursuance of this Act may be sent or delivered in accordance with this section; or
 - (b) if, in respect of the agency or Minister, there is no notice in force specifying such an address—
 - (i) in the case of an agency—the address of the office or principal office of the agency that was last specified in the Commonwealth Government Directory; and
 - (ii) in the case of a Minister—the address of the office or principal office of the Department of State administered by the Minister that was last specified in the Commonwealth Government Directory.

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“(3) In sub-section (1), ‘the relevant period’, in relation to a request made to an agency or to a Minister for access to a document, means, subject to sub-section (4)—

- (a) in a case where the request is received before 1 December 1984—60 days;
- (b) in a case where a request is received on or after 1 December 1984 but before 1 December 1986—45 days; and
- (c) in any other case—30 days.

“(4) Where a request has been made to an agency or to a Minister for access to a document, being a request in relation to which, but for this sub-section, the relevant period for the purposes of sub-section (1) would be the period specified in paragraph (3) (b) or (c), and that agency or that Minister, as the case requires, determines in writing that the requirements of section 26A or 27 make it appropriate to extend that relevant period, the relevant period in relation to that request shall be taken, by force of this sub-section, to be extended by a period of 15 days.

“(5) Where an agency or a Minister makes a determination in writing under sub-section (4), in relation to a request, that agency or Minister shall forthwith inform the applicant that the relevant period in relation to that request has been extended, in pursuance of that sub-section, by a period of 15 days.”.

Decisions to be made by authorized persons

11. Section 23 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “a person who is declared by the regulations to be the prescribed officer for the purposes of this sub-section in relation to” and substituting “the principal officer of”; and
- (b) by omitting from sub-section (2) “prescribed officer in relation to” and substituting “principal officer of”.

Information as to existence of certain documents

12. Section 25 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “or 33A” after “section 33”; and
- (b) by inserting in sub-section (2) “or 33A” after “section 33” (wherever occurring).

Reasons and other particulars of decisions to be given

13. Section 26 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “under this Part refusing” and substituting “relating to a refusal”;
- (b) by omitting from sub-section (1) “agency or Minister concerned” and substituting “decision-maker”;

- (c) by omitting paragraph (1) (c) and substituting the following paragraph:

“(c) give to the applicant appropriate information concerning—

- (i) his rights with respect to review of the decision;
- (ii) his rights to make a complaint to the Ombudsman in relation to the decision; and
- (iii) the procedure for the exercise of the rights referred to in sub-paragraphs (i) and (ii),

including (where applicable) particulars of the manner in which an application for review under section 54 may be made.”;

- (d) by inserting after sub-section (1) the following sub-section:

“(1A) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in sub-section (1).”; and

- (e) by omitting from sub-section (2) “An agency or Minister is not required to include in a notice under this section” and substituting “A notice under this section is not required to contain”.

14. After section 26 of the Principal Act the following section is inserted:

**Procedure on request in respect of documents likely to affect
Commonwealth-State relations**

“26A. (1) Where arrangements have been entered into between the Commonwealth and a State with regard to consultation under this section, and it appears that—

- (a) a document that is the subject of a request originated with, or was received from, or contains information that originated with, or was received from, the State or an authority of the State; and
- (b) the State may reasonably wish to contend that the document is an exempt document under section 33A,

a decision to grant access to the document shall not be made by the agency or Minister concerned unless consultation has taken place between the Commonwealth and the State in accordance with those arrangements.

“(2) Where, after consultation between the Commonwealth and a State in pursuance of sub-section (1) has taken place in relation to a document, a decision is made that the document is not an exempt document under section 33A or under any other provision of this Act—

- (a) the agency or Minister making the decision shall, in accordance with the arrangements, cause notice in writing of the decision to be given to the State as well as to the person who made the request; and
- (b) access shall not be given to the document or, in the case of a document that contains information that originated with or was received from

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the State or an authority of the State, to the document so far as it contains that information, unless—

- (i) the time for an application to the Tribunal by the State in accordance with section 58F for review of the decision that the document is not an exempt document under section 33A has expired and such an application has not been made; or
- (ii) such an application has been made and the Tribunal has confirmed the decision that the document is not an exempt document under that section.”.

Certain periods to be disregarded for the purposes of section 19

15. Section 31 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “prescribed period” (first occurring) and substituting “relevant period”;
- (b) by omitting from sub-section (1) “prescribed period” (second occurring) and substituting “relevant period”; and
- (c) by omitting sub-section (2).

Documents affecting national security, defence or international relations

16. Section 33 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

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

- (a) would, 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.”.

17. After section 33 of the Principal Act the following section is inserted:

Documents affecting relations with States

“33A. (1) Subject to sub-section (5), 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 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

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Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

“(2) Where a Minister is satisfied that a document is an exempt document for a reason referred to in sub-section (1), he may sign a certificate to that effect (specifying that reason) and, subject to the operation of Part VI, such a certificate, so long as it remains in force, establishes conclusively that the document is an exempt document referred to in sub-section (1).

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

“(4) Where a Minister is satisfied that information as to the existence or non-existence of a document as described in a request would, if contained in a document of an agency, cause the last-mentioned document to be an exempt document under this section for a reason referred to in sub-section (1), he may sign a certificate to that effect (specifying that reason).

“(5) This section does not apply to a document in respect of matter in the document the disclosure of which under this Act would, on balance, be in the public interest.

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

“(7) A power delegated under sub-section (6), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the responsible Minister.

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

Cabinet documents

18. Section 34 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) This section does not apply to a document (in this sub-section referred to as a ‘relevant document’) that is referred to in paragraph (1) (a), or that is referred to in paragraph (1) (b) or (c) and is a copy of, or of part of, or contains an extract from, a document that is referred to in paragraph (1) (a), to the extent that the relevant document contains purely factual material unless—

- (a) the disclosure under this Act of that document would involve the disclosure of any deliberation or decision of the Cabinet; and
- (b) the fact of that deliberation or decision has not been officially published.”.

Executive Council documents

19. Section 35 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) This section does not apply to a document (in this sub-section referred to as a ‘relevant document’) that is referred to in paragraph (1) (a), or that is referred to in paragraph (1) (b) or (c) and is a copy of, or of part of, or contains an extract from, a document that is referred to in paragraph (1) (a), to the extent that the relevant document contains purely factual material unless—

- (a) the disclosure under this Act of that document would involve the disclosure of any deliberation or advice of the Executive Council; and
- (b) the fact of that deliberation or advice has not been officially published.”.

Documents affecting enforcement of the law and protection of public safety

20. Section 37 of the Principal Act is amended by omitting paragraph (1) (c) and substituting the following paragraph:

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

21. Sections 39 and 40 of the Principal Act are repealed and the following sections are substituted:

Documents affecting financial or property interests of the Commonwealth

“39. (1) Subject to sub-section (2), a document is an exempt document 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.

“(2) This section does not apply to a document in respect of matter in the document the disclosure of which under this Act would, on balance, be in the public interest.

Documents concerning certain operations of agencies

“40. (1) Subject to sub-section (2), a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—

- (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; or
- (e) have a substantial adverse effect on the conduct by or on behalf of the Commonwealth or an agency of industrial relations.

“(2) This section does not apply to a document in respect of matter in the document the disclosure of which under this Act would, on balance, be in the public interest.”.

Documents relating to business affairs, &c.

22. Section 43 of the Principal Act is amended by omitting from sub-section 43 (3) “, a State, the Northern Territory or” and substituting “or a State or by”.

Documents containing material obtained in confidence

23. Section 45 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) Sub-section (1) does not apply to any document to the disclosure of which paragraph 36 (1) (a) applies or would apply, but for the operation of sub-section 36 (2), (5) or (6), being a document 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 duties, or by a prescribed authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State.”.

Certain documents arising out of companies and securities legislation

24. Section 47 of the Principal Act is amended by omitting sub-section (2).

Form of request for amendment of records

25. Section 49 of the Principal Act is amended by omitting from paragraph (1) (c) “an address set out in regulations made for the purposes of section 19” and substituting “determined in accordance with section 19”.

Review of requests for amendments

26. Section 51 of the Principal Act is amended—

(a) by inserting before paragraph (1) (a) the following new paragraph:

“(aa) section 54 has effect as if all the words in sub-section (1) of that section after ‘agency’ (second occurring) and before ‘the applicant’ (second occurring) were omitted;”;

(b) by omitting paragraph (1) (c) and substituting the following paragraph:

“(c) paragraph 56 (1) (b) has effect as if ‘relevant period, in relation to that request, for the purposes of section 19’ were omitted and ‘period of 30 days’ were substituted;”.

27. The Principal Act is amended by inserting after Part V the following Part:

PART VA—ROLE OF THE OMBUDSMAN

Interpretation

“52A. In this Part—

- (a) a reference to the taking of action has the same meaning as it has for the purposes of the *Ombudsman Act 1976*; and
- (b) action shall be deemed to have been taken by an agency in the circumstances in which it would be deemed to be so taken for the purposes of the *Ombudsman Act 1976*.

Complaints to Ombudsman

“52B. (1) Subject to this Act, a person may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under this Act.

“(2) Notwithstanding anything contained in this Act or in sub-section 6 (3) of the *Ombudsman Act 1976* but subject to sub-section 6 (2) of that Act, the exercise of the powers of the Ombudsman under the *Ombudsman Act 1976* in respect of matters arising under this Act is not precluded or restricted by reason of the rights conferred on persons by this Act to make applications to the Tribunal.

“(3) Where a complaint is made to the Ombudsman under the *Ombudsman Act 1976* concerning action taken by an agency in the exercise of powers or the performance of functions under this Act, an application to the Tribunal for a review of the decision shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 12 of the *Ombudsman Act 1976*.

“(4) Notwithstanding anything contained in the *Ombudsman Act 1976*, a report under that Act to a complainant in respect of a complaint arising out of a request under this Act shall not contain information of the kind referred to in sub-section 25 (1) of this Act.

Ombudsman shall designate a Deputy Ombudsman for freedom of information matters

“52C. (1) The Ombudsman shall, by notice published in the *Gazette*, designate a Deputy Ombudsman as the Deputy Ombudsman for freedom of information matters.

“(2) In relation to any action taken by an agency in the exercise of any power or the performance of any function conferred by this Act, the Deputy Ombudsman for freedom of information matters has all the powers, and may exercise all the functions, of the Commonwealth Ombudsman under the *Ombudsman Act 1976*, other than the power of the Commonwealth Ombudsman to report to the Parliament under section 17 or 19 of that Act.

“(3) Nothing in this section prevents the exercise of a power or the performance of a function by the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to action of the kind referred to in sub-section (2).

“(4) In this section, a reference to the *Ombudsman Act 1976* shall be construed as a reference to that Act as modified in the manner provided in sections 52A and 52B of this Act.

Reports made by the Ombudsman

“52D. (1) Where, in the course of an investigation by the Ombudsman in relation to action taken by an agency in the exercise of powers or the performance of functions under this Act—

- (a) the Ombudsman has referred evidence concerning an officer to a Minister or to a principal officer under sub-section 8 (10) of the *Ombudsman Act 1976*; and
- (b) that officer is employed under the *Public Service Act 1922*,

the Ombudsman shall furnish a copy of that evidence to the Public Service Board.

“(2) Where, after an investigation by the Ombudsman in relation to action taken by a Department in the exercise of powers or the performance of functions under this Act, a report is made to the Department by the Ombudsman under sub-section 15 (2) of the *Ombudsman Act 1976*, the Ombudsman shall furnish a copy of the report to the Public Service Board.

“(3) Each annual report required to be submitted to the Minister by the Ombudsman under paragraph 19 (1) (a) of the *Ombudsman Act 1976*, and each additional report submitted to the Minister by the Ombudsman under sub-section 19 (2) of that Act—

- (a) shall include a report on the operations of the Ombudsman during the year, or the part of a year, to which the report relates with respect to complaints made to the Ombudsman or investigations commenced or completed by the Ombudsman concerning action taken by agencies in the exercise of powers or the performance of functions conferred by this Act; and
- (b) may include—
 - (i) such observations as the Ombudsman sees fit to make concerning the operation of this Act during the year, or the part of a year, to which the report relates; and
 - (ii) such recommendations as the Ombudsman sees fit to make concerning ways in which public access to documents of agencies or to official documents of Ministers might be better secured.

Documents of agencies claimed to be exempt under section 33, 34, 35 or 36

“52E. Where—

- (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) a certificate is furnished to the Ombudsman under paragraph 9 (3) (a), (c) or (d) of the *Ombudsman Act 1976* in relation to that investigation,

the certificate shall not be taken to affect the right of the Ombudsman to seek from any person the reasons for any decision made under this Act that the document is an exempt document or to require any person to furnish any information or to answer any questions concerning that decision.

Ombudsman may represent persons in proceedings before the Tribunal

“52F. (1) The Ombudsman may represent, or arrange for another person to represent, any person who makes application to the Tribunal, under section 55 of this Act, for review of a decision (not being a decision made by a Minister) in the proceedings before the Tribunal pursuant to that application, if the Ombudsman is of the opinion, in all the circumstances of the case, that it is reasonable for him to do so.

“(2) Without limiting the generality of the matters to which the Ombudsman may have regard in deciding whether to represent an applicant in proceedings before the Tribunal under section 55, the Ombudsman shall have regard to—

- (a) the importance of the principle involved in the matter under review;
- (b) the likelihood that the proceedings will establish a precedent in future proceedings;
- (c) the financial means of the applicant;
- (d) the applicant’s prospect of success; and
- (e) the reasonableness of the decision under review.

“(3) Notwithstanding anything in this Part, the reference in sub-section (1) to a decision made by a Minister shall not be taken to include a reference to a decision made by a person in the exercise of a power delegated by a Minister.”.

Interpretation

28. Section 53 of the Principal Act is amended—

- (a) by inserting in paragraph (a) “33A (4),” after “33 (4),”; and
- (b) by inserting in paragraph (b) “33A,” after “33,”.

Internal review

29. Section 54 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) a decision refusing to grant access to a document in accordance with a request or deferring the provision of access to a document; or”;
- (b) by inserting in sub-section (1) “in writing” after “apply”; and
- (c) by omitting from sub-section (4) “upon a review of a decision in relation to the provision of access to a document that is the subject of a request”.

Applications to Administrative Appeals Tribunal

30. Section 55 of the Principal Act is amended—

- (a) by omitting from paragraph (3) (b) “he made that application” and substituting “that application was received by or on behalf of the agency concerned”; and
- (b) by omitting from paragraph (4) (c) “57 (4)” and substituting “52B (3)”.

Application to Tribunal where decision delayed

31. Section 56 of the Principal Act is amended by omitting from paragraph (1) (b) “period of 60 days or such other period as is applicable by virtue of regulations under sub-section 19 (2) has elapsed” and substituting “relevant period, in relation to that request, for the purposes of section 19, has expired”.

Repeal of section 57

32. Section 57 of the Principal Act is repealed.

Powers of Tribunal

33. Section 58 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “sub-section (2)” and substituting “this section”;
- (b) by omitting from sub-section (2) “this section” and substituting “this Act”;
- (c) by omitting sub-sections (3) and (4) and substituting the following sub-sections:

“(3) Where there is in force in respect of a document a certificate under section 33, 33A, 34, 35 or 36, the powers of the Tribunal do not extend to reviewing the decision to give the certificate, but the Tribunal, constituted in accordance with section 58B, may determine such question in relation to that certificate as is provided for in whichever of sub-sections (4), (5) and (5A) applies in relation to that certificate.

“(4) Where application is or has been made to the Tribunal for the review of 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, 33A, 34 or 35 and in respect of which a certificate (other than a certificate of a kind referred to in sub-section (5A)) is in force under that section, the Tribunal shall, if the applicant so requests, determine the question whether there exist reasonable grounds for that claim.”;

- (d) by omitting from sub-section (5) “refer to the Document Review Tribunal” and substituting “determine”;
- (e) by inserting after sub-section (5) the following sub-section:

“(5A) Where application is or has been made to the Tribunal for the review of a decision refusing to grant access to a document in accordance with a request, being a document as described in the request in respect of which a certificate is in force under sub-section 33 (4) or 33A (4), the Tribunal shall, if the applicant so requests, determine the question whether there exist reasonable grounds for the claim that information as to the existence or non-existence of the document as so described would, if contained in a document of an agency—

- (a) in a case where the certificate was given under sub-section 33 (4)—cause the disclosure under this Act of that document of an agency to be contrary to the public interest for a reason specified in sub-section 33 (1); or
- (b) in a case where the certificate was given under sub-section 33A (4)—cause that document of an agency to be an exempt document under section 33A.”; and

- (f) by adding at the end thereof the following sub-section:

“(7) Where—

- (a) application is or has been made to the Administrative Appeals Tribunal for review of a decision refusing to grant a person access to a document in accordance with a request; and
- (b) the agency to which or the Minister to whom the request was made—
 - (i) has given to the applicant a notice under this Act of the decision, being a notice that does not include a statement (in whatever terms expressed) to the effect that access to the document is being refused for the reason that, by virtue of the operation of sub-section 12 (2) or of that sub-section as modified by regulations in pursuance of sub-section 12 (3), the applicant is not entitled to access to that document; or
 - (ii) informs or has informed the Tribunal, either before or in the course of the proceeding for the review of the decision, that the agency or the Minister, as the case

requires, does not intend, or does not any longer intend, to refuse access to the document for the reason referred to in sub-paragraph (i),

then, for the purposes of the review by the Tribunal of that decision, this Act has effect as if sub-section 12 (2), or that sub-section as so modified, as the case requires, had not been enacted.”.

34. After section 58 of the Principal Act the following sections are inserted:

Proceedings upon exercise of powers under sub-section 58 (4), (5) or (5A)

“58A. (1) Where, in considering a question referred to in sub-section 58 (4), (5) or (5A) in relation to a document in respect of which a certificate has been given, the Tribunal determines that there do not exist reasonable grounds for the claim to which the question relates, the appropriate Minister shall, not later than 28 days after the determination of the Tribunal is communicated to him, make a decision—

- (a) to revoke the certificate; or
- (b) not to revoke the certificate.

“(2) Where a Minister makes a decision under sub-section (1) to revoke a certificate—

- (a) in a case where the certificate was given under sub-section 33 (2), 33A (2), 34 (2) or (4) or 35 (2) or (4)—the claim that the document to which the certificate relates is an exempt document shall be taken, for the purposes of this Act, to have been withdrawn; and
- (b) in a case where the certificate was given under sub-section 33 (4) or 33A (4)—the Minister shall, forthwith upon the revocation of the certificate, inform the applicant of the existence or non-existence of the document to which the certificate relates.

“(3) Where a Minister makes a decision under sub-section (1) not to revoke a certificate, he shall—

- (a) cause notice in writing of the decision to be furnished to the applicant forthwith; and
- (b) cause a copy of the notice to be laid before each House of the Parliament within 5 sitting days of that House after the notice is so furnished.

“(4) A notice under sub-section (3) shall state the findings of the Minister giving the notice on any material question of fact, the material on which those findings were based, and the reasons for the decision.

“(5) A Minister is not required to include in a notice under sub-section (3) 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 under section 33, 33A, 34, 35 or 36.

“(6) A Minister is not required to include in a notice under sub-section (3) information as to the existence or non-existence of a document or the existence

or non-existence of a state of fact if that information would, if included in a document of an agency, cause that last-mentioned document to be an exempt document under section 33, 33A, 34 or 35.

“(7) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision of a Minister under this section.

“(8) Nothing in this section shall be taken to imply that a certificate under sub-section 33, 33A, 34, 35 or 36 may not be revoked otherwise than in pursuance of a decision under sub-section (1).

“(9) For the purposes of this section, ‘appropriate Minister’ means—

- (a) in relation to a document in respect of which there is a certificate in force under section 33, 33A or 36—the Minister who gave, or whose delegate gave, that certificate; or
- (b) in relation to a document in respect of which there is a certificate in force under section 34 or 35—the Prime Minister.

Constitution of Tribunal for purposes of proceedings under sub-section 58 (4), (5) or (5A)

“58B. (1) Where a request is made to the Tribunal in accordance with sub-section 58 (4), (5) or (5A), the Tribunal shall be constituted in accordance with sub-section (2) for the purposes of any proceeding for the determination of the question to which the request relates.

“(2) For the purposes of a proceeding referred to in sub-section (1), the Tribunal shall be constituted by—

- (a) 3 presidential members; or
- (b) a presidential member alone.

“(3) In its application to a proceeding referred to in sub-section (1), section 21A of the *Administrative Appeals Tribunal Act 1975* applies as if—

- (a) sub-section (1) of that section were omitted and the following sub-section substituted:

‘(1) At any time during the hearing of a proceeding before the Tribunal constituted in accordance with sub-section 58B (2) of the *Freedom of Information Act 1982* by a presidential member alone, a party to the proceeding may make an application to the Tribunal as constituted for the purposes of that proceeding requesting that the Tribunal be reconstituted for the purposes of that proceeding.’; and

- (b) sub-section (3) of that section were omitted and the following sub-section substituted:

‘(3) The President may, after taking the submissions into account, if he considers that the matters to which the proceeding relates are of such public importance as to justify him in so doing, give a direction varying the constitution of the Tribunal for the purposes of that proceeding so that the Tribunal is constituted by 3 presidential members.’.

“(4) In its application to a proceeding referred to in sub-section (1), section 22 of the *Administrative Appeals Tribunal Act 1975* applies as if there were inserted after paragraph (1) (aa) of that section the following paragraphs:

- ‘(ab) if the Tribunal is constituted by presidential members of whom at least 2 are Judges and none of whom is the President—the senior Judge shall preside;
- (ac) if the Tribunal is constituted by presidential members none of whom is a Judge—one of those presidential members who is directed by the President to do so shall preside;’.

Hearing of certain proceedings before the Tribunal

“58C. (1) This section has effect notwithstanding anything contained in the *Administrative Appeals Tribunal Act 1975*.

“(2) At the hearing of a proceeding referred to in sub-section 58B (1), the Tribunal—

- (a) shall hold in private the hearing of any part of the proceeding during which evidence or information is given, or a document is produced, to the Tribunal by—

- (i) an agency or an officer of an agency;
 - (ii) a Minister or a member of the staff of a Minister; or
 - (iii) a member, an officer, or a member of the staff, of a body referred to in sub-section 7 (1) or the person referred to in that sub-section,

or during which a submission is made to the Tribunal by or on behalf of an agency or Minister, being a submission in relation to the claim—

- (iv) in the case of a document in respect of which there is in force a certificate under sub-section 33 (2) or 33A (2) or section 34 or 35—that the document is an exempt document;
 - (v) in the case of a document in respect of which there is in force a certificate under section 36—that the disclosure of the document would be contrary to the public interest; or
 - (vi) in the case where a certificate is in force under sub-section 33 (4) or 33A (4)—that information as to the existence or non-existence of a document as described in a request would, if contained in a document of an agency—

- (A) in a case where the certificate was given under sub-section 33 (4)—cause the disclosure under this Act of that document of an agency to be contrary to the public interest for a reason specified in sub-section 33 (1); or

- (B) in a case where the certificate was given under sub-section 33A (4)—cause that document of an agency to be an exempt document under section 33A; and

- (b) subject to sub-section (4), shall hold the hearing of any other part of the proceeding in public.

“(3) Where the hearing of any part of a proceeding is held in private in accordance with sub-section (2), the Tribunal—

- (a) may, by order, give directions as to the persons who may be present at that hearing; and
- (b) shall give directions prohibiting the publication of—
 - (i) any evidence or information given to the Tribunal;
 - (ii) the contents of any documents lodged with, or received in evidence by, the Tribunal; and
 - (iii) any submission made to the Tribunal,at that hearing.

“(4) Where, in relation to a proceeding referred to in sub-section 58B (1), the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence, information or matter or for any other reason, the Tribunal may, by order—

- (a) direct that the hearing of a part of the proceeding that, but for this sub-section, would be held in public shall take place in private and give directions as to the persons who may be present at that hearing;
- (b) give directions prohibiting or restricting the publication of—
 - (i) the contents of any document lodged with the Tribunal in relation to the proceeding; or
 - (ii) any evidence or information given to the Tribunal, the contents of any document received in evidence by the Tribunal, or any submission made to the Tribunal, in relation to the proceeding otherwise than at a hearing held in private in accordance with sub-section (2); or
- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to the proceeding of evidence given before the Tribunal, or the contents of a document lodged with, or received in evidence by, the Tribunal, in relation to the proceeding.

“(5) A direction given by the Tribunal under paragraph (3) (b) or (4) (b), does not prevent a person referred to in sub-paragraph (2) (a) (i), (ii) or (iii) from disclosing, in the course of the performance of his duties, any matter to any other person.

Modification of section 42 of the *Administrative Appeals Tribunal Act 1975*

“58D. In its application to a proceeding referred to in sub-section 58B (1) of this Act, section 42 of the *Administrative Appeals Tribunal Act 1975* applies as if sub-section (1) of that section were omitted and the following sub-section substituted:

“(1) A question of law (including the question whether a particular question is one of law) arising in a proceeding before the Tribunal constituted

in accordance with sub-section 58B (2) of the *Freedom of Information Act 1982* by 3 presidential members shall—

- (a) in a case where one only of those members is a Judge—be decided according to the opinion of that member; and
- (b) in a case where 2 of those members are Judges—be decided according to the opinion of the majority.’.

Production to the Tribunal of documents in relation to which a certificate has been issued

“58E. (1) In any proceedings before the Tribunal under this Act in relation to a document in respect of which there is in force a certificate under section 33, 33A, 34, 35 or 36, the Tribunal is entitled to require the production of the document in accordance with this section and not otherwise.

“(2) Where, in considering a question referred to in sub-section 58 (4), (5) or (5A) in relation to a document, the Tribunal is not satisfied, by evidence on affidavit or otherwise, that there exist reasonable grounds for the claim to which the question relates, the Tribunal may require the document to be produced for inspection by the Tribunal as constituted for the purposes of the proceeding.

“(3) After an inspection of a document under this section the Tribunal shall return the document to the person by whom it was produced without permitting any person who is not a member of the Tribunal as constituted for the purposes of the proceeding, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person.

Review of certain decisions in respect of documents relating to the Government of a State

“58F. (1) Where notice of a decision that a document is not an exempt document under section 33A or under any other provision of this Act has been given in accordance with sub-section 26A (2) to a State, the State may apply to the Tribunal for a review of the decision that the document is not an exempt document under section 33A.

“(2) Where an application is made in accordance with sub-section (1)—

- (a) the provisions of this Part (other than sections 55 and 61) apply in like manner as they apply in relation to an application for review of a decision refusing to grant access to a document; and
- (b) the agency or Minister concerned shall forthwith inform the person who made the request of the application.

“(3) Where—

- (a) after consultation between the Commonwealth and a State in accordance with arrangements of the kind referred to in section 26A, a decision is made not to grant access to the document to which the consultation relates; and
- (b) an application is made to the Tribunal for a review of the decision,

the agency or Minister concerned shall forthwith inform the State in accordance with those arrangements of the application.”.

Parties

35. Section 60 of the Principal Act is amended—

- (a) by omitting from paragraph (a) “and”; and
- (b) by omitting paragraph (b) and substituting the following paragraphs:
 - “(b) in proceedings by virtue of section 56, the agency or Minister to which or to whom the request was made shall be a party to the proceedings; and
 - (c) in proceedings for the determination of a question referred to in sub-section 58 (4), (5) or (5A) in relation to a document, the Minister who is the appropriate Minister for the purposes of section 58A in respect of that document shall, upon application to the Tribunal, be entitled to be a party to the proceedings.”.

Application of section 28 of Administrative Appeals Tribunal Act, &c.

36. Section 62 of the Principal Act is amended—

- (a) by omitting “complying with” and substituting “under”; and
- (b) by adding at the end thereof the following sub-section:

“(2) If the Tribunal, upon application for a declaration under this sub-section made to it by a person to whom a notice has been furnished in pursuance of sub-section 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 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.”.

Tribunal to ensure non-disclosure of certain matters

37. Section 63 of the Principal Act is amended by omitting from paragraph (2) (a) “reasons for a decision” and substituting “decision, or reasons for a decision,”.

Production of exempt documents

38. Section 64 of the Principal Act is amended—

- (a) by omitting sub-section (3) and substituting the following sub-section:
 - “(3) Notwithstanding sub-sections (1) and (2), but subject to sub-section (4), the Tribunal is not empowered, in any proceedings

other than proceedings to determine a question referred to in sub-section 58 (4), (5) or (5A), to require—

- (a) the production of a document in respect of which there is in force a certificate under section 33, 33A, 34, 35 or 36; or
- (b) the giving of information in respect of which a certificate is in force under sub-section 33 (4) or 33A (4).”; and
- (b) by inserting in sub-section (4) “any” after “the production, in”.

Evidence of certificates

39. Section 65 of the Principal Act is amended by inserting “33A,” after “section 33,”.

40. Sections 66 to 69 (inclusive) of the Principal Act are repealed and the following section is substituted:

Tribunal may make recommendation that costs be available in certain circumstances

“66. (1) Where—

- (a) a person makes application to the Tribunal under section 55 for review of a decision constituting the action to which the complaint relates; and
- (b) the person is successful, or substantially successful, in his application for review,

the Tribunal may, in its discretion, recommend to the Attorney-General 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 sub-section (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 Attorney-General may, pursuant to a recommendation of the Tribunal under sub-section (1), authorize the payment of costs to an applicant.”.

Repeal of Part VII

41. Part VII of the Principal Act is repealed.

Protection against certain actions

42. Section 91 of the Principal Act is amended by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) the access was required by this Act to be given or would, but for the operation of sub-section 12 (2) or of that sub-section as modified by regulations made in pursuance of sub-section 12 (3), have been so required to be given; or”.

Protection in respect of offences

43. Section 92 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

“(a) the access was required by this Act to be given or would, but for the operation of sub-section 12 (2) or of that sub-section as modified by regulations made in pursuance of sub-section 12 (3), have been so required to be given; or”.

Reports to Parliament

44. Section 93 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:

“(1) The Minister shall—

(a) as soon as practicable after 30 June in each year (but, in respect of 30 June 1985 or any subsequent 30 June, not later than 31 October next following that 30 June) prepare a report on the operation of this Act during the year that ended on that 30 June; and

(b) cause that report to be laid before each House of the Parliament within 15 sitting days of that House after the preparation of that report is completed.”; and

(b) by omitting sub-paragraph (3) (a) (viii).

Regulations

45. Section 94 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

“(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.”.

Transitional provisions

46. (1) Where—

(a) before the commencement of this section, a decision has been made upon a request for access to a document of an agency or an official document of a Minister under the Principal Act;

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- (b) the decision refused access to the document on the ground, or on grounds that include the ground, that the document is not a document to which, by virtue of section 12 of that Act, a person is entitled to access under Part III of that Act or is an exempt document under section 33, 34, 35, 37, 39 or 40 of that Act or under any 2 or more of those sections; and
- (c) the person who made the request was, immediately before the commencement of this section, entitled to apply for review of the decision under section 55 of the Principal Act,

the person who made the request, may, within 14 days after the commencement of this section or within such further period as the principal officer of the agency or the Minister, as the case requires, allows, apply in writing to the principal officer of the agency or to the Minister, as the case requires, for his request for access to that document to be reconsidered and, where he does so, the principal officer of the agency or the Minister, as the case requires, shall forthwith arrange for himself or a person authorized by him to reconsider the request as if it had been lodged on the date of that application and to make a fresh decision.

(2) Sub-section 54 (1) of the Principal Act does not apply in relation to a decision made upon reconsideration under sub-section (1) of a request for access to a document.

NOTE

1. No. 3, 1982, as amended. For previous amendment, see No. 7, 1983.