

2002-2003

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Freedom of Information Amendment
(Open Government) Bill 2003**

No. , 2003

(Senator Murray)

A Bill for an Act to amend the *Freedom of Information Act 1982* to give effect to recommendations made by the Australian Law Reform Commission and the Administrative Review Council, and for related purposes

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1 **A Bill for an Act to amend the *Freedom of***
2 ***Information Act 1982* to give effect to**
3 **recommendations made by the Australian Law**
4 **Reform Commission and the Administrative**
5 **Review Council, and for related purposes**

6 The Parliament of Australia enacts:

7 **1 Short title**

8 This Act may be cited as the *Freedom of Information Amendment*
9 (*Open Government*) Act 2003.

10 **2 Commencement**

11 (1) Subject to this section, this Act commences on the day on which it
12 receives the Royal Assent.

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- (2) Items 10, 11, 12, 23, 24, 26, 31, 40 and 41 of Schedule 1 commence on the third anniversary of the day on which this Act receives the Royal Assent.

- (3) Items 76, 77, 78, 79, 81, 83, 85, 86, 88, 89, 92, 93, 94 and 96 of Schedule 1 commence on the first anniversary of the day on which this Act receives the Royal Assent unless subsection (4) or (5) applies.

- (4) If, before the day mentioned in subsection (3):
 - (a) the Attorney-General is satisfied that an agency mentioned in item 76, 77, 78, and 79 of Schedule 1 should continue to be an exempt agency for the purposes of the *Freedom of Information Act 1982*; and
 - (b) the Attorney-General has caused to be laid before each House of the Parliament a statement setting out the reasons why the Attorney-General is satisfied that an agency should continue to be an exempt agency; and
 - (c) neither House, by resolution agreed to not more than 15 sitting days of that House after the statement is tabled, disapproves of the statement;the item mentioning that agency never commences.

- (5) If, before the day mentioned in subsection (3):
 - (a) the Attorney-General is satisfied that an agency mentioned in item 81, 83, 85, 86, 88, 89, 92, 93, 94 or 96 of Schedule 1 in respect of particular documents should continue to be an exempt agency in respect of those documents for the purposes of the *Freedom of Information Act 1982*; and
 - (b) the Attorney-General has caused to be laid before each House of the Parliament a statement setting out the reasons why the Attorney-General is satisfied that an agency should continue to be an exempt agency in respect of particular documents; and
 - (c) neither House, by resolution agreed to not more than 15 sitting days of that House after the statement is tabled, disapproves of the statement;the item mentioning the agency never commences.

- (6) Nothing in this section prevents the Attorney-General from tabling a revised statement under paragraph (3)(b) or (4)(b) if either House

1 of the Parliament, by resolution, disapproves of an earlier
2 statement.

3 **3 Schedule(s)**

4 Subject to section 2, each Act, and each set of regulations, that is
5 specified in a Schedule to this Act is amended or repealed as set
6 out in the applicable items in the Schedule concerned, and any
7 other item in a Schedule to this Act has effect according to its
8 terms.

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Schedule 1—Amendment of Freedom of Information legislation

Freedom of Information Act 1982

1 Section 3

Repeal the section, substitute:

3 Object

- (1) The object of this Act is to extend as far as possible the right of the Australian community to access to information in the possession of the Government of the Commonwealth:
- (a) to enable people to participate in the policy, accountability and decision-making processes of government; and
 - (b) to open the Government’s activities to scrutiny, discussion, comment and review; and
 - (c) to increase the accountability of the executive branch of government;
- by:
- (d) creating a right of access to personal information in documentary form about an applicant in the possession of Ministers, departments and public authorities; and
 - (e) creating a general right of access to the national resource of information in documentary form in the possession of Ministers, departments and public authorities; and
 - (f) creating a right to bring about the amendment of records containing personal information that is incomplete, incorrect, out of date or misleading.
- (2) It is the intention of the Parliament that the provisions of this Act shall be interpreted so as to further the object set out in subsection (1) and give effect to the principles of representative democracy, and that any discretions conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

1 **2 Subsection 4(1) (definition of *agency*)**

2 After “Department,”, insert “a Parliamentary Department,”.

3 **3 Subsection 4(1)**

4 Insert:

5 *Commissioner* means the FOI Commissioner.

6 **4 Subsection 4(1) (subparagraph (a)(iv) of the definition of**
7 ***document*)**

8 After “images”, insert “, data”.

9 **5 Subsection 4(1)**

10 Insert:

11 *Parliamentary Department* means a Department of the Parliament
12 established under the *Parliamentary Service Act 1999*.

13 **6 After section 9**

14 Insert:

15 **9A Publication of information about this Act**

16 Each Agency must make information about how to use this Act
17 available in plain English at each office of the agency to which
18 members of the public have ordinary access.

19 **7 After section 11**

20 Insert:

21 **11A Matter relating to personal affairs of applicant**

22 If an application for access to a document is made under this Act,
23 the fact that the document contains matter relating to the personal
24 affairs of the applicant is an element to be taken into account in
25 deciding:

26 (a) whether it is in the public interest to grant access to the
27 applicant; and

28 (b) the effect that the disclosure of the matter might have.

1 **8 Subsection 12(2)**

2 Omit “more than 5 years before the date of commencement of this part”,
3 substitute “more than 30 years before the date of the request for access”.

4 **9 After paragraph 13(1)(d)**

5 Insert:

6 or (e) in the collection of library material maintained by the
7 Parliamentary Library;

8 **10 Paragraph 15(5)(a)**

9 Omit “14 days”, substitute “7 days”.

10 **11 Paragraph 15(5)(b)**

11 Omit “30 days”, substitute “21 days”.

12 **12 Subparagraph 15A(2)(d)(ii)**

13 Omit “30 days”, substitute “14 days”.

14 **13 After subsection 18(1)**

15 Insert:

16 (1A) Where subsection (1) requires access to be given to the person, the
17 agency or Minister must take all reasonable steps to enable the
18 person to access the document as soon as practicable but in any
19 case no later than 7 days after the day on which the agency or
20 Minister notified the person:

21 (a) where the person has requested a review under subsection
22 54(1)—of the decision under subsection 54(2); or

23 (b) where the person has made no request under subsection
24 54(1)—of the decision in accordance with paragraph
25 15(5)(b);

26 unless a further period is otherwise agreed to by the person in
27 writing.

28 **14 Section 24**

29 Repeal the section, substitute:

1 **24 Requests may be refused in certain cases**

- 2 (1) If the agency or Minister dealing with a request considers:
- 3 (a) that the work involved in processing the request:
- 4 (i) in the case of an agency—would substantially and
- 5 unreasonably divert the resources of the agency from its
- 6 other operations; or
- 7 (ii) in the case of a Minister—would substantially and
- 8 unreasonably interfere with the performance of the
- 9 Minister’s functions; or
- 10 (b) that the request does not comply with paragraph 15(2)(b);
- 11 the agency or Minister must:
- 12 (c) give the applicant a written notice:
- 13 (i) stating an intention to refuse access; and
- 14 (ii) identifying an officer of the agency or a member of staff
- 15 of the Minister with whom the applicant may consult
- 16 with a view to making the request in a form that would
- 17 remove the ground for refusal; and
- 18 (d) give the applicant a reasonable opportunity so to consult; and
- 19 (e) as far as is reasonably practicable, provide the applicant with
- 20 any information that would assist the making of the request
- 21 in such a form.

- 22 (2) If, after consulting with the applicant under subsection (1), the
- 23 agency or Minister is satisfied as to the matters mentioned in
- 24 subparagraph (1)(a)(i) or (ii), as the case requires, the agency or
- 25 Minister may refuse to grant access to documents in accordance
- 26 with the request.

- 27 (3) Subject to subsection (4) but without limiting the matters to which
- 28 the agency or Minister may have regard in deciding whether to
- 29 refuse under subsection (2) to grant access to the documents to
- 30 which the request relates, the agency or Minister is to have regard
- 31 to the resources that would have to be used:
- 32 (a) in identifying, locating or collating the documents within the
- 33 filing system of the agency, or the office of the Minister; or
- 34 (b) in deciding whether to grant, refuse or defer access to
- 35 documents to which the request relates, or to grant access to
- 36 edited copies of such documents, including resources that
- 37 would have to be used:

- 1 (i) in examining the documents; or
2 (ii) in consulting with any person or body in relation to the
3 request; or
4 (c) in making a copy, or an edited copy, of the documents; or
5 (d) in notifying any interim or final decision on the request.
- 6 (4) The agency or Minister is not to have regard to any maximum
7 amount, specified in regulations, payable as a charge for
8 processing a request of that kind.
- 9 (5) In deciding whether to refuse, under subsection (2), to grant access
10 to documents, an agency or Minister must not have regard to:
11 (a) any reasons that the person who requests access gives for
12 requesting access; or
13 (b) the agency's or Minister's belief as to what are his or her
14 reasons for requesting access.
- 15 (6) For the purposes of section 15, the period commencing on the day
16 an applicant is given a notice under paragraph (1)(c) and ending on
17 the day the applicant confirms or alters the request following the
18 consultation referred to in subsection (1) is to be disregarded in the
19 computation of the 14 day period referred to in section 15.
- 20 (7) If:
21 (a) a decision is made under this section to refuse a request for
22 access to information; and
23 (b) the decision is not the subject of an application under
24 Part VI;
25 the agency or Minister must refund any application fee paid by the
26 applicant in respect of the request.

27 **15 After section 24A**

28 Insert:

29 **24AA Request may be refused if it is the same as a previous request**

30 An agency or Minister may refuse a request for access to a
31 document if:

- 32 (a) the applicant has previously made a request for the same
33 document; and

- 1 (b) the agency or Minister has refused the request; and
2 (c) the agency or Minister is satisfied that there are no
3 reasonable grounds for the request.

4 **16 Section 25**

5 Omit “or 33A” (wherever occurring).

6 **17 At the end of paragraph 26(1)(a)**

7 Add “including, where relevant, the factors taken into account in
8 applying the public interest test”.

9 **18 Subsection 29(1)**

10 Omit “a request for access to a document, or”.

11 **19 Subsection 29(3)**

12 Omit “a request for access to a document, or”.

13 **20 Subsection 29(5)**

14 Repeal the subsection, substitute:

15 (5) For the avoidance of doubt, the discretion in subsection (4) to
16 reduce or not impose a charge is to be exercised to further the
17 object of this Act as set out in subsection 3(1), and in accordance
18 with subsection 3(2).

19 **21 Paragraph 30A(1)(a)**

20 Omit “or under subsection 54(1) requesting a review of a decision
21 relating to a document”.

22 **22 Paragraph 30A(1)(b)**

23 Repeal the paragraph, substitute:

24 (b) the agency or Minister considers that the fee or a part of the
25 fee should be remitted for any reason;

26 **23 Subsection 30A(1A)**

27 Omit “30 days”, substitute “14 days”.

28 **24 Subsection 30A(1B)**

29 Omit “30 days”, substitute “14 days”.

1 **25 Subsection 30A(2)**

2 Omit “or 54(1), as the case may be”.

3 **26 Subsection 31(1)**

4 Omit “30 days”, substitute “14 days”.

5 **27 Section 41**

6 Repeal the section, substitute:

7 **41 Documents affecting personal privacy**

8 (1) A document is an exempt document under this Act if:

9 (a) it contains personal information about any person (including
10 a deceased person); and

11 (b) its disclosure would constitute a breach of Information
12 Privacy Principle 11(1), other than paragraph 11(1)(d) in so
13 far as it relates to the release of information under this Act;
14 and

15 (c) its disclosure would not, on balance, be in the public interest.

16 (2) Where a document which is the subject of a request to an agency or
17 Minister under section 15 contains personal information about a
18 person other than the applicant, the agency or Minister in judging
19 the public interest in disclosure may have regard to any special
20 relationship between that person and the applicant.

21 (3) Subject to subsection (4), the provisions of subsection (1) do not
22 have effect in relation to a request by a person for access to a
23 document by reason only of the inclusion in the document of
24 matter relating to that person.

25 (4) Where:

26 (a) a request is made to an agency or Minister for access to a
27 document of the agency, or an official document of the
28 Minister, that contains information concerning the applicant;
29 and

30 (b) it appears to the principal officer of the agency or to the
31 Minister (as the case may be) that the disclosure of the
32 information to the applicant might be detrimental to the
33 applicant’s physical or mental health, or well-being;

1 the principal officer or Minister must disclose the information in a
2 way that minimises the risk of detriment to the applicant's health
3 or well-being.

4 (5) The powers and functions of the principal officer of an agency
5 under this section may be exercised by an officer of the agency
6 acting within his or her scope of authority in accordance with
7 arrangements referred to in section 23.

8 **28 Subsection 42(1)**

9 Repeal the subsection, substitute:

10 (1) A document is an exempt document if it was created by, for, or on
11 behalf of a person (the *client*) for the dominant purpose of:

- 12 (a) seeking or providing legal advice; or
13 (b) use in legal proceedings.

14 (1A) This section does not apply to a document if the client has waived
15 legal professional privilege at common law.

16 **29 Paragraph 48(a)**

17 Repeal the paragraph, substitute:

18 (a) that is:

- 19 (i) incorrect; or
20 (ii) having regard to the purpose for which the information
21 was collected, is used or is available for use by the
22 agency or Minister—out of date, incomplete, misleading
23 or irrelevant; and

24 **30 Section 50**

25 Repeal the section, substitute:

26 **50 Amendment of records**

27 (1) Subject to section 51C, where the agency or Minister to whom
28 such an application is made is satisfied that:

- 29 (a) the record of personal information to which the request
30 relates is contained in a document of the agency or an official
31 document of the Minister, as the case may be; and
32 (b) the information is:

- 1 (i) incorrect; or
2 (ii) having regard to the purpose for which the information
3 was collected, is used or is available for use by the
4 agency or Minister—out of date, incomplete, misleading
5 or irrelevant; and
6 (c) the information has been used, is being used or is available
7 for use by the agency or Minister for an administrative
8 purpose;
9 the agency or Minister must take such steps as are reasonable in the
10 circumstances to amend the record of information by altering the
11 document or official document concerned to make the information
12 complete, correct, up to date or not misleading or irrelevant.
- 13 (2) The agency or Minister must add to the document or official
14 document a note:
15 (a) specifying the respects in which the agency or Minister is
16 satisfied that the information is incomplete, incorrect, out of
17 date, misleading or irrelevant; and
18 (b) in a case where the agency or Minister is satisfied that the
19 information is out of date—setting out such information as is
20 required to bring the information up to date.
- 21 (3) To the extent that it is practicable to do so, the agency or Minister
22 must, when making an amendment under subsection (1), ensure
23 that the record of information is amended in a way that does not
24 obliterate the text of the record as it existed prior to the
25 amendment.

26 **31 Subsection 51D(1)**

27 Omit “30 days”, substitute “14 days”.

28 **32 Paragraph 53(a)**

29 Omit “33A(4), 34(4) or 35(4)”, substitute “or 34(4)”.

30 **33 Paragraph 53(b)**

31 Omit “33A, 34 or 35”, substitute “or 34”.

32 **34 Subsection 54(1)**

33 Omit “accompanied by any application fee in respect of the
34 application”.

1 **35 Paragraph 54(1)(f)**

2 Repeal the paragraph.

3 **36 Subsections 55(2) and (3)**

4 Repeal the subsections.

5 **37 Paragraph 55(4)(a)**

6 Omit “or (c)”.

7 **38 After paragraph 55(4)(b)**

8 Omit “; or”.

9 **39 Paragraph 55(4)(c)**

10 Repeal the paragraph.

11 **40 Paragraph 56(1)(b)**

12 Omit “30 days”, substitute “14 days”.

13 **41 Paragraph 56(1A)(b)**

14 Omit “30 days”, substitute “14 days”.

15 **42 Subsection 58(3)**

16 Omit “, 33A, 34, 35 or 36”, substitute “or 34”.

17 **43 Subsection 58(4)**

18 Omit “, 33A, 34 or 35”, substitute “or 34”.

19 **44 Subsection 58(5)**

20 Repeal the subsection.

21 **45 Subsection 58(5A)**

22 Repeal the subsection, substitute:

23 (5A) Where application is or has been made to the Tribunal for the
24 review of a decision refusing to grant access to a document in
25 accordance with a request, being a document as described in the
26 request in respect of which a certificate is in force under subsection
27 33(4), the Tribunal shall, if the applicant so requests, determine the

1 question whether there exist reasonable grounds for the claim that
2 the information as to the existence or non-existence of the
3 document as so described would, if contained in a document of an
4 agency cause that document of an agency to be an exempt
5 document for a reason referred to in subsection 33(1).

6 **46 Subsection 58A(1)**

7 Omit “subsection 58(4), (5) or (5A)”, substitute “subsection 58(4) or
8 (5A)”.

9 Note: The heading to section 58A is altered by omitting “, (5)”.

10 **47 Paragraph 58A(2)(b)**

11 Omit “or 33A(4)”.

12 **48 Subsection 58A(5)**

13 Omit “, 33A, 34, 35 or 36”, substitute “or 34”.

14 **49 Subsection 58A(6)**

15 Omit “, 33A, 34 or 35”, substitute “or 34”.

16 **50 Subsection 58B(1)**

17 Omit “subsection 58(4), (5) or (5A)”, substitute “subsection 58(4) or
18 (5A)”.

19 Note: The heading to section 58B is altered by omitting “, (5)”.

20 **51 Subparagraph 58C(2)(a)(iv)**

21 Omit “subsection 33(2) or 33A(2) or section 34 or 35”, substitute
22 “subsection 33(2) or section 34”.

23 **52 Subparagraph 58C(2)(a)(v)**

24 Repeal the subparagraph.

25 **53 Subparagraph 58C(2)(a)(vi)**

26 Repeal the subparagraph, substitute:

27 (vi) in the case where a certificate is in force under
28 subsection 33(4)—that information as to the existence
29 or non-existence of a document as described in a request
30 would, if contained in a document of an agency, cause

1 that document of an agency to be an exempt document
2 for a reason referred to in subsection 33(1); and

3 **54 Subsection 58C(2A)**

4 Repeal the subsection.

5 **55 Subsection 58E(1)**

6 Omit “, 33A, 34, 35 or 36”, substitute “or 34”.

7 **56 Subsection 58E(2)**

8 Omit “subsection 58(4), (5) or (5A)”, substitute “subsection 58(4) or
9 (5A)”.

10 **57 Paragraph 60(c)**

11 Omit “subsection 58(4), (5) or (5A)”, substitute “subsection 58(4) or
12 (5A)”.

13 **58 Subsection 64(1)**

14 Omit “section 37 of the *Administrative Appeals Tribunal Act 1975* does
15 not apply in relation to the document but”.

16 **59 Subsection 64(1)**

17 After “may”, insert “, at any time after the date by which an agency or
18 Minister is required to have complied with section 37 of the
19 *Administrative Appeals Tribunal Act 1975*,”.

20 **60 Subsection 64(3)**

21 Omit “subsection 58(4), (5) or (5A)”, substitute “subsection 58(4) or
22 (5A)”.

23 **61 Paragraph 64(3)(a)**

24 Omit “, 33A, 34, 35 or 36”, substitute “or 34”.

25 **62 Paragraph 64(3)(b)**

26 Omit “or 33A(4)”.

27 **63 Subsection 64(4)**

28 Omit “, 34(3), 35(3) or 36(4)”, substitute “or 34(3)”.

1 **64 At the end of section 64**

2 Add:

3 (7) Where there are proceedings before the Tribunal under this Act in
4 relation to a document that is claimed to be an exempt document
5 and the document has been produced to the Tribunal other than in
6 accordance with subsection (1) or (2), the Tribunal must, after
7 inspecting the document, return the document to the person by
8 whom it was produced without permitting any person other than a
9 member of the Tribunal as constituted for the purposes of the
10 proceeding or a member of the staff of the Tribunal in the course of
11 the performance of his or her duties as a member of that staff, to
12 have access to the document or disclosing the contents of the
13 document to any such person.

14 **65 Section 65**

15 Omit “, 33A, 34, 35 or 36”, substitute “or 34”.

16 **66 After paragraph 66(2)**

17 Insert:

18 (2A) Where a person makes application to the Tribunal under section 55
19 for a review of a decision relating to access to a document and after
20 the application is made:
21 (a) the agency or Minister issues a certificate in relation to the
22 document; or
23 (b) the agency or Minister claims a new ground for refusing to
24 grant access to the document and the Tribunal is not satisfied
25 that the document is an exempt document on the ground or
26 grounds claimed by the agency or Minister in refusing to
27 grant access to the document;
28 the Tribunal may, in its discretion, recommend to the
29 Attorney-General that the costs of the applicant in relation to the
30 proceedings be paid by the Commonwealth.

31 **67 Subsection 66(3)**

32 After “subsection (1)”, insert “or (2A)”.

33 **68 After Part VI**

1/2

Insert:

3

Part VIA—The FOI Commissioner

4

Division 1—Establishment of Commissioner

5

66A FOI Commissioner

6

(1) There shall be an FOI Commissioner.

7

(2) The Commonwealth Ombudsman shall be the Commissioner.

8

(3) The reference in subsection (2) to the person who holds the office of Commonwealth Ombudsman includes a reference to a person for the time being acting in that office by virtue of an appointment under section 29 of the *Ombudsman Act 1976*.

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66B Resources of the Commissioner

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In allocating and managing the resources of the Commissioner, the Ombudsman shall have regard to the needs of the Commissioner and the needs of the Australian Public Service officers and employees referred to in subsection 66K(1) in respect of which the Commissioner performs or exercises functions, duties or powers.

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1 **Division 2—Functions and powers of the Commissioner**

2 **66C Functions of the Commissioner**

3 Subject to this Division, the Commissioner has the following
4 functions:

- 5 (a) to review the compliance of agencies with this Act;
- 6 (b) to prepare, and to publish in such manner as the
7 Commissioner considers appropriate, guidelines for the use
8 of agencies in complying with this Act;
- 9 (c) to provide advice (with or without a request) to a Minister or
10 an agency on any matter relevant to the operation of this Act;
- 11 (d) to provide information or advice on request to an applicant or
12 a third party on any matter relevant to an application for
13 access to information under this Act;
- 14 (e) to promote an understanding of the Act in the
15 Commonwealth public sector and the community in general;
- 16 (f) to make determinations about the scale of charges applying to
17 requests for access to information under this Act;
- 18 (g) to consult with the Privacy Commissioner, the
19 Director-General of the Australian Archives and the Chief
20 Executive Officer of the National Office for the Information
21 Economy about the coordination of Commonwealth
22 information policy and practice;
- 23 (h) to make reports to the Minister administering this Act for
24 presentation to Parliament.

25 **66D Functions of Commissioner in relation to the preparation of**
26 **guidelines**

- 27 (1) Without limiting paragraph 66C(b), the Commissioner must, as
28 soon as practicable after the commencement of this Part, make
29 guidelines in relation to the following:
- 30 (a) access to an applicant's personal information, including
31 where personal information about a third party is involved;
- 32 (b) amendment of an applicant's personal information;
- 33 (c) the application of the public interest test for the purposes of
34 this Act;

- 1 (d) the appropriate application of section 25;
2 (e) the deletion of information following a request under
3 section 48.
- 4 (2) Before making guidelines under paragraph (1)(a) or (b), the
5 Commissioner must consult the Privacy Commissioner.

6 **66E Status of guidelines**

- 7 (1) A person authorised to make any decision under this Act must take
8 any relevant guidelines issued by the Commissioner into account in
9 making that decision.
- 10 (2) The Tribunal must take any relevant guidelines issued by the
11 Commissioner into account when making a decision.
- 12 (3) Where a decision-maker has taken into account any relevant
13 guidelines issued by the Commissioner, the decision-maker must
14 provide a copy of the guidelines to the applicant.

15 **66F Functions of Commissioner in relation to the provision of advice**
16 **to a Minister or agency**

17 Without limiting paragraph 66C(c), the Commissioner must, as
18 soon as practicable after the commencement of this Part, provide
19 advice to ministers and agencies about:

- 20 (a) maximising the use of information technology to provide
21 better access to information; and
- 22 (b) appropriate arrangements for access to information about
23 services and functions provided to the public on behalf of the
24 Commonwealth by organisations other than agencies.

25 **66G Functions of the Commissioner in relation to promoting an**
26 **understanding of the Act**

27 Without limiting paragraph 66C(e), the Commissioner must
28 publish information about section 66 of this Act at least twice a
29 year in a newspaper circulating generally in each State and
30 Territory.

1 **66H Determination of charges**

- 2 (1) As soon as practicable after the commencement of this Part, and
3 after consultation with the Chief Executive Officer of the National
4 Office for the Information Economy, the Commissioner must
5 determine a scale of charges to be applied by agencies in relation to
6 access to information under this Act.
- 7 (2) In determining a scale of charges, the Commissioner must have
8 regard to the information technology capability and the quality of
9 records management systems that an agency could reasonably be
10 expected to maintain.
- 11 (3) The Commissioner must review the scale of charges after each
12 period of 12 months and determine a fresh scale if, after
13 consultation with the Chief Executive Officer of the National
14 Office for the Information Economy, the Commissioner believes it
15 is appropriate to do so.

16 **66J Powers of the Commissioner**

17 The Commissioner has power to do all things that are necessary or
18 convenient to be done for or in connection with the performance of
19 his or her functions under this Act.

20 **66K Delegations**

- 21 (1) The Commissioner may, in writing, delegate all or any of the
22 Commissioner's powers or functions under this Act to an officer or
23 employee of the branch of the Australian Public Service under the
24 direct control of the Commissioner (whether as Commissioner or
25 Ombudsman).
- 26 (2) A delegation under subsection (1) continues in force even though
27 there has been a change in the occupancy of, or there is a vacancy
28 in, the office of Commissioner, but for the purposes of the
29 application of subsection 33(3) of the *Acts Interpretation Act 1901*
30 in relation to such a delegation, nothing in any law shall be taken
31 to preclude the revocation or variation of the delegation by the
32 same or a subsequent holder of the office.

1 **Division 3—Reports by Commissioner**

2 **66L Annual report**

- 3 (1) The Commissioner shall, as soon as practicable after 30 June in
4 each year, prepare and furnish to the Minister administering this
5 Act a report on the working of this Act.
- 6 (2) The Minister administering this Act shall cause a copy of the report
7 to be laid before each House of Parliament within 15 sitting days of
8 that House after the day on which the Minister administering this
9 Act receives the report.
- 10 (3) Each agency shall, in relation to the agency, and each Minister
11 shall, in relation to his or her official documents, furnish to the
12 Commissioner such information as he or she requires for the
13 purposes of the preparation of reports under this section and shall
14 comply with any prescribed requirements concerning the
15 furnishing of that information and the keeping of records for the
16 purposes of this section.
- 17 (4) The report must include:
- 18 (a) statistics for each agency on its administration of this Act for
19 the financial year;
- 20 (b) information about the practices and pricing policies of
21 agencies in relation to the sale of documents for purchase by
22 the public;
- 23 (c) information about the compliance by agencies with sections 8
24 and 9 of this Act;
- 25 (d) an assessment of the quality of statements of reasons
26 prepared by agencies for the purposes of this Act together
27 with the identification of agencies which, in the
28 Commissioner’s view, have not met an appropriate standard;
- 29 (e) an assessment of the use by agencies of conclusive
30 certificates under this Act and the identification of any cases
31 in which a Minister has failed to revoke a conclusive
32 certificate despite a finding by the Tribunal that there are no
33 reasonable grounds for the exemption claim;

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(f) an assessment of the adequacy of arrangements for access to information made by agencies in respect of services or functions which have been contracted out.

(5) Without limiting the generality of subsection (4) or the kinds of information which an agency or a Minister might be required, in pursuance of subsection (3), to furnish to the Commissioner, a report of the Commissioner shall set out:

(a) particulars of the operations of each agency and Minister under this Act during the year to which the report relates, including, in relation to each agency and Minister:

(i) the number of requests under section 15 for access to documents received during the year;

(ii) the number of requests received at any time in respect of which during the year:

(A) access other than partial access was granted to the document or all of the documents to which the request related;

(B) access was refused to the document or all of the documents to which the request related; or

(C) partial access was granted;

(iii) the number of applications made during the year for the review of decisions under section 54 and particulars of the results of such reviews;

(iv) the number of applications made during the year to the Tribunal for the review of decisions and particulars of the results of such reviews;

(v) particulars of the total charges and application fees collected during the year in dealing with requests and other applications whenever received; and

(vi) the number of requests received during the year to amend records under section 48 and particulars of the results of such requests;

(b) an identification of the guidelines, if any, issued during the year to which the report relates by the Commissioner in relation to the manner in which agencies should comply with their obligations under this Act;

(c) a description of any other efforts by the Commissioner to comply with his or her obligations under this Act.

- 1 (6) For the purposes of subparagraph (5)(a)(ii), partial access shall be
2 taken to have been granted in respect of a request if either or both
3 of the following conditions are satisfied in relation to the request:
4 (a) access was granted to a copy of the document or of any of the
5 documents to which the request related with deletions;
6 (b) the request related to 2 or more documents and access was
7 refused to any one or more of the documents.

8 **66M Review of Commissioner's functions**

- 9 (1) As soon as practicable after the fifth anniversary of the
10 commencement of this Part, the Administrative Review Council
11 (the *Council*) must prepare and give to the Attorney-General a
12 report on the role of, and need for, the Commissioner.
- 13 (2) The Attorney-General must cause the report prepared by the
14 Council to be laid before each House of the Parliament within 15
15 sitting days of that House after the receipt of the report by the
16 Attorney-General.

17 **69 Subsection 91(1)**

18 Repeal the subsection, substitute:

- 19 (1) Where access has been given to a document and the access was
20 authorised by a Minister, or by an officer having authority, in
21 accordance with section 23 or 54, to make decisions in respect of
22 requests under this Act, no action for defamation, breach of
23 confidence or infringement of copyright lies against the
24 Commonwealth, an agency, a Minister or an officer by reason of
25 the authorising or giving of the access, and no action for
26 defamation or breach of confidence in respect of any publication
27 involved in, or resulting from, the giving of the access lies against
28 the author of the document or any other person by reason of that
29 author or other person having supplied the document to an agency
30 or Minister.
- 31 (1AA) Subsection (1) applies whether or not access to a document was
32 authorised or given pursuant to this Act, provided that the
33 document would not have been an exempt document if it had been
34 the subject of a request for access under this Act.

1 **70 After subsection 91(1C)**

2 Insert:

3 (1D) Where access has been given to a document whether or not
4 pursuant to this Act and:

5 (a) the document would be an exempt document under this Act;
6 and

7 (b) the access was authorised by a Minister, or by an officer
8 having authority, in accordance with section 23 or 54, to
9 make decisions in respect of requests; and

10 (c) the Minister or officer, as the case may be, in the *bona fide*
11 exercise of his or her discretion, decided not to claim an
12 exemption for the document;

13 no action for defamation, breach of confidence or infringement of
14 copyright lies against the Commonwealth, an agency, a Minister or
15 an officer by reason of the authorising or giving of the access, and
16 no action for defamation or breach of confidence in respect of any
17 publication involved in, or resulting from, the giving of the access
18 lies against the author of the document or any other person by
19 reason of that author or other person having supplied the document
20 to an agency or Minister.

21 **71 Section 93**

22 Repeal the section.

23 **72 Paragraph 94(1)(a)**

24 Omit “fixed by or in accordance with the regulations”, substitute “fixed
25 in accordance with a scale of charges determined by the
26 Commissioner”.

27 **73 After paragraph 94(2)(a)**

28 Insert:

29 (aa) must not provide for a charge to be made for access to the
30 personal information of an applicant;

31 **74 Paragraph 94(2)(d)**

32 Repeal the paragraph, substitute:

1 (d) must not provide for a charge to be made for supervising the
2 inspection by a person of any document for which a request
3 for access has been made under this Act.

4 **75 At the end of subsection 94(2)**

5 Add:
6 ; and (e) must provide for a charge to be made only in respect of
7 documents to which access is to be granted.

8 **76 Part I of Schedule 2**

9 Omit “Aboriginal Land Councils and Land Trusts”.

10 **77 Part I of Schedule 2**

11 Omit “Auditor-General”.

12 **78 Part I of Schedule 2**

13 Omit “National Debt Commission”.

14 **79 Part I of Schedule 2**

15 Omit “National Labour Consultative Council”.

16 **80 Division 1 of Part II of Schedule 2**

17 Omit:
18 Aboriginal and Torres Strait Islander Commercial Development Corporation,
19 in relation to documents in respect of its commercial activities
20 Albury-Wodonga Development Corporation, in relation to documents in
21 respect of its commercial activities
22 Attorney-General’s Department, in relation to documents in respect of
23 commercial activities it undertakes and in relation to documents in respect
24 of commercial activities undertaken by the Australian Government
25 Solicitor

26 **81 Division 1 of Part II of Schedule 2**

27 Omit:
28 Australian Broadcasting Corporation, in relation to its program material and
29 its datacasting content

30 **82 Division 1 of Part II of Schedule 2**

1 Omit:
2 Australian Postal Corporation in relation to documents in respect of its
3 commercial activities

4 **83 Division 1 of Part II of Schedule 2**

5 Omit:
6 “Australian Trade Commission”, in relation to documents concerning the
7 carrying out, in whole or in part, of overseas development projects

8 **84 Division 1 of Part II of Schedule 2**

9 Omit:
10 Comcare, in relation to documents in respect of its commercial activities
11 Commonwealth Scientific and Industrial Research Organisation, in relation
12 to documents in respect of its commercial activities

13 **85 Division 1 of Part II of Schedule 2**

14 Omit “Department of the Treasury in relation to documents in respect of
15 activities of the Australian Loan Council”.

16 **86 Division 1 of Part II of Schedule 2 (item relating to the
17 Department of the Treasury)**

18 Omit “and in respect of the commercial activities of the Royal
19 Australian Mint”.

20 **87 Division 1 of Part II of Schedule 2**

21 Omit:
22 Export Finance and Insurance Corporation, in relation to documents
23 concerning anything done by it under Part 4 or 5 of the *Export Finance
24 and Insurance Corporation Act 1991*

25 **88 Division 1 of Part II of Schedule 2**

26 Omit “Federal Airports Corporation” and “in respect of determinations
27 of aeronautical charges under the *Federal Airports Corporation Act
28 1986*”.

29 **89 Division 1 of Part II of Schedule 2 (item relating to the
30 Federal Airports Corporation)**

1 Omit “, in relation to documents in respect of its commercial activities
2 and”.

3 **90 Division 1 of Part II of Schedule 2**

4 Omit:

5 Health Insurance Commission, in relation to documents in respect of its
6 commercial activities

7 **91 Division 1 of Part II of Schedule 2**

8 Omit:

9 “National Health and Medical Research Council”, in relation to documents in
10 the possession of members of the National Health and Medical Research
11 Council who are not persons appointed or engaged under the *Public*
12 *Service Act 1999*

13 **92 Division 1 of Part II of Schedule 2**

14 Omit:

15 Reserve Bank of Australia, in relation to documents in respect of its banking
16 operations (including individual open market operations and foreign
17 exchange dealings) and in respect of exchange control matters

18 **93 Division 1 of Part II of Schedule 2**

19 Omit:

20 Special Broadcasting Service Corporation, in relation to its program material
21 and its datacasting content

22 **94 Division 1 of Part II of Schedule 2**

23 Omit:

24 Telstra Corporation Limited in relation to documents in respect of its
25 commercial activities

26 **95 Division 2 of Part II of Schedule 2**

27 Repeal the Division.

28 **96 Part III of Schedule 2**

29 Repeal the Part.

30 **97 Schedule 3**

1 Repeal the Schedule.

2 **98 Schedule 4**

3 Repeal the Schedule.

4 ***Freedom of Information (Fees and Charges) Regulations***

5 **99 Regulation 5**

6 Repeal the regulation, substitute:

7 **5 Application fees**

8 For the purposes of subsection 4(8) of the Act, an application fee
9 of \$30 is, subject to regulation 6, applicable in respect of an
10 application under subsection 15(1) of the Act.

11 **100 Transitional—regulations may be amended**

12 This Schedule does not prevent the amendment or repeal of the
13 Freedom of Information (Fees and Charges) Regulations by regulations
14 made under the *Freedom of Information Act 1982*.