

2008-2009

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Freedom of Information Amendment  
(Reform) Bill 2009**

**No.     , 2009**

*(Cabinet Secretary)*

**A Bill for an Act to amend the law relating to access  
to information, and for related purposes**



---

## Contents

|   |   |     |
|---|---|-----|
| 1   | Short title .....   | 1   |
| 2   | Commencement .....  | 1   |
| 3   | Schedule(s) .....   | 3   |
| <b>Schedule 1—Objects</b>   |   | 4   |
|   | <i>Freedom of Information Act 1982</i>                                | 4   |
| <b>Schedule 2—Publication of information</b>  |   | 6   |
|   | <i>Freedom of Information Act 1982</i>                                | 6   |
| <b>Schedule 3—Exemptions</b>  |   | 14  |
| Part 1—Open access period amendments  |   | 14  |
|   | <i>Archives Act 1983</i>  | 14  |
| Part 2—Main exemption amendments  |   | 17  |
|   | <i>Freedom of Information Act 1982</i>                                | 17  |
| Part 3—Other exemption amendments   |   | 43  |
|   | <i>Archives Act 1983</i>  | 43  |
|   | <i>Privacy Act 1988</i>   | 44  |
| Part 4—Application provisions   |   | 45  |
| <b>Schedule 4—Information Commissioner amendments</b>   |   | 46  |
| Part 1—Main amendments  |   | 46  |
|   | <i>Freedom of Information Act 1982</i>                                | 46  |
| Part 2—Other amendments   |   | 120 |
|   | <i>Ombudsman Act 1976</i>   | 120 |
| Part 3—Application and transitional provisions  |   | 122 |
| <b>Schedule 5—Amendments consequential on the establishment<br/>of the Office of the Information Commissioner</b> |   | 124 |
|   | <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> | 124 |
|   | <i>Australian Citizenship Act 2007</i>                                | 124 |
|   | <i>Australian Human Rights Commission Act 1986</i>                    | 124 |
|   | <i>Aviation Legislation Amendment (2008 Measures No. 2) Act 2009</i>  | 125 |

---

|  |     |
|--|-----|
| <i>Child Care Act 1972</i>   | 125 |
| <i>Crimes Act 1914</i>   | 125 |
| <i>Data-matching Program (Assistance and Tax) Act 1990</i>           | 127 |
| <i>Environment Protection and Biodiversity Conservation Act 1999</i> | 128 |
| <i>Fair Work Act 2009</i>  | 129 |
| <i>Fisheries Management Act 1991</i>                                 | 129 |
| <i>Migration Act 1958</i>  | 129 |
| <i>National Health Act 1953</i>                                      | 129 |
| <i>National Health and Medical Research Council Act 1992</i>         | 130 |
| <i>Privacy Act 1988</i>  | 131 |
| <i>Telecommunications Act 1997</i>                                   | 131 |
| <i>Telecommunications (Interception and Access) Act 1979</i>         | 133 |
| <i>Torres Strait Fisheries Act 1984</i>                              | 133 |
| <b>Schedule 6—Other amendments</b>                                   | 135 |
| Part 1—Amendments to the Freedom of Information Act 1982             | 135 |
| <i>Freedom of Information Act 1982</i>                               | 135 |
| Part 2—Application provisions  | 150 |
| Part 3—Amendment of other Acts                                       | 151 |
| <i>Australian Crime Commission Act 2002</i>                          | 151 |
| <i>Environment Protection and Biodiversity Conservation Act 1999</i> | 151 |
| <i>Inspector-General of Intelligence and Security Act 1986</i>       | 153 |
| <b>Schedule 7—Privacy Commissioner transition</b>                    | 154 |
| Part 1—Preliminary   | 154 |
| Part 2—Office holders, staff and consultants                         | 155 |
| Part 3—Things done by, or in relation to, the Privacy Commissioner   | 158 |
| Part 4—Investigations  | 161 |
| Part 5—Written instruments and reporting requirements                | 163 |
| Part 6—Legal and other proceedings                                   | 165 |

---





1     **A Bill for an Act to amend the law relating to access**  
2     **to information, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Freedom of Information Amendment*  
6                     *(Reform) Act 2009*.

7     **2 Commencement**

8             (1) Each provision of this Act specified in column 1 of the table  
9             commences, or is taken to have commenced, in accordance with  
10            column 2 of the table. Any other statement in column 2 has effect  
11            according to its terms.  
12

| <b>Commencement information</b>   |  |                     |
|---|--|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provision(s)</b>   | <b>Commencement</b>  | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.  |                     |
| 2. Schedule 1   | Immediately after the commencement of section 3 of the <i>Information Commissioner Act 2009</i> .<br>However, if section 3 of the <i>Information Commissioner Act 2009</i> does not commence, the provision(s) do not commence at all.   |                     |
| 3. Schedule 2   | The day after the end of the period of 6 months beginning on the day section 3 of the <i>Information Commissioner Act 2009</i> commences.<br>However, if section 3 of the <i>Information Commissioner Act 2009</i> does not commence, the provision(s) do not commence at all. |                     |
| 4. Schedule 3, items 1 to 14  | Immediately after the commencement of section 3 of the <i>Information Commissioner Act 2009</i> .<br>However, if section 3 of the <i>Information Commissioner Act 2009</i> does not commence, the provision(s) do not commence at all.   |                     |
| 5. Schedule 3, item 15  | The day after the end of the period of 6 months beginning on the day section 3 of the <i>Information Commissioner Act 2009</i> commences.<br>However, if section 3 of the <i>Information Commissioner Act 2009</i> does not commence, the provision(s) do not commence at all. |                     |
| 6. Schedule 3, items 16 to 40   | Immediately after the commencement of section 3 of the <i>Information Commissioner Act 2009</i> .<br>However, if section 3 of the <i>Information Commissioner Act 2009</i> does not commence, the provision(s) do not commence at all.   |                     |



---

---

**Commencement information**

---

| <b>Column 1</b>     | <b>Column 2</b>  | <b>Column 3</b>     |
|---------------------|--|---------------------|
| <b>Provision(s)</b> | <b>Commencement</b>  | <b>Date/Details</b> |
| 7. Schedules 4 to 7 | Immediately after the commencement of section 3 of the <i>Information Commissioner Act 2009</i> .<br><br>However, if section 3 of the <i>Information Commissioner Act 2009</i> does not commence, the provision(s) do not commence at all. |                     |

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by both Houses of the Parliament and assented to. It will not be  
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.

### 7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule  
10 concerned, and any other item in a Schedule to this Act has effect  
11 according to its terms.

1  
2  
3

## Schedule 1—Objects

### *Freedom of Information Act 1982*

#### 1 Section 3

6 Repeal the section, substitute:

#### 3 Objects—general

- 8 (1) The objects of this Act are to give the Australian community  
9 access to information held by the Government of the  
10 Commonwealth, by:  
11 (a) requiring agencies to publish the information; and  
12 (b) providing for a right of access to documents.
- 13 (2) The Parliament intends, by these objects, to promote Australia's  
14 representative democracy by contributing towards the following:  
15 (a) increasing public participation in Government processes,  
16 with a view to promoting better-informed decision-making;  
17 (b) increasing scrutiny, discussion, comment and review of the  
18 Government's activities.
- 19 (3) The Parliament also intends, by these objects, to increase  
20 recognition that information held by the Government is to be  
21 managed for public purposes, and is a national resource.
- 22 (4) The Parliament also intends that functions and powers given by  
23 this Act are to be performed and exercised, as far as possible, to  
24 facilitate and promote public access to information, promptly and  
25 at the lowest reasonable cost.

#### 3A Objects—information or documents otherwise accessible

##### *Scope*

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

1                    *Publication and access powers not limited*

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

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

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

10                   **2 Section 14**

11                          Repeal the section.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

## **Schedule 2—Publication of information**

### ***Freedom of Information Act 1982***

#### **1 Subsection 4(1)**

Insert:

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

#### **2 Subsection 4(9)**

Omit “of this Act (other than sections 8 and 93)”.

#### **3 Part II**

Repeal the Part, substitute:

### **Part II—Information publication scheme**

#### **Division 1—Guide to this Part**

##### **7A Information publication scheme—guide**

This Part establishes an information publication scheme for agencies.

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

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15

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

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

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

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

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

16

**Division 2—Information to be published**

17

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

18

*Agency plans*

19  
20  
21  
22  
23  
24

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

25

*Information that must be published*

26  
27  
28  
29

- (2) The agency must publish the following information:
  - (a) the plan prepared under subsection (1);
  - (b) details of the structure of the agency’s organisation (for example, in the form of an organisation chart);

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38

- (c) as far as practicable, details of the functions of the agency, including its decision-making powers and other powers affecting members of the public (or any particular person or entity, or class of persons or entities);
- (d) details of appointments of officers of the agency that are made under Acts (other than APS employees within the meaning of the *Public Service Act 1999*);
- (e) the information in annual reports prepared by the agency that are laid before the Parliament;
- (f) details of arrangements for members of the public to comment on specific policy proposals for which the agency is responsible, including how (and to whom) those comments may be made;
- (g) information in documents to which the agency routinely gives access in response to requests under Part III (access to documents), except information of the following kinds:
  - (i) personal information about any individual, if it would be unreasonable to publish the information;
  - (ii) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;
  - (iii) other information of a kind determined by the Information Commissioner under subsection (3), if it would be unreasonable to publish the information;
- (h) information held by the agency that is routinely provided to the Parliament in response to requests and orders from the Parliament;
- (i) contact details for an officer (or officers) who can be contacted about access to the agency's information or documents under this Act;
- (j) the agency's operational information (see section 8A).

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

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

*Other information*

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

---

---

*Functions and powers*

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

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

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

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

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

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

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

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

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

**8C Information to be published—restrictions**

*Exempt documents*

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

*Publication prohibited or restricted by other legislation*

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

1                                    *Operation of restrictions*

2                                    (3) This section applies despite section 8.

3                                    **8D Information to be published—how (and to whom) information is**  
4                                    **to be published**

5                                    *Scope*

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

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

- 9                                    (2) The agency must publish the information:
- 10                                    (a) to members of the public generally; and
  - 11                                    (b) if the agency considers that it is appropriate to do so—to
  - 12                                    particular classes of persons or entities.
- 13                                    (3) The agency must publish the information on a website by:
- 14                                    (a) making the information available for downloading from the
  - 15                                    website; or
  - 16                                    (b) publishing on the website a link to another website, from
  - 17                                    which the information can be downloaded; or
  - 18                                    (c) publishing on the website other details of how the
  - 19                                    information may be obtained.

20                                    *Charges*

- 21                                    (4) The agency may impose a charge on a person for accessing the
- 22                                    information only if:
- 23                                    (a) the person does not directly access the information by
  - 24                                    downloading it from the website (or another website); and
  - 25                                    (b) the charge is to reimburse the agency for specific
  - 26                                    reproduction costs, or other specific incidental costs, incurred
  - 27                                    in giving the person access to that particular information.
- 28                                    (5) If there is a charge for accessing the information, the agency must
- 29                                    publish details of the charge in the same way as the information is
- 30                                    published under this section.

31                                    Note 1:    The agency must have regard to the objects of this Act and guidelines

32                                    issued by the Information Commissioner in performing functions, and

33                                    exercising powers, under this section (see section 9A).



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

6                   **8E Information to be published—Information Commissioner to**  
7                                   **assist agencies**

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

- 10                   (a) identifying and preparing information which is required or  
11                                   permitted to be published under this Part; and  
12                   (b) determining how (and to whom) the information is required  
13                                   or permitted to be published under section 8D.

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

15                   **8F Review of scheme—Information Commissioner functions**

16                   The Information Commissioner has the following functions (as  
17                   conferred by this Act and the *Information Commissioner Act 2009*,  
18                   but without limiting any provision of either Act):

- 19                   (a) reviewing the operation in each agency of the information  
20                                   publication scheme established by this Part, in conjunction  
21                                   with the agency;  
22                   (b) investigating an agency’s compliance with this Part under  
23                                   Division 2 of Part VIIB (Information Commissioner  
24                                   investigations);  
25                   (c) otherwise monitoring, investigating and reporting on the  
26                                   operation of the scheme.

27                   **9 Review of scheme—by agencies**

- 28                   (1) An agency must, in conjunction with the Information  
29                                   Commissioner, complete a review of the operation, in the agency,  
30                                   of the information publication scheme established by this Part:  
31                                   (a) as appropriate from time to time; and  
32                                   (b) in any case—within 5 years after the last time a review under  
33                                   this section was completed.

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

3 Note 1: This section commences on the day after the end of the period of 6  
4 months beginning on the day on which the *Information Commissioner*  
5 *Act 2009* commences.

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

## 9 **Division 4—Guidelines**

### 10 **9A Functions and powers under this Part**

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

- 13 (a) the objects of this Act (including all the matters set out in  
14 sections 3 and 3A); and  
15 (b) guidelines issued by the Information Commissioner for the  
16 purposes of this paragraph under section 93A.

## 17 **Division 5—Miscellaneous**

### 18 **10 Unpublished operational information**

#### 19 *Scope*

20 (1) This section applies if:

- 21 (a) part (or all) of an agency's operational information (the  
22 *unpublished information*), in relation to a function or power  
23 of the agency, is not published by the agency in accordance  
24 with this Part; and  
25 (b) a person engages in conduct relevant to the performance of  
26 the function or the exercise of the power; and  
27 (c) at the time of engaging in that conduct:  
28 (i) the person was not aware of the unpublished  
29 information; and  
30 (ii) the agency had been in existence for more than 12  
31 months.

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

---

*No prejudice from lack of awareness of unpublished information*

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

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

- (1) A function or power given to an agency under this Part may be performed or exercised, on behalf of the agency, by:
- (a) the principal officer of the agency; or
  - (b) an officer of the agency acting within the scope of his or her authority in accordance with arrangements approved by the principal officer of the agency.
- (2) The performance or exercise of a function or power under paragraph (1)(b) is subject to the regulations.

**4 Saving—unpublished information**

Section 10 of the *Freedom of Information Act 1982*, as in force immediately before the commencement of item 3 (the **commencement time**), continues in force at and after the commencement time in relation to:

- (a) a document relating to a function of an agency, required to be made available in accordance with section 9 of that Act before the commencement time; and
- (b) conduct engaged in by a person before the commencement time that is relevant to the performance of that function.

Note: Item 3 commences on the day after the end of the period of 6 months beginning on the day on which the *Information Commissioner Act 2009* commences.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

## Schedule 3—Exemptions

### Part 1—Open access period amendments

#### *Archives Act 1983*

##### 1 Subsection 3(1)

Insert:

*open access period*, in relation to a record, has the meaning given by the following provisions:

- (a) for a Cabinet notebook—section 22A;
- (b) for a record containing Census information—section 22B;
- (c) for any other record—subsection (7) of this section.

##### 2 Subsection 3(7)

Repeal the subsection (including the note), substitute:

- (7) For the purposes of this Act, subject to sections 22A and 22B, work out when a record is in the *open access period* in accordance with the following table:

---

| <b>Open access period for records</b> |   |  |
|---------------------------------------|---|--|
| <b>Item</b>                           | <b>If the record came into existence in any of the following years (ending on 31 December):</b> | <b>the record is in the open access period on and after the following day:</b>   |
| 1                                     | a year (the <i>creation year</i> ) before 1980  | 1 January in the year that is 31 years after the creation year.<br><br>Example: A record that came into existence in the year 1979 is in the open access period on and after 1 January 2010. |
| 2                                     | 1980 or 1981  | 1 January 2011.  |
| 3                                     | 1982 or 1983  | 1 January 2012.  |
| 4                                     | 1984 or 1985  | 1 January 2013.  |
| 5                                     | 1986 or 1987  | 1 January 2014.  |
| 6                                     | 1988 or 1989  | 1 January 2015.  |

---

---

**Open access period for records**

---

| Item | If the record came into existence in any of the following years (ending on 31 December): | the record is in the open access period on and after the following day:  |
|------|--|--|
| 7    | 1990 or 1991   | 1 January 2016.  |
| 8    | 1992 or 1993   | 1 January 2017.  |
| 9    | 1994 or 1995   | 1 January 2018.  |
| 10   | 1996 or 1997   | 1 January 2019.  |
| 11   | 1998 or 1999   | 1 January 2020.  |
| 12   | 2000   | 1 January 2021.  |
| 13   | a year (the <i>creation year</i> ) after 2000  | 1 January in the year that is 21 years after the creation year.<br><br>Example: A record that came into existence in the year 2001 is in the open access period on and after 1 January 2022. |

Note: Cabinet notebooks and records containing Census information have different open access periods (see sections 22A and 22B).

**3 Subsection 22A(1)**

Repeal the subsection, substitute:

- (1) For the purposes of this Act, work out when a Cabinet notebook is in the *open access period* in accordance with the following table:

---

**Open access period for Cabinet notebooks**

---

| Item | If the Cabinet notebook came into existence in any of the following years (ending on 31 December): | the Cabinet notebook is in the open access period on and after the following day:  |
|------|--|--|
| 1    | a year (the <i>creation year</i> ) before 1960   | 1 January in the year that is 51 years after the creation year.<br><br>Example: A Cabinet notebook that came into existence in the year 1959 is in the open access period on and after 1 January 2010. |
| 2    | 1960, 1961 or 1962   | 1 January 2011.  |
| 3    | 1963, 1964 or 1965   | 1 January 2012.  |
| 4    | 1966, 1967 or 1968   | 1 January 2013.  |

---

**Schedule 3 Exemptions**  
**Part 1 Open access period amendments**

---

---

**Open access period for Cabinet notebooks**

| <b>Item</b> | <b>If the Cabinet notebook came into existence in any of the following years (ending on 31 December):</b> | <b>the Cabinet notebook is in the open access period on and after the following day:</b>   |
|-------------|---|--|
| 5           | 1969, 1970 or 1971  | 1 January 2014.  |
| 6           | 1972, 1973 or 1974  | 1 January 2015.  |
| 7           | 1975, 1976 or 1977  | 1 January 2016.  |
| 8           | 1978, 1979 or 1980  | 1 January 2017.  |
| 9           | 1981, 1982 or 1983  | 1 January 2018.  |
| 10          | 1984, 1985 or 1986  | 1 January 2019.  |
| 11          | 1987, 1988 or 1989  | 1 January 2020.  |
| 12          | 1990  | 1 January 2021.  |
| 13          | a year (the <i>creation year</i> ) after 1990   | 1 January in the year that is 31 years after the creation year.<br><br>Example: A Cabinet notebook that came into existence in the year 1991 is in the open access period on and after 1 January 2022. |

1 Note: Records that are not Cabinet notebooks have different open access  
2 periods (see subsection 3(7) (general records) and section 22B  
3 (records containing Census information)).

4 **4 Paragraph 26(1)(a)**

5 Omit “25 years”, substitute “15 years”.

6 **5 Paragraph 27(3)(b)**

7 Omit “25 years”, substitute “15 years”.

8 **6 Subsection 30(2)**

9 Omit “25 years”, substitute “15 years”.

1

2 **Part 2—Main exemption amendments**

3 *Freedom of Information Act 1982*

4 **7 Subsection 4(1)**

5 Insert:

6 *Cabinet* includes a committee of the Cabinet.

7 **8 Subsection 4(1) (definition of *Cabinet notebook*)**

8 Omit “or of a committee of the Cabinet, being notes”, substitute “, if the  
9 notes were”.

10 **9 Subsection 4(1)**

11 Insert:

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

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

17 **10 Subsection 4(1) (definition of *edited copy*)**

18 Repeal the definition, substitute:

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

21 **11 Subsection 4(1) (paragraph (a) of the definition of *exempt*  
22 *document*)**

23 Repeal the paragraph, substitute:

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

26 **12 Subsection 4(1)**

27 Insert:

- 1                    **run out:** all of a person's opportunities for review or appeal in  
2 relation to an access grant decision have **run out** when:
- 3                    (a) the latest time for applying for an internal review or an IC  
4 review in relation to the decision has ended, if the person has  
5 not applied for either review; or
- 6                    (b) if the person has applied for an internal review in relation to  
7 the decision:
- 8                    (i) the internal review is concluded; and  
9                    (ii) the time for applying for an IC review of the decision on  
10 internal review has ended, if the person has not applied  
11 for the IC review; or
- 12                    (c) if the person has applied for an IC review in relation to the  
13 decision:
- 14                    (i) proceedings in relation to the IC review are concluded;  
15 and  
16                    (ii) the time for applying to the Tribunal for a review in  
17 relation to the decision has ended, if the person has not  
18 applied for such a review; and
- 19                    (iii) the time for instituting an appeal to the Federal Court in  
20 relation to the IC review has ended (with no appeal  
21 instituted), or, if an appeal has been instituted, all  
22 proceedings in relation to the appeal have been  
23 concluded; or
- 24                    (d) if the person has applied to the Tribunal for a review in  
25 relation to the decision:
- 26                    (i) proceedings in relation to the review are concluded; and  
27                    (ii) the time for instituting an appeal to the Federal Court in  
28 relation to the review by the Tribunal has ended (with  
29 no appeal instituted), or, if an appeal has been instituted,  
30 all proceedings in relation to the appeal have been  
31 concluded.

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

### 34                    **13 At the end of section 4**

35                    Add:

- 36                    (10) To avoid doubt, information or matter communicated in the way  
37 mentioned in paragraph 33(b) includes information or matter so  
38 communicated pursuant to any treaty or formal instrument on the



1 reciprocal protection of classified information between the  
2 Government of the Commonwealth, or an authority of the  
3 Commonwealth, and:

- 4 (a) a foreign government or an authority of a foreign  
5 government; or  
6 (b) an international organisation.

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

9 **14 After section 11**

10 Insert:

11 **11A Access to documents on request**

12 *Scope*

13 (1) This section applies if:

- 14 (a) a request is made by a person, in accordance with subsection  
15 15(2), to an agency or Minister for access to:  
16 (i) a document of the agency; or  
17 (ii) an official document of the Minister; and  
18 (b) any charge that, under the regulations, is required to be paid  
19 before access is given has been paid.

20 (2) This section applies subject to this Act.

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

- 23 (a) section 12 (documents otherwise available);  
24 (b) section 13 (documents in national institutions);  
25 (c) section 15A (personnel records);  
26 (d) section 22 (access to edited copies with exempt or irrelevant  
27 matter deleted).

28 *Mandatory access—general rule*

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

1 *Exemptions and conditional exemptions*

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

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

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

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

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

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

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

22 (a) a conditionally exempt document; and

23 (b) an exempt document:

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

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

27 **11B Public interest exemptions—factors**

28 *Scope*

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

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

1 *Factors favouring access*

- 2 (3) Factors favouring access to the document in the public interest  
3 include whether access to the document would do any of the  
4 following:  
5 (a) promote the objects of this Act (including all the matters set  
6 out in sections 3 and 3A);  
7 (b) inform debate on a matter of public importance;  
8 (c) promote effective oversight of public expenditure;  
9 (d) allow a person to access his or her own personal information.

10 *Irrelevant factors*

- 11 (4) The following factors must not be taken into account in deciding  
12 whether access to the document would, on balance, be contrary to  
13 the public interest:  
14 (a) access to the document could result in embarrassment to the  
15 Commonwealth Government, or cause a loss of confidence in  
16 the Commonwealth Government;  
17 (b) access to the document could result in any person  
18 misinterpreting or misunderstanding the document;  
19 (c) the author of the document was (or is) of high seniority in the  
20 agency to which the request for access to the document was  
21 made;  
22 (d) access to the document could result in confusion or  
23 unnecessary debate.

24 *Guidelines*

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

29 **15 Before section 12**

30 Insert:

1 **11C Publication of information in accessed documents**

2 *Scope*

- 3 (1) This section applies to information if an agency or Minister gives a  
4 person access to a document under section 11A containing the  
5 information, except in the case of any of the following:
- 6 (a) personal information about any person, if it would be  
7 unreasonable to publish the information;
  - 8 (b) information about the business, commercial, financial or  
9 professional affairs of any person, if it would be  
10 unreasonable to publish the information;
  - 11 (c) other information of a kind determined by the Information  
12 Commissioner under subsection (2), if it would be  
13 unreasonable to publish the information;
  - 14 (d) any information, if it is not reasonably practicable to publish  
15 the information under this section because of the extent of  
16 any modifications to a document (or documents) necessary to  
17 delete information mentioned in paragraphs (a) to (c).
- 18 (2) The Information Commissioner may, by legislative instrument,  
19 make a determination for the purposes of paragraph (1)(c).

20 *Publication*

- 21 (3) The agency, or the Minister, must publish the information to  
22 members of the public generally on a website by:
- 23 (a) making the information available for downloading from the  
24 website; or
  - 25 (b) publishing on the website a link to another website, from  
26 which the information can be downloaded; or
  - 27 (c) publishing on the website other details of how the  
28 information may be obtained.
- 29 (4) The agency may impose a charge on a person for accessing the  
30 information only if:
- 31 (a) the person does not directly access the information by  
32 downloading it from the website (or another website); and
  - 33 (b) the charge is to reimburse the agency for a specific  
34 reproduction cost, or other specific incidental costs, incurred  
35 in giving the person access to that particular information.

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

4 *Time limit for publication*

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

- 8 (7) In this section:

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

- 10 (a) a Saturday; or  
11 (b) a Sunday; or  
12 (c) a public holiday in the place where the function of publishing  
13 the information under this section is to be performed.

14 **16 Section 18**

15 Repeal the section.

16 **17 Section 22**

17 Repeal the section, substitute:

18 **22 Access to edited copies with exempt or irrelevant matter deleted**

19 *Scope*

- 20 (1) This section applies if:  
21 (a) an agency or Minister decides:  
22 (i) to refuse to give access to an exempt document; or  
23 (ii) that to give access to a document would disclose  
24 information that would reasonably be regarded as  
25 irrelevant to the request for access; and  
26 (b) it is possible for the agency or Minister to prepare a copy (an  
27 *edited copy*) of the document, modified by deletions,  
28 ensuring that:  
29 (i) access to the edited copy would be required to be given  
30 under section 11A (access to documents on request);  
31 and

- 1 (ii) the edited copy would not disclose any information that  
2 would reasonably be regarded as irrelevant to the  
3 request; and  
4 (c) it is reasonably practicable for the agency or Minister to  
5 prepare the edited copy, having regard to:  
6 (i) the nature and extent of the modification; and  
7 (ii) the resources available to modify the document; and  
8 (d) it is not apparent (from the request or from consultation with  
9 the applicant) that the applicant would decline access to the  
10 edited copy.

11 *Access to edited copy*

- 12 (2) The agency or Minister must:  
13 (a) prepare the edited copy as mentioned in paragraph (1)(b); and  
14 (b) give the applicant access to the edited copy.

15 *Notice to applicant*

- 16 (3) The agency or Minister must give the applicant notice in writing:  
17 (a) that the edited copy has been prepared; and  
18 (b) of the grounds for the deletions; and  
19 (c) if any matter deleted is exempt matter—that the matter  
20 deleted is exempt matter because of a specified provision of  
21 this Act.  
22 (4) Section 26 (reasons for decision) does not apply to the decision to  
23 refuse access to the whole document unless the applicant requests  
24 the agency or Minister to give the applicant a notice in writing in  
25 accordance with that section.

26 **18 Subsections 25(1) and (2)**

27 Omit “or 33A” (wherever occurring).

28 **19 At the end of paragraph 26(1)(a)**

29 Add “and”.

30 **20 After paragraph 26(1)(a)**

31 Insert:

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

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

8 **21 Sections 26A, 27, 27A and 28**

9 Repeal the sections, substitute:

10 **26A Consultation—documents affecting Commonwealth-State**  
11 **relations**

12 *Scope*

- 13 (1) This section applies if:
- 14 (a) arrangements have been entered into between the  
15 Commonwealth and a State about consultation under this  
16 section; and
- 17 (b) a request is made to an agency or Minister for access to a  
18 document that:
- 19 (i) originated with, or was received from, the State or an  
20 authority of the State; or
- 21 (ii) contains information (*State-originated information*)  
22 that originated with, or was received from, the State or  
23 an authority of the State; and
- 24 (c) it appears to the agency or Minister that the State may  
25 reasonably wish to contend that:
- 26 (i) the document is conditionally exempt under section 47B  
27 (Commonwealth-State relations); and
- 28 (ii) access to the document would, on balance, be contrary  
29 to the public interest for the purposes of subsection  
30 11A(5).

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

1                                    *Consultation required*

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

6                                    *Decision to give access*

- 7                    (3) If, after such consultation has taken place, the agency or Minister  
8                    decides to give the applicant access to the document, the agency or  
9                    Minister must give written notice of the decision to both of the  
10                   following:  
11                      (a) the State;  
12                      (b) the applicant.

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

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

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

23                    Note 2:    For when all opportunities for review or appeal in relation to the  
24                    decision to give access to the document have *run out*, see subsection  
25                    4(1).

26                                    *Edited copies and State-originated information*

- 27                    (5) This section applies:  
28                    (a) in relation to an edited copy of a document—in the same way  
29                    as it applies to the document; and  
30                    (b) in relation to a document containing State-originated  
31                    information—to the extent to which the document contains  
32                    such information.



1       **27 Consultation—business documents**

2                   *Scope*

3       (1) This section applies if:

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

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

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

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

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

21       (2) This subsection covers the following information:

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

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

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

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

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

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

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

3 *Opportunity to make submissions*

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

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

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

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

17 *Notice of decision to give access*

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

21 (a) the person or organisation concerned;

22 (b) the applicant.

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

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

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

33 Note 2: For when all opportunities for review or appeal in relation to the  
34 decision to give access to the document have *run out*, see subsection  
35 4(1).

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

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

6                    *Edited copies and business information*

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

## 13        **27A Consultation—documents affecting personal privacy**

14                    *Scope*

- 15                    (1) This section applies if:  
16                           (a) a request is made to an agency or Minister for access to a  
17                                   document containing personal information about a person  
18                                   (including a person who has died); and  
19                           (b) it appears to the agency or Minister that the person or the  
20                                   person's legal personal representative (the *person*  
21                                   *concerned*) might reasonably wish to make a contention (the  
22                                   *exemption contention*) that:  
23                                   (i) the document is conditionally exempt under  
24                                   section 47F; and  
25                                   (ii) access to the document would, on balance, be contrary  
26                                   to the public interest for the purposes of subsection  
27                                   11A(5).

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

- 31                    (2) In determining, for the purposes of paragraph (1)(b), whether the  
32                    person concerned might reasonably wish to make an exemption  
33                    contention because of personal information in a document, the  
34                    agency or Minister must have regard to the following matters:  
35                           (a) the extent to which the information is well known;

**Schedule 3 Exemptions**  
**Part 2 Main exemption amendments**

---

- 1 (b) whether the person to whom the information relates is known  
2 to be (or to have been) associated with the matters dealt with  
3 in the information;  
4 (c) the availability of the information from publicly accessible  
5 sources;  
6 (d) any other matters that the agency or Minister considers  
7 relevant.

8 *Opportunity to make submissions*

- 9 (3) The agency or Minister must not decide to give the applicant  
10 access to the document unless:  
11 (a) the person concerned is given a reasonable opportunity to  
12 make submissions in support of the exemption contention;  
13 and  
14 (b) the agency or the Minister has regard to any submissions so  
15 made.  
16 (4) However, subsection (3) only applies if it is reasonably practicable  
17 for the agency or Minister to give the person concerned a  
18 reasonable opportunity to make submissions in support of the  
19 exemption contention, having regard to all the circumstances  
20 (including the application of subsections 15(5) and (6) (time limits  
21 for processing requests)).

22 *Decision to give access*

- 23 (5) If the agency or Minister decides to give access to the document,  
24 the agency or Minister must give written notice of the decision to  
25 both of the following:  
26 (a) the person concerned;  
27 (b) the applicant.

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

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

- 1 Note 1: The decision to give access to the document is subject to internal  
2 review (see Part VI), review by the Information Commissioner (see  
3 Part VII) and review by the Tribunal (see Part VIIA).
- 4 Note 2: For when all opportunities for review or appeal in relation to the  
5 decision to give access to the document have *run out*, see subsection  
6 4(1).

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

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

12 *Edited copies and personal information*

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

## 19 **22 Before section 32**

20 Insert:

## 21 **Division 1—Preliminary**

### 22 **31A Access to exempt and conditionally exempt documents**

23 The following table summarises how this Act applies to exempt  
24 documents and documents that are conditionally exempt:  
25

---

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

---

| <b>Item</b> | <b>If ...</b>   | <b>then ...</b>                                    | <b>because of ...</b> |
|-------------|---|--|-----------------------|
| 1           | a document is an exempt document under Division 2 (exemptions) or under paragraph (b) or (c) of the definition of <i>exempt document</i> in | access to the document is not required to be given | subsection 11A(4).    |

---

**Schedule 3 Exemptions**  
**Part 2 Main exemption amendments**

| <b>How this Act applies to exempt and conditionally exempt documents</b> |  |  |   |
|--|--|--|---|
| <b>Item</b>  | <b>If ...</b>  | <b>then ...</b>  | <b>because of ...</b>   |
|  | subsection 4(1)  |  |   |
| 2  | a document is a conditionally exempt document under Division 3 (public interest conditional exemptions)            | access to the document is required to be given, unless it would be contrary to the public interest                                   | subsection 11A(5) (see also section 11B (public interest factors)). |
| 3  | a document is an exempt document as mentioned in item 1, and also a conditionally exempt document under Division 3 | access to the document is not required to be given   | subsections 11A(4) and (6), and section 32 (interpretation).        |
| 4  | access to a document is refused because it contains exempt matter, and the exempt matter can be deleted            | (a) an edited copy deleting the exempt matter must be prepared (if practicable); and<br>(b) access to the edited copy must be given; | section 22.   |
| 5  | a document is an exempt document because of any provision of this Act  | access to the document may be given apart from under this Act  | section 3A (objects—information or documents otherwise accessible). |

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

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

- (a) it is an exempt document under Division 2; or
- (b) it is conditionally exempt under Division 3, and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

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

- (a) it is exempt under this section; or
- (b) it is exempt because of section 7 (exemption of certain persons and bodies); or
- (c) it is an official document of a Minister that contains matters not relating to the affairs of an agency or a Department of State.

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

3 **23 Section 32**

4 After “exempt documents,” (wherever occurring), insert “, or are  
5 conditionally exempt”.

6 **24 After section 32**

7 Insert:

8 **Division 2—Exemptions**

9 **25 At the end of section 33**

10 Add:

11 Note: See also subsection 4(10).

12 **26 Sections 33A to 36**

13 Repeal the sections, substitute:

14 **34 Cabinet documents**

15 *General rules*

- 16 (1) A document is an exempt document if:  
17 (a) both of the following are satisfied:  
18 (i) it has been submitted to the Cabinet for its  
19 consideration, or is or was proposed by a Minister to be  
20 so submitted;  
21 (ii) it was brought into existence for the dominant purpose  
22 of submission for consideration by the Cabinet; or  
23 (b) it is an official record of the Cabinet; or  
24 (c) it was brought into existence for the dominant purpose of  
25 briefing a Minister on a document to which paragraph (a)  
26 applies; or  
27 (d) it is a draft of a document to which paragraph (a), (b) or (c)  
28 applies.
- 29 (2) A document is an exempt document to the extent that it is a copy or  
30 part of, or contains an extract from, a document to which  
31 subsection (1) applies.

**Schedule 3 Exemptions**  
**Part 2 Main exemption amendments**

---

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

5 *Exceptions*

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

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

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

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

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

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

18 **27 Sections 39, 40 and 41**

19 Repeal the sections.

20 **28 Subsection 42(2)**

21 Repeal the subsection, substitute:

22 (2) A document is not an exempt document because of subsection (1)  
23 if the person entitled to claim legal professional privilege in  
24 relation to the production of the document in legal proceedings  
25 waives that claim.

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

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

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

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

33 **29 Sections 43, 43A and 44**

---



1 Repeal the sections.

2 **30 Subsection 45(2)**

3 Omit “any document to the disclosure of which paragraph 36(1)(a)  
4 applies or would apply, but for the operation of subsection 36(2), (5) or  
5 (6), being a document”, substitute “a document to which subsection  
6 47C(1) (deliberative processes) applies (or would apply, but for  
7 subsection 47C(2) or (3)), that is”.

8 **31 Subsection 45(2)**

9 After “unless the disclosure”, insert “of the document”.

10 **32 Section 47**

11 Repeal the section, substitute:

12 **47 Documents disclosing trade secrets or commercially valuable**  
13 **information**

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

16 (a) trade secrets; or

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

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

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

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

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

- 1 (3) A reference in this section to an undertaking includes a reference to  
2 an undertaking that is carried on by, or by an authority of, the  
3 Commonwealth or a State or by a local government authority.

4 **33 At the end of Part IV**

5 Add:

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

7 **47B Public interest conditional exemptions—Commonwealth-State**  
8 **relations**

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

- 11 (a) would, or could reasonably be expected to, cause damage to  
12 relations between the Commonwealth and a State; or  
13 (b) would divulge information or matter communicated in  
14 confidence by or on behalf of the Government of a State or  
15 an authority of a State, to the Government of the  
16 Commonwealth, to an authority of the Commonwealth or to a  
17 person receiving the communication on behalf of the  
18 Commonwealth or of an authority of the Commonwealth.

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

21 **47C Public interest conditional exemptions—deliberative processes**

22 *General rule*

- 23 (1) A document is conditionally exempt if its disclosure under this Act  
24 would disclose matter (*deliberative matter*) in the nature of, or  
25 relating to, opinion, advice or recommendation obtained, prepared  
26 or recorded, or consultation or deliberation that has taken place, in  
27 the course of, or for the purposes of, the deliberative processes  
28 involved in the functions of an agency or Minister or of the  
29 Government of the Commonwealth.

30 *Exceptions*

- 31 (2) Deliberative matter does not include either of the following:  
32 (a) operational information (see section 8A);

1 (b) purely factual material.

2 Note: An agency must publish its operational information (see section 8).

3 (3) This section does not apply to any of the following:

4 (a) reports (including reports concerning the results of studies,  
5 surveys or tests) of scientific or technical experts, whether  
6 employed within an agency or not, including reports  
7 expressing the opinions of such experts on scientific or  
8 technical matters;

9 (b) reports of a body or organisation, prescribed by the  
10 regulations, that is established within an agency;

11 (c) the record of, or a formal statement of the reasons for, a final  
12 decision given in the exercise of a power or of an  
13 adjudicative function.

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

#### 16 **47D Public interest conditional exemptions—financial or property** 17 **interests of the Commonwealth**

18 A document is conditionally exempt if its disclosure under this Act  
19 would have a substantial adverse effect on the financial or property  
20 interests of the Commonwealth or of an agency.

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

#### 23 **47E Public interest conditional exemptions—certain operations of** 24 **agencies**

25 A document is conditionally exempt if its disclosure under this Act  
26 would, or could reasonably be expected to, do any of the  
27 following:

28 (a) prejudice the effectiveness of procedures or methods for the  
29 conduct of tests, examinations or audits by an agency;

30 (b) prejudice the attainment of the objects of particular tests,  
31 examinations or audits conducted or to be conducted by an  
32 agency;

33 (c) have a substantial adverse effect on the management or  
34 assessment of personnel by the Commonwealth or by an  
35 agency;

1 (d) have a substantial adverse effect on the proper and efficient  
2 conduct of the operations of an agency.

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

5 **47F Public interest conditional exemptions—personal privacy**

6 *General rule*

7 (1) A document is conditionally exempt if its disclosure under this Act  
8 would involve the unreasonable disclosure of personal information  
9 about any person (including a deceased person).

10 (2) In determining whether the disclosure of the document would  
11 involve the unreasonable disclosure of personal information, an  
12 agency or Minister must have regard to the following matters:  
13 (a) the extent to which the information is well known;  
14 (b) whether the person to whom the information relates is known  
15 to be (or to have been) associated with the matters dealt with  
16 in the document;  
17 (c) the availability of the information from publicly accessible  
18 sources;  
19 (d) any other matters that the agency or Minister considers  
20 relevant.

21 (3) Subject to subsection (5), subsection (1) does not have effect in  
22 relation to a request by a person for access to a document by reason  
23 only of the inclusion in the document of matter relating to that  
24 person.

25 *Access given to qualified person instead*

26 (4) Subsection (5) applies if:  
27 (a) a request is made to an agency or Minister for access to a  
28 document of the agency, or an official document of the  
29 Minister, that contains information concerning the applicant,  
30 being information that was provided by a qualified person  
31 acting in his or her capacity as a qualified person; and

- 1 (b) it appears to the principal officer of the agency or to the  
2 Minister (as the case may be) that the disclosure of the  
3 information to the applicant might be detrimental to the  
4 applicant's physical or mental health, or well-being.
- 5 (5) The principal officer or Minister may, if access to the document  
6 would otherwise be given to the applicant, direct that access to the  
7 document, so far as it contains that information, is not to be given  
8 to the applicant but is to be given instead to a qualified person  
9 who:
- 10 (a) carries on the same occupation, of a kind mentioned in the  
11 definition of *qualified person* in subsection (7), as the  
12 first-mentioned qualified person; and  
13 (b) is to be nominated by the applicant.
- 14 (6) The powers and functions of the principal officer of an agency  
15 under this section may be exercised by an officer of the agency  
16 acting within his or her scope of authority in accordance with  
17 arrangements referred to in section 23.
- 18 (7) In this section:
- 19 *qualified person* means a person who carries on, and is entitled to  
20 carry on, an occupation that involves the provision of care for the  
21 physical or mental health of people or for their well-being, and,  
22 without limiting the generality of the foregoing, includes any of the  
23 following:
- 24 (a) a medical practitioner;  
25 (b) a psychiatrist;  
26 (c) a psychologist;  
27 (d) a counsellor;  
28 (e) a social worker.
- 29 Note: Access must generally be given to a conditionally exempt document  
30 unless it would be contrary to the public interest (see section 11A).

31 **47G Public interest conditional exemptions—business**

- 32 (1) A document is conditionally exempt if its disclosure under this Act  
33 would disclose information concerning a person in respect of his or  
34 her business or professional affairs or concerning the business,  
35 commercial or financial affairs of an organisation or undertaking,  
36 in a case in which the disclosure of the information:
-

**Schedule 3 Exemptions**  
**Part 2 Main exemption amendments**

---

- 1 (a) would, or could reasonably be expected to, unreasonably  
2 affect that person adversely in respect of his or her lawful  
3 business or professional affairs or that organisation or  
4 undertaking in respect of its lawful business, commercial or  
5 financial affairs; or  
6 (b) could reasonably be expected to prejudice the future supply  
7 of information to the Commonwealth or an agency for the  
8 purpose of the administration of a law of the Commonwealth  
9 or of a Territory or the administration of matters administered  
10 by an agency.
- 11 (2) Subsection (1) does not apply to trade secrets or other information  
12 to which section 47 applies.
- 13 (3) Subsection (1) does not have effect in relation to a request by a  
14 person for access to a document:  
15 (a) by reason only of the inclusion in the document of  
16 information concerning that person in respect of his or her  
17 business or professional affairs; or  
18 (b) by reason only of the inclusion in the document of  
19 information concerning the business, commercial or financial  
20 affairs of an undertaking where the person making the  
21 request is the proprietor of the undertaking or a person acting  
22 on behalf of the proprietor; or  
23 (c) by reason only of the inclusion in the document of  
24 information concerning the business, commercial or financial  
25 affairs of an organisation where the person making the  
26 request is the organisation or a person acting on behalf of the  
27 organisation.
- 28 (4) A reference in this section to an undertaking includes a reference to  
29 an undertaking that is carried on by, or by an authority of, the  
30 Commonwealth or a State or by a local government authority.
- 31 (5) For the purposes of subsection (1), information is not taken to  
32 concern a person in respect of the person's professional affairs  
33 merely because it is information concerning the person's status as a  
34 member of a profession.
- 35 Note: Access must generally be given to a conditionally exempt document  
36 unless it would be contrary to the public interest (see section 11A).

1 **47H Public interest conditional exemptions—research**

2 A document is conditionally exempt if:

- 3 (a) it contains information relating to research that is being, or is  
4 to be, undertaken by an officer of an agency specified in  
5 Schedule 4; and  
6 (b) disclosure of the information before the completion of the  
7 research would be likely unreasonably to expose the agency  
8 or officer to disadvantage.

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

11 **47J Public interest conditional exemptions—the economy**

12 (1) A document is conditionally exempt if its disclosure under this Act  
13 would, or could be reasonably expected to, have a substantial  
14 adverse effect on Australia's economy by:

- 15 (a) influencing a decision or action of a person or entity; or  
16 (b) giving a person (or class of persons) an undue benefit or  
17 detriment, in relation to business carried on by the person (or  
18 class), by providing premature knowledge of proposed or  
19 possible action or inaction of a person or entity.

20 Note: A person includes a body corporate and a body politic (see section 22  
21 of the *Acts Interpretation Act 1901*). Examples of a body politic  
22 include the government of the Commonwealth, a State, a Territory or  
23 a foreign country.

24 (2) For the purposes of subsection (1), a substantial adverse effect on  
25 Australia's economy includes a substantial adverse effect on:

- 26 (a) a particular sector of the economy; or  
27 (b) the economy of a particular region of Australia.

28 (3) The documents to which subsection (1) applies include, but are not  
29 limited to, documents containing matter relating to any of the  
30 following:

- 31 (a) currency or exchange rates;  
32 (b) interest rates;  
33 (c) taxes, including duties of customs or of excise;  
34 (d) the regulation or supervision of banking, insurance and other  
35 financial institutions;  
36 (e) proposals for expenditure;
-

**Schedule 3 Exemptions**

**Part 2 Main exemption amendments**

---

- 1 (f) foreign investment in Australia;  
2 (g) borrowings by the Commonwealth, a State or an authority of  
3 the Commonwealth or of a State.

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

6 **34 Schedule 4**

7 Omit “Section 43A”, substitute “Section 47H”.



1

2

## **Part 3—Other exemption amendments**

3

### ***Archives Act 1983***

4

#### **35 Paragraph 33(1)(b)**

5

Repeal the paragraph, substitute:

6

(b) information or matter:

7

(i) that was communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation (the *foreign entity*) to the Government of the Commonwealth, to an authority of the Commonwealth or to a person who received the communication on behalf of the Commonwealth or an authority of the Commonwealth (the *Commonwealth entity*); and

8

9

10

11

12

13

14

15

16

17

18

(ii) which the foreign entity advises the Commonwealth entity is still confidential; and

(iii) the confidentiality of which it would be reasonable to maintain;

19

#### **36 Paragraph 50A(2)(b)**

20

Repeal the paragraph, substitute:

21

(b) whether it would be reasonable to maintain the confidentiality of information or matter to which both of the following apply by not making the record available for public access:

22

23

24

25

26

27

28

29

30

31

32

33

34

35

(i) the information or matter was communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation (the *foreign entity*) to the Government of the Commonwealth, to an authority of the Commonwealth or to a person who received the communication on behalf of the Commonwealth or an authority of the Commonwealth (the *Commonwealth entity*);

(ii) the foreign entity advises the Commonwealth entity that the information or matter is still confidential.

1 **37 Paragraph 50A(3)(b)**

2 Repeal the paragraph, substitute:

3 (b) whether it would be reasonable to maintain the  
4 confidentiality of information or matter to which both of the  
5 following apply by not making that part, or a copy of that  
6 part, of the record available for public access:

7 (i) the information or matter was communicated in  
8 confidence by, or on behalf of, a foreign government, an  
9 authority of a foreign government or an international  
10 organisation (the *foreign entity*) to the Government of  
11 the Commonwealth, to an authority of the  
12 Commonwealth or to a person who received the  
13 communication on behalf of the Commonwealth or an  
14 authority of the Commonwealth (the *Commonwealth*  
15 *entity*);

16 (ii) the foreign entity advises the Commonwealth entity that  
17 the information or matter is still confidential.

18 ***Privacy Act 1988***

19 **38 Subsection 34(1)**

20 Omit “or 33A,”.

1

2 **Part 4—Application provisions**

3 **39 Application—Part 2**

4 An amendment made by an item in Part 2 applies in relation to requests  
5 for access made under section 15 of the *Freedom of Information Act*  
6 *1982* that are received at or after the commencement of that item.

7 **40 Application—items 35, 36 and 37**

8 The amendments made by items 35, 36 and 37 apply for the purposes of  
9 determining whether access, or an extension of partial access, to a  
10 record referred to in section 31 of the *Archives Act 1983* will be given in  
11 accordance with an application made under section 40 of that Act that is  
12 received by the Archives at or after the commencement of those items.

1  
2 **Schedule 4—Information Commissioner**  
3 **amendments**

4 **Part 1—Main amendments**

5 *Freedom of Information Act 1982*

6 **1 Subsection 4(1)**

7 Insert:

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

9 **2 Subsection 4(1)**

10 Insert:

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

12 **3 Subsection 4(1)**

13 Insert:

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

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

17 **4 Subsection 4(1)**

18 Insert:

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

20 **5 Subsection 4(1)**

21 Insert:

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

23 **6 Subsection 4(1)**

24 Insert:

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

1 **7 Subsection 4(1)**

2 Insert:

3 *engage in conduct* means:

4 (a) do an act; or

5 (b) omit to do an act.

6 **8 Subsection 4(1)**

7 Insert:

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

9 **9 Subsection 4(1)**

10 Insert:

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

12 **10 Subsection 4(1)**

13 Insert:

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

15 **11 Subsection 4(1)**

16 Insert:

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

18 **12 Subsection 4(1)**

19 Insert:

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

21 **13 Subsection 4(1)**

22 Insert:

23 *Information Commissioner* has the meaning given by the  
24 *Information Commissioner Act 2009*.

25 **14 Subsection 4(1)**

26 Insert:

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

---

1 **15 Subsection 4(1)**

2 Insert:

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

4 **16 Subsection 4(1)**

5 Insert:

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

8 **17 Subsection 4(1)**

9 Insert:

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

11 **18 Subsection 4(1)**

12 Insert:

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

15 **19 Subsection 4(1)**

16 Insert:

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

18 **20 Subsection 4(1)**

19 Insert:

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

22 **21 Subsection 12(1)**

23 Omit "(1)".

24 **22 Subsections 12(2) to (4)**

25 Repeal the subsections.

26 **23 Subsection 21(3)**

27 Repeal the subsection.

---

1 **24 Subparagraph 26(1)(c)(ii)**

2 Omit “Ombudsman”, substitute “Information Commissioner”.

3 **25 Paragraph 26(1)(c)**

4 Omit “review under section 54”, substitute “internal review (Part VI)  
5 and IC review (Part VII)”.

6 **26 Paragraph 29(9)(b)**

7 Omit “Ombudsman”, substitute “Information Commissioner”.

8 **27 Subsection 29(9)**

9 Omit “review under section 54”, substitute “internal review (Part VI)  
10 and IC review (Part VII)”.

11 **28 Section 31**

12 Repeal the section, substitute:

13 **31 Decision to impose charge—extended period for processing**  
14 **request**

15 *Scope*

16 (1) This section applies if:

- 17 (a) on a particular day (the *charge notice day*) an applicant in  
18 relation to a request receives a notice under subsection 29(1)  
19 or (6) to the effect that the applicant is liable to pay a charge  
20 in respect of the request; and  
21 (b) the notice is received before the end of the period (the  
22 *processing period*) applicable under paragraph 15(5)(b) in  
23 relation to the request (or that period as extended).

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

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

- 30 (a) the day the applicant pays the amount of the charge (or a  
31 deposit on account of the charge prescribed by the

- 1 regulations), whether or not the decision to impose the charge  
2 has been considered under section 29, or is the subject of a  
3 review under this Act;
- 4 (b) if the amount of the charge is changed under section 29, or  
5 following a review under this Act—the day the applicant  
6 pays the amount of the charge (or a deposit on account of the  
7 charge prescribed by the regulations) as changed following  
8 the review;
- 9 (c) if, under section 29, or following a review under this Act, a  
10 decision is made with the effect that the charge is not  
11 imposed—the day the applicant is notified of the decision.

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

## 16 **29 After section 51D**

17 Insert:

### 18 **51DA Decision not made on request for amendment or annotation** 19 **within time—deemed refusal**

- 20 (1) This section applies if:
- 21 (a) an application has been made to an agency or Minister under  
22 section 48; and
- 23 (b) the period of 30 days mentioned in section 51D (the *initial*  
24 *decision period*) has ended since the day the application was  
25 received by, or on behalf of, the agency or Minister; and
- 26 (c) notice of a decision on the application has not been received  
27 by the applicant.

#### 28 *Deemed refusal*

- 29 (2) Subject to this section:
- 30 (a) the principal officer of the agency or the Minister is taken to  
31 have made a decision personally refusing to amend or  
32 annotate the record of personal information to which the  
33 application relates on the last day of the initial decision  
34 period; and
- 35 (b) notice of the decision is taken to have been given under  
36 section 26 to the applicant on the same day.



- 1                    *Agency or Minister may apply for further time*
- 2                    (3) However, the agency or Minister concerned may apply, in writing,  
3                    to the Information Commissioner for further time to deal with the  
4                    application.
- 5                    (4) The Information Commissioner may allow further time considered  
6                    appropriate by the Information Commissioner for the agency or  
7                    Minister to deal with the application.
- 8                    (5) If the Information Commissioner allows further time, the  
9                    Information Commissioner may impose any condition that he or  
10                   she considers appropriate.
- 11                   (6) Subsection (2) (deemed refusal) does not apply, and is taken never  
12                   to have applied, if the agency or Minister:  
13                          (a) makes a decision on the application within the further time  
14                          allowed; and  
15                          (b) complies with any condition imposed under subsection (5).
- 16                   (7) However, subsection (2) (deemed refusal) applies as if the initial  
17                   decision period were extended by the time allowed by the  
18                   Information Commissioner under subsection (4) if the agency or  
19                   Minister:  
20                          (a) does not make a decision on the request within the further  
21                          time allowed; or  
22                          (b) does not comply with any condition imposed under  
23                          subsection (5).
- 24                   *No further time allowed*
- 25                   (8) If subsection (7) (deemed refusal after allowance of further time)  
26                   applies, the Information Commissioner does not have the power to  
27                   allow further time under this section in relation to the decision  
28                   taken to be made under subsection (2) in its operation as affected  
29                   by subsection (7).

30 **30 Part VI (heading)**

31                   Repeal the heading, substitute:

1 **Part VI—Internal review of decisions**

2 **31 Before section 53**

3 Insert:

4 **52 Internal review of decisions—guide**

5 This Part provides for internal review of decisions by agencies,  
6 other than decisions made personally by the principal officer of an  
7 agency or the responsible Minister. Agencies are required to  
8 complete internal reviews within 30 days. However, this period  
9 may be extended.

10 Sections 53A, 53B and 53C define the terms *access refusal*  
11 *decision*, *access grant decision* and *affected third party*. These  
12 terms are used in this Part and in Parts VII and VIIA.

13 **32 Section 53**

14 Omit “Part”, substitute “Act”.

15 **33 Section 53**

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

17 **34 Sections 54 to 57**

18 Repeal the sections, substitute:

19 **53A What is an *access refusal decision*?**

20 An *access refusal decision* is any of the following decisions:

- 21 (a) a decision refusing to give access to a document in  
22 accordance with a request;
- 23 (b) a decision giving access to a document but not giving, in  
24 accordance with the request, access to all documents to  
25 which the request relates;
- 26 (c) a decision purporting to give, in accordance with a request,  
27 access to all documents to which the request relates, but not  
28 actually giving that access;

- 1 (d) a decision to defer the provision of access to a document  
2 (other than a document covered by paragraph 21(1)(d)  
3 (Parliament should be informed of contents));  
4 (e) a decision under section 29 relating to imposition of a charge  
5 or the amount of a charge;  
6 (f) a decision to give access to a document to a qualified person  
7 under subsection 47F(5);  
8 (g) a decision refusing to amend a record of personal information  
9 in accordance with an application made under section 48;  
10 (h) a decision refusing to annotate a record of personal  
11 information in accordance with an application made under  
12 section 48.
- 13 Note: If a decision is not made on a request under section 15 within the time  
14 required by that section, a decision is taken to have been made to  
15 refuse to give access to a document in accordance with the request  
16 (see section 15AC).

17 **53B What is an *access grant decision*?**

18 An *access grant decision* is a decision covered by the following  
19 table:

20 Note: The table covers documents that may be conditionally exempt under  
21 section 47B (item 1), 47G (item 2) or 47F (items 3 and 4). Access  
22 must generally be given to a conditionally exempt document unless it  
23 would be contrary to the public interest (see section 11A).  
24

**Access grant decisions**

| Item | If, in relation to a request for access to a document ...  | the <i>access grant decision</i> is ...   |
|------|--|---|
| 1    | consultation with a State under section 26A (documents affecting Commonwealth-State relations) is required | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because:<br>(a) the document is not conditionally exempt under section 47B (Commonwealth-State relations); or<br>(b) access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5). |
| 2    | section 27 (business documents) applies in relation  | a decision of an agency or Minister to give access to the document (or an edited copy   |

**Schedule 4** Information Commissioner amendments

**Part 1** Main amendments

---

**Access grant decisions**

---

| <b>Item</b> | <b>If, in relation to a request for access to a document ...</b>   | <b>the <i>access grant decision</i> is ...</b>  |
|-------------|--|---|
|             | to business information in the document  | of the document) because:<br>(a) the document is not conditionally exempt under section 47G (business documents); or<br>(b) access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5).   |
| 3           | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a living person   | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because:<br>(a) the document is not conditionally exempt under section 47F (personal privacy); or<br>(b) access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5). |
| 4           | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a deceased person | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because:<br>(a) the document is not conditionally exempt under section 47F (personal privacy); or<br>(b) access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5). |

1 **53C Internal review—who is an *affected third party*?**

2 The following table has effect:

3

---

**Who is an *affected third party*?**

---

| <b>Item</b> | <b>If, in relation to a request for access to a document ...</b> | <b>the <i>affected third party</i> for the document is ...</b> |
|-------------|--|--|
| 1           | consultation with a State under section 26A                      | the State.   |

---

---

**Who is an *affected third party*?**

| <b>Item</b> | <b>If, in relation to a request for access to a document ...</b>   | <b>the <i>affected third party</i> for the document is ...</b>           |
|-------------|--|--|
|             | (documents affecting Commonwealth-State relations) is required   |  |
| 2           | section 27 (business documents) applies in relation to business information in the document  | the person or organisation concerned (within the meaning of section 27). |
| 3           | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a living person   | the person.  |
| 4           | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a deceased person | the legal personal representative of the deceased person.                |

1     **54 Internal review—access refusal decision**

- 2                     (1) This section applies if an access refusal decision is made in relation  
3                     to a request to an agency for access to a document, other than a  
4                     decision made personally by the principal officer of the agency or  
5                     the responsible Minister.
- 6                     (2) The applicant in relation to the request may apply under this Part  
7                     for the review (the *internal review*) of the access refusal decision.

8     **54A Internal review—access grant decision**

- 9                     (1) This section applies if an access grant decision is made in relation  
10                    to a request to an agency for access to a document, other than a  
11                    decision made personally by the principal officer of the agency or  
12                    the responsible Minister.
- 13                    (2) The affected third party for the document may apply under this  
14                    Part for the review (the *internal review*) of the access grant  
15                    decision.

16                    Note:     For *affected third party*, see section 53C.

1 **54B Internal review—application for review**

- 2 (1) An application for internal review must be in writing and must be  
3 made:  
4 (a) within 30 days, or such further period as the agency allows,  
5 after the day the decision is notified to the applicant for  
6 internal review (the *internal review applicant*); or  
7 (b) in the case of an access refusal decision of a kind mentioned  
8 in paragraph 53A(b), (c) or (f), within whichever of the  
9 following is the longer period:  
10 (i) 30 days, or such further period as the agency allows,  
11 after the day the decision is notified to the internal  
12 review applicant;  
13 (ii) 15 days after the day the access referred to in that  
14 paragraph was given (or purported to be given).
- 15 (2) A decision by an agency to allow a further period for making an  
16 application may be made whether or not the time for making such  
17 an application has already expired.
- 18 (3) The agency's power to allow a further period for making an  
19 application may be exercised by an officer of the agency who is:  
20 (a) acting within the scope of authority exercisable by him or  
21 her; and  
22 (b) acting in accordance with arrangements approved by the  
23 responsible Minister or principal officer of the agency.

24 **54C Internal review—decision on internal review**

25 *Scope*

- 26 (1) This section applies if an application for internal review of an  
27 access refusal decision or an access grant decision (the *original*  
28 *decision*) is made in accordance with this Part.

29 *Decision*

- 30 (2) The agency must, as soon as practicable, arrange for a person  
31 (other than the person who made the original decision) to review  
32 the decision.

- 1 (3) The person must make a fresh decision on behalf of the agency  
2 within 30 days after the day on which the application was received  
3 by, or on behalf of, the agency.

4 *Notice of decision*

- 5 (4) Section 26 extends to a decision made under this section.

6 **54D Internal review—deemed affirmation of original decision**

- 7 (1) This section applies if:  
8 (a) an application for internal review has been made to an  
9 agency; and  
10 (b) the period (the *initial decision period*) of 30 days (as  
11 mentioned in subsection 54C(3)) has ended since the day the  
12 application for internal review was received by the agency;  
13 and  
14 (c) notice of a decision on the application has not been received  
15 by the internal review applicant.
- 16 (2) Subject to this section:  
17 (a) the principal officer of the agency is taken to have made a  
18 decision personally affirming the original decision on the last  
19 day of the initial decision period; and  
20 (b) notice of the decision is taken to have been given under  
21 section 26 to the internal review applicant on the same day.

22 *Agency may apply for further time*

- 23 (3) However, the agency may apply, in writing, to the Information  
24 Commissioner for further time to deal with the application.
- 25 (4) The Information Commissioner may allow further time considered  
26 appropriate by the Information Commissioner for the agency to  
27 deal with the application.
- 28 (5) If the Information Commissioner allows further time the  
29 Information Commissioner may impose any condition that he or  
30 she considers appropriate.
- 31 (6) Subsection (2) (deemed affirmation) does not apply, and is taken  
32 never to have applied, if the agency:

- 1 (a) makes a decision on the application within the further time  
2 allowed; and  
3 (b) complies with any condition imposed under subsection (5).

- 4 (7) However, subsection (2) (deemed affirmation) applies as if the  
5 initial decision period were extended by the time allowed by the  
6 Information Commissioner under subsection (4) if the agency:  
7 (a) does not make a decision on the request within the further  
8 time allowed; or  
9 (b) does not comply with any condition imposed under  
10 subsection (5).

11 *No further time allowed*

- 12 (8) If subsection (7) (deemed affirmation after allowance of further  
13 time) applies, the Information Commissioner does not have the  
14 power to allow further time under this section in relation to the  
15 decision taken to be made under subsection (2) in its operation as  
16 affected by subsection (7).

17 **54E Internal review—decisions to which this Part does not apply**

18 This Part does not apply in relation to:

- 19 (a) a decision on internal review; or  
20 (b) a decision in relation to the provision of access to a document  
21 upon a request that is taken to have been made under  
22 section 15AC or 51DA.

23 **Part VII—Review by Information Commissioner**

24 **Division 1—Guide to this Part**

25 **54F Review by the Information Commissioner—guide**

26 This Part sets up a system for review of decisions by the  
27 Information Commissioner.

28 Division 2 sets out the key concepts for the Part.

29 Division 3 sets out the types of decisions that are reviewable.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

Division 4 provides for the making of applications for review by the Information Commissioner, including the time limits within which applications must be made.

The Information Commissioner may make preliminary inquiries before deciding whether or not to conduct a review. In certain circumstances, the Information Commissioner may decide not to review a decision (or a part of a decision) (see Division 5).

Division 6 provides for the procedure in an IC review, including the parties to the proceeding, circumstances in which a hearing may be held and who bears the onus of proof.

The Information Commissioner may refer questions of law to the Federal Court of Australia at any time during the review.

The Information Commissioner must make a decision on the review in accordance with Division 7.

The Information Commissioner has powers to gather information for the purposes of an IC review (see Division 8).

In certain circumstances, the Inspector-General of Intelligence and Security must be called to give evidence (see Division 9).

An application for review of a decision of the Information Commissioner may be made to the Administrative Appeals Tribunal. A review party may appeal to the Federal Court of Australia, on a question of law, from a decision of the Information Commissioner (see Division 10).

## 24 **Division 2—Key concepts**

### 25 **54G Key concepts—what is an *IC review*?**

26 An *IC review* is a review of an IC reviewable decision undertaken  
27 by the Information Commissioner under this Part.

28 Note: *IC review* is short for Information Commissioner review.

1 **54H Key concepts—what is an *IC review application*?**

2 An *IC review application* is an application made under Division 4  
3 for the review of an IC reviewable decision.

4 Note: *IC review application* is short for Information Commissioner review  
5 application.

6 **54J Key concepts—who is an *IC review applicant*?**

7 An *IC review applicant* is a person who applies for an IC review  
8 under section 54L or 54M.

9 Note: *IC review applicant* is short for Information Commissioner review  
10 applicant.

11 **54K Key concepts—what is an *IC reviewable decision*?**

12 An *IC reviewable decision* is:

- 13 (a) a decision covered by subsection 54L(2) (access refusal  
14 decisions); or  
15 (b) a decision covered by subsection 54M(2) (access grant  
16 decisions).

17 Note: *IC reviewable decision* is short for Information Commissioner  
18 reviewable decision.

19 **Division 3—IC reviewable decisions**

20 **54L IC reviewable decisions—access refusal decisions**

21 (1) An application may be made to the Information Commissioner for  
22 a review of a decision covered by subsection (2).

23 (2) This subsection covers the following decisions:

- 24 (a) an access refusal decision;  
25 (b) a decision made by an agency on internal review of an access  
26 refusal decision (see section 54C);  
27 (c) a decision refusing to allow a further period for making an  
28 application for internal review of an access refusal decision  
29 (under section 54B).

30 Note 1: An application for the review of an access refusal decision made for  
31 the purposes of paragraph (a) may be made regardless of whether the  
32 decision was the subject of internal review.

1 Note 2: If no decision is made on internal review within 30 days, a decision to  
2 affirm the original access refusal decision is taken to have been made  
3 (see section 54D).

4 (3) The IC review application may be made by, or on behalf of, the  
5 person who made the request to which the decision relates.

#### 6 **54M IC reviewable decisions—access grant decisions**

7 (1) An application may be made to the Information Commissioner for  
8 a review of a decision covered by subsection (2).

9 (2) This subsection covers the following decisions:

- 10 (a) an access grant decision;
- 11 (b) a decision made by an agency on internal review of an access  
12 grant decision (see section 54C).

13 Note: If no decision is made on internal review within 30 days, a decision to  
14 affirm the original access grant decision is taken to have been made  
15 (see section 54D).

16 (3) The IC review application may be made by, or on behalf of, the  
17 following:

- 18 (a) in any case—an affected third party for the document in  
19 relation to which the decision covered by subsection (2) was  
20 made;
- 21 (b) in a case covered by paragraph (2)(b)—the person who made  
22 the request to which the decision relates.

23 Note: For *affected third party*, see section 53C.

### 24 **Division 4—IC review applications**

#### 25 **Subdivision A—Making an application**

#### 26 **54N IC review applications—application**

##### 27 *Content of application*

28 (1) An IC review application must be in writing, and must:

- 29 (a) give details of how notices under this Part may be sent to the  
30 IC review applicant (for example, by providing an electronic  
31 address to which notices may be sent by electronic  
32 communication); and

**Schedule 4** Information Commissioner amendments

**Part 1** Main amendments

---

1 (b) include a copy of the notice given under section 26 of the IC  
2 reviewable decision for which an IC review is sought.

3 Note: For who may make an IC review application, see sections 54L and  
4 54M.

5 (2) The IC review application may contain particulars of the basis on  
6 which the IC review applicant disputes the IC reviewable decision.

7 (3) The Office of the Information Commissioner must provide  
8 appropriate assistance to a person who:

9 (a) wishes to make an IC review application; and

10 (b) requires assistance to prepare the IC review application.

11 *Delivery of application*

12 (4) The IC review application must be sent to the Information  
13 Commissioner. The IC review application may be sent in any of  
14 the following ways:

15 (a) delivery to the Information Commissioner at the address of  
16 the Information Commissioner specified in a current  
17 telephone directory;

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

20 (c) sending by electronic communication to an electronic address  
21 specified by the Information Commissioner.

22 **54P IC review applications—requirement to notify affected third**  
23 **parties**

24 *Scope*

25 (1) This section applies if:

26 (a) an agency or Minister decides not to give access to a  
27 document to which a consultation requirement applies under  
28 section 26A, 27 or 27A; and

29 (b) an IC review application is made for an IC review of that  
30 decision.

1                    *Requirement to notify*

- 2                    (2) The agency or Minister must, as soon as practicable, take all  
3                    reasonable steps to notify the affected third party for the document  
4                    of the application.

5                    Note 1:    For *affected third party*, see section 53C.

6                    Note 2:    The agency or Minister is not required to give notice if the  
7                    Information Commissioner orders that it is not appropriate to do so in  
8                    the circumstances (see section 54Q).

- 9                    (3) The agency or Minister must, as soon as practicable, give a copy of  
10                    the notice to the Information Commissioner.

11                    **54Q IC review applications—circumstances in which not giving**  
12                    **notice is appropriate**

- 13                    (1) This section applies in relation to a document to which a  
14                    consultation requirement applies under section 27 or 27A.

- 15                    (2) An agency or Minister is not required to notify an affected third  
16                    party for the document under subsection 54P(2) if:  
17                    (a) the agency or the Minister applies to the Information  
18                    Commissioner for an order that it would not be appropriate to  
19                    notify the affected third party in the circumstances covered  
20                    by subsection (3); and  
21                    (b) the Information Commissioner makes the order.

22                    Note:       For *affected third party*, see section 53C.

- 23                    (3) The circumstances covered by this subsection are whether  
24                    notifying the affected third party would, or could reasonably be  
25                    expected to, do any of the following:  
26                    (a) prejudice the conduct of an investigation of a breach, or  
27                    possible breach, of the law, or a failure, or possible failure, to  
28                    comply with a law relating to taxation;  
29                    (b) prejudice the enforcement or proper administration of the law  
30                    in a particular instance;  
31                    (c) disclose, or enable a person to ascertain, the existence or  
32                    identity of a confidential source of information, or the  
33                    non-existence of a confidential source of information, in  
34                    relation to the enforcement or administration of the law;  
35                    (d) endanger the life or physical safety of any person;

- 1 (e) cause damage to the security, defence or international  
2 relations of the Commonwealth.

3 **54R IC review applications—withdrawal**

- 4 (1) An IC review applicant may, in writing, withdraw the IC review  
5 application at any time before the Information Commissioner  
6 makes a decision under section 55K.
- 7 (2) If the IC review application is withdrawn, it is taken never to have  
8 been made.

9 **Subdivision B—Time limits**

10 **54S IC review applications—time limits**

11 *Access refusal decisions*

- 12 (1) An IC review application in relation to a decision covered by  
13 subsection 54L(2) (access refusal decisions) must be made within  
14 60 days after the day notice of the IC reviewable decision was  
15 given under section 26.

16 *Access grant decisions*

- 17 (2) An IC review application in relation to a decision covered by  
18 subsection 54M(2) (access grant decisions) must be made within  
19 30 days after:
- 20 (a) if a decision is made on internal review of the decision—the  
21 day notice of the decision under section 54C was given to the  
22 affected third party for the document in relation to which the  
23 decision is made; or
- 24 (b) otherwise—the day notice under section 26A, 27 or 27A was  
25 given to the affected third party for the document in relation  
26 to which the decision was made.

27 Note: For *affected third party*, see section 53C.

1 **54T IC review applications—extension of time**

2 *Application for extension of time*

- 3 (1) A person may apply to the Information Commissioner for an  
4 extension of time for making an IC review application.
- 5 (2) The Information Commissioner may extend the time if the  
6 Information Commissioner is satisfied that it is reasonable in all  
7 the circumstances to do so.
- 8 (3) The time for making an IC review application may be extended  
9 under this section although the period mentioned in section 54S has  
10 ended.

11 *Requirement to notify*

- 12 (4) Before determining an application under subsection (1), the  
13 Information Commissioner may require the IC review applicant to  
14 give notice of the application to a specified person or persons that  
15 the Information Commissioner considers is affected by the  
16 application.

17 *Person may oppose application*

- 18 (5) A person to whom notice is given under subsection (4) may notify  
19 the Information Commissioner in writing that he or she opposes the  
20 application under subsection (1). The person must do so within the  
21 time required by the Information Commissioner.

22 *Reasonable opportunity to be heard*

- 23 (6) If notice is given under subsection (5), the Information  
24 Commissioner must give the IC review applicant and the person to  
25 whom notice has been given under subsection (4) a reasonable  
26 opportunity to present their cases before determining the  
27 application under subsection (1).

1 **Division 5—Decision to review**

2 **54U Decision to review—interpretation**

3 This Division applies to a part of an IC review application as if a  
4 reference to an IC review application were a reference to the part  
5 of the IC review application.

6 **54V Decision to review—preliminary inquiries**

7 The Information Commissioner may make inquiries of the review  
8 parties for the purpose of determining whether or not to undertake  
9 an IC review.

10 **54W Decision to review—discretion not to review**

11 The Information Commissioner may decide not to undertake an IC  
12 review, or not to continue to undertake an IC review, if:

13 (a) the Information Commissioner is satisfied of any of the  
14 following:

15 (i) the IC review application is frivolous, vexatious,  
16 misconceived, lacking in substance or not made in good  
17 faith;

18 (ii) the IC review applicant has failed to cooperate in  
19 progressing the IC review application, or the IC review,  
20 without reasonable excuse;

21 (iii) the Information Commissioner cannot contact the IC  
22 review applicant after making reasonable attempts; or

23 (b) the Information Commissioner is satisfied that the interests of  
24 the administration of this Act make it desirable that the IC  
25 reviewable decision be considered by the Tribunal; or

26 (c) the IC review applicant fails to comply with a direction of the  
27 Information Commissioner.

28 Note 1: The Information Commissioner may make a decision under this  
29 section to review only part of an IC reviewable decision (see  
30 section 54U).

31 Note 2: If the Information Commissioner makes a decision under  
32 paragraph (b), an application for review may be made to the Tribunal  
33 for review of the IC reviewable decision (see section 57A).

34 Note 3: Division 1 of Part VIII sets out the circumstances in which a vexatious  
35 applicant declaration may be made in relation to a person. A



1 declaration may permit the Information Commissioner to refuse to  
2 consider an IC review application if the person makes the IC review  
3 application under this section without the written permission of the  
4 Information Commissioner.

5 **54X Decision to review—notice requirement if discretion not to**  
6 **review exercised**

7 (1) This section applies if the Information Commissioner decides not  
8 to undertake an IC review, or not to continue to undertake an IC  
9 review.

10 (2) The Information Commissioner must, as soon as practicable, notify  
11 the review parties of the decision in writing.

12 (3) The notice must:

13 (a) state the reasons for the Information Commissioner's  
14 decision; and

15 (b) if the Information Commissioner makes a decision under  
16 paragraph 54W(b)—state that an application for review of  
17 the relevant IC reviewable decision may be made to the  
18 Tribunal under section 57A.

19 Note: Subsection 29(2) of the *Administrative Appeals Tribunal Act 1975* sets  
20 out the time within which the application for review must be made.

21 (4) However, the notice must not include:

22 (a) exempt matter; or

23 (b) information of the kind referred to in subsection 25(1).

24 Note: Subsection 25(1) deals with information about the existence or  
25 otherwise of certain documents.

26 **54Y Decision to review—actual decisions made after IC review has**  
27 **commenced**

28 (1) This section applies if:

29 (a) an agency or Minister has been taken to have made a decision  
30 (the *deemed decision*) under subsection 15AC(3), 51DA(2)  
31 or 54D(2); and

32 (b) a person makes an IC review application for review of the  
33 deemed decision; and

- 1 (c) the Information Commissioner has not made a decision under  
2 section 54W (decision not to review) or 55K (decision on  
3 review) in relation to the deemed decision; and  
4 (d) subsection 15AC(7), 51DA(6) or 54D(6) applies in relation  
5 to a decision (the *actual decision*) made by the agency or  
6 Minister.

- 7 (2) The Information Commissioner must deal with the IC review  
8 application for review of the deemed decision as if it were an IC  
9 review application for the review of the actual decision, subject  
10 otherwise to this Part.

11 Note: When making the actual decision, a consultation requirement under  
12 section 26A (documents affecting Commonwealth-State relations), 27  
13 (business documents) or 27A (documents affecting personal privacy)  
14 may apply.

## 15 **Division 6—Procedure in IC review**

### 16 **54Z Procedure in IC review—general notice requirement**

17 Before undertaking an IC review, the Information Commissioner  
18 must inform:

- 19 (a) the person, agency or Minister who made the decision; or  
20 (b) if the IC review application is made under section 54M  
21 (access grant decisions)—the person who made the request.

### 22 **55 Procedure in IC review—general**

- 23 (1) The Information Commissioner may, for the purposes of an IC  
24 review, review an IC reviewable decision by considering the  
25 documents or other material lodged with or provided to the  
26 Information Commissioner, and without holding a hearing, if:  
27 (a) it appears to the Information Commissioner that the issues for  
28 determination on the IC review can be adequately determined  
29 in the absence of the review parties; and  
30 (b) the Information Commissioner is satisfied that there are no  
31 unusual circumstances that would warrant the Information  
32 Commissioner holding a hearing; and  
33 (c) none of the review parties have applied for a hearing under  
34 section 55B.
- 35 (2) The Information Commissioner may otherwise:
-

- 1 (a) conduct an IC review in whatever way he or she considers  
2 appropriate; and  
3 (b) use any technique that the Information Commissioner  
4 considers appropriate to facilitate an agreed resolution of  
5 matters at issue in the IC review (for example by using  
6 techniques that are used in alternative dispute resolution  
7 processes); and  
8 (c) allow a person to participate in an IC review by any means of  
9 communication; and  
10 (d) obtain any information from any person, and make any  
11 inquiries, that he or she considers appropriate; and  
12 (e) give written directions as to the procedure to be followed in  
13 relation to:  
14 (i) IC reviews generally; or  
15 (ii) a particular IC review.

16 Example 1: The Information Commissioner may allow a person under  
17 paragraph (2)(c) to participate in a hearing by telephone.

18 Example 2: The Information Commissioner may give written directions under  
19 subparagraph (2)(e)(ii) as to the procedure to be followed when  
20 dealing with confidential documents in a particular IC review.

- 21 (3) A direction given under paragraph (2)(e) is not a legislative  
22 instrument.
- 23 (4) Without limiting subsection (2), the Information Commissioner  
24 must, in relation to an IC review:  
25 (a) conduct the IC review with as little formality and as little  
26 technicality as is possible given:  
27 (i) the requirements of this Act; and  
28 (ii) the requirements of any other law; and  
29 (iii) a proper consideration of the matters before the  
30 Information Commissioner; and  
31 (b) ensure that each review party is given a reasonable  
32 opportunity to present his or her case; and  
33 (c) conduct the IC review in as timely a manner as is possible  
34 given the matters mentioned in subparagraphs (a)(i) to (iii).
- 35 (5) If the Information Commissioner holds a hearing, the Information  
36 Commissioner:  
37 (a) must hold the hearing in public, unless the Information  
38 Commissioner is satisfied that it is not desirable to do so:

- 1 (i) because of the confidential nature of any evidence or  
2 matter relating to the proceeding; or  
3 (ii) for any other reason; and  
4 (b) is not bound by the rules of evidence; and  
5 (c) may hold a part of the hearing in the absence of a review  
6 party (or a review party's representative) if it is necessary to  
7 do so to prevent disclosure to the review party (or the review  
8 party's representative) of any evidence or matter relating to  
9 the proceeding that is of a confidential nature.

## 10 **55A Procedure in IC review—parties to proceeding**

11 *Who are the review parties?*

- 12 (1) The parties to an IC review (the *review parties*) are as follows:  
13 (a) the IC review applicant;  
14 (b) the principal officer of the agency, or the Minister, to whom  
15 the request was made;  
16 (c) an affected third party (if any) required to be notified of the  
17 IC review application under section 54P (requirement to  
18 notify affected third parties);  
19 (d) a party to the proceeding under subsection (3).

20 Note: For *affected third party*, see section 53C.

21 *Application to become a review party*

- 22 (2) If an IC review application is made in relation to an IC reviewable  
23 decision, a person whose interests are affected by the IC  
24 reviewable decision may apply, in writing, to the Information  
25 Commissioner to be a review party.  
26 (3) The Information Commissioner may, by notice in writing, make a  
27 person who applies under subsection (2) an IC review party.

## 28 **55B Procedure in IC review—application for hearing**

- 29 (1) At any time during an IC review, a review party may apply to the  
30 Information Commissioner requesting that the Information  
31 Commissioner hold a hearing for the purposes of the IC review.  
32 (2) The Information Commissioner must notify the other review  
33 parties of the application.

- 1 (3) The Information Commissioner must:  
2 (a) give all review parties a reasonable opportunity to make  
3 submissions on the application; and  
4 (b) decide whether or not to hold a hearing.

5 **55C Procedure in IC review—representation**

- 6 At the hearing of a proceeding before the Information  
7 Commissioner, a review party may:  
8 (a) appear in person; or  
9 (b) be represented by another person.

10 **55D Procedure in IC review—onus**

- 11 (1) Subject to subsection (2), in an IC review in relation to a request or  
12 an application under section 48, the agency or Minister concerned  
13 has the onus of establishing that:  
14 (a) a decision given in respect of the request or application is  
15 justified; or  
16 (b) the Information Commissioner should give a decision  
17 adverse to the IC review applicant.
- 18 (2) In an IC review of a decision for which an IC review application is  
19 made under section 54M (access grant decisions), the affected third  
20 party for the document in relation to which the decision was made  
21 has the onus of establishing that:  
22 (a) a decision refusing the request is justified; or  
23 (b) the Information Commissioner should give a decision  
24 adverse to the person who made the request.

25 Note: For *affected third party*, see section 53C.

26 **55E Procedure in IC review—inadequate reasons from decision**  
27 **maker**

- 28 (1) This section applies if:  
29 (a) an IC review application is made in relation to an IC  
30 reviewable decision made by an agency or a Minister; and  
31 (b) the agency or Minister was required to provide a statement of  
32 reasons under section 26 for the decision to the person who  
33 made the request; and

- 1 (c) the Information Commissioner believes that:  
2 (i) no statement has been provided; or  
3 (ii) the statement that has been provided is inadequate.
- 4 (2) The Information Commissioner may, by notice in writing, require  
5 the agency or Minister to provide an adequate statement of reasons  
6 as mentioned in subsection 26(1).
- 7 (3) If the Information Commissioner gives notice under subsection (2),  
8 the agency or Minister must provide the adequate statement of  
9 reasons to the IC review applicant and the Information  
10 Commissioner within:  
11 (a) the period specified in the notice; or  
12 (b) if no period is specified in the notice—28 days after the day  
13 the notice was given to the agency or Minister.

14 **55F Procedure in IC review—review parties reach agreement**

- 15 (1) This section applies if, at any stage of an IC review:  
16 (a) the review parties reach agreement as to the terms of a  
17 decision on an IC review:  
18 (i) on the IC review application; or  
19 (ii) in relation to a part of the IC review application; or  
20 (iii) in relation to a matter arising out of the IC review  
21 application; and  
22 (b) the agreement is acceptable to all of the review parties; and  
23 (c) the terms of the agreement are reduced to writing, signed by,  
24 or on behalf of, the review parties and given to the  
25 Information Commissioner; and  
26 (d) the Information Commissioner is satisfied that a decision in  
27 those terms or consistent with those terms would be within  
28 the powers of the Information Commissioner.
- 29 (2) The Information Commissioner may, if satisfied that it is  
30 appropriate:  
31 (a) in the case of an agreement as to the terms of a decision of  
32 the Information Commissioner on the IC review—make a  
33 decision in accordance with those terms without completing  
34 the IC review; or  
35 (b) in the case of an agreement that relates to a part of the  
36 proceeding or a matter arising out of the proceeding—in the

1 Information Commissioner's decision on the IC review, give  
2 effect to the terms of the agreement without completing the  
3 IC review with respect to the part.

4 **55G Procedure in IC review—revocation or variation of access**  
5 **refusal decision**

- 6 (1) An agency or Minister may vary (or set aside and substitute) an  
7 access refusal decision (the *original decision*) in relation to a  
8 request or an application under section 48 at any time during an IC  
9 review of the access refusal decision if the variation or substitution  
10 (the *revised decision*) would have an effect of:  
11 (a) giving access to a document in accordance with the request;  
12 or  
13 (b) relieving the IC review applicant from liability to pay a  
14 charge; or  
15 (c) requiring a record of personal information to be amended or  
16 annotated in accordance with the application.

17 Note: When making the revised decision, a consultation requirement under  
18 section 26A (documents affecting Commonwealth-State relations), 27  
19 (business documents) or 27A (documents affecting personal privacy)  
20 may apply.

- 21 (2) If an agency or Minister varies (or sets aside and substitutes) an  
22 access refusal decision under subsection (1):  
23 (a) the agency or Minister must, in writing, notify the  
24 Information Commissioner as soon as practicable after the  
25 agency or Minister makes the variation or substitution; and  
26 (b) the Information Commissioner must deal with the IC review  
27 application for review of the original decision as if it were an  
28 IC review application for the review of the varied or  
29 substituted decision, subject otherwise to this Part.

30 **55H Procedure in IC review—reference of questions of law to**  
31 **Federal Court of Australia**

- 32 (1) The Information Commissioner may, at any time during an IC  
33 review, refer a question of law arising in an IC review to the  
34 Federal Court of Australia for decision.  
35 (2) The Information Commissioner may refer the question of law:  
36 (a) on the application of a review party; or

- 1 (b) on the Information Commissioner's initiative.
- 2 (3) The Federal Court of Australia has jurisdiction to hear and  
3 determine a question of law referred to it.
- 4 (4) The jurisdiction of the Federal Court of Australia may be exercised  
5 by a single judge of the Court.
- 6 (5) If a question of law is referred, the Information Commissioner  
7 must not, for the purposes of the IC review:
- 8 (a) give a decision to which the question is relevant before the  
9 Federal Court of Australia makes a decision in relation to the  
10 reference; or
- 11 (b) proceed in a manner, or make a decision, that is inconsistent  
12 with the opinion of the Federal Court of Australia on the  
13 question.

14 **55J Procedure in IC review—sending of documents to, and**  
15 **disclosure of documents by, the Federal Court of**  
16 **Australia**

17 If a question of law is referred under section 55H:

- 18 (a) the Information Commissioner must cause all documents and  
19 information in the possession of the Information  
20 Commissioner that relate to the IC review and to the  
21 reference to be sent to the Federal Court of Australia; and
- 22 (b) at the conclusion of the proceeding before the Federal Court  
23 of Australia, the Court must cause the documents to be  
24 returned to the Information Commissioner.

25 **Division 7—Decision on IC review**

26 **55K Decision on IC review—decision of Information Commissioner**

- 27 (1) After undertaking an IC review, the Information Commissioner  
28 must make a decision in writing:
- 29 (a) affirming the IC reviewable decision; or  
30 (b) varying the IC reviewable decision; or  
31 (c) setting aside the IC reviewable decision and making a  
32 decision in substitution for that decision.



1 (2) For the purposes of implementing a decision on an IC review, the  
2 Information Commissioner may perform the functions, and  
3 exercise the powers, of the person who made the IC reviewable  
4 decision.

5 (3) A decision of the Information Commissioner on an IC review has  
6 the same effect as a decision of the agency or Minister who made  
7 the IC reviewable decision.

8 *Content of the decision*

9 (4) A decision on an IC review must include the following:  
10 (a) a statement of reasons for the decision;  
11 (b) a statement of the rights of the review parties to apply to the  
12 Tribunal for review of the decision under section 57A.

13 (5) However, a decision on an IC review must not include:  
14 (a) information of the kind referred to in subsection 25(1); or  
15 (b) exempt matter.

16 Note: Subsection 25(1) deals with information about the existence or  
17 otherwise of certain documents.

18 *Providing copy of decision*

19 (6) The Information Commissioner must give a copy of a decision on  
20 an IC review to each review party.

21 *Copy of decision prima facie evidence*

22 (7) A document is prima facie evidence of a decision on an IC review  
23 if:  
24 (a) the document purports to be a copy of the decision; and  
25 (b) the document purports to be certified by, or on behalf of, the  
26 Information Commissioner to be a true copy of the decision.

27 *Publication requirement*

28 (8) The Information Commissioner must publish a decision on an IC  
29 review to members of the public generally.

1       **55L Decision on IC review—no power to give access to exempt**  
2                                   **documents**

- 3                   (1) This section applies if it is established in proceedings on an IC  
4                   review that a document is an exempt document.
- 5                   (2) The Information Commissioner does not have power to decide that  
6                   access to the document is to be given, so far as it contains exempt  
7                   matter.

8       **55M Decision on IC review—limitation on amending records**

- 9                   (1) The Information Commissioner may, in a decision under  
10                   section 55K, make a decision that requires, or has the effect of  
11                   requiring, that an amendment be made to a record that relates to a  
12                   record of an opinion only if he or she is satisfied of either (or both)  
13                   of the following:
- 14                   (a) the opinion was based on a mistake of fact;  
15                   (b) the author of the opinion was biased, unqualified to form the  
16                   opinion or acted improperly in conducting the factual  
17                   inquiries that led to the formation of the opinion.
- 18                   (2) The Information Commissioner must not, in a decision under  
19                   section 55K, make a decision that requires, or has the effect of  
20                   requiring, that an amendment be made to a record if he or she is  
21                   satisfied of either of the following:
- 22                   (a) the record is a record of a decision, under an enactment, by a  
23                   court, tribunal, authority or person;  
24                   (b) the decision whether to amend the record involves the  
25                   determination of a question that the person seeking  
26                   amendment of the record is, or has been, entitled to have  
27                   determined by the agency (on internal review), the  
28                   Information Commissioner, a court or tribunal.

29       **55N Decision on IC review—obligation to comply with decision**

30                   A principal officer of an agency or a Minister must comply with a  
31                   decision of the Information Commissioner under section 55K on an  
32                   IC review.

1 **55P Decision on IC review—enforcement of decision against agency**

- 2 (1) If the principal officer of an agency or a Minister fails to comply  
3 with section 55N, an application may be made to the Federal Court  
4 of Australia for an order directing the principal officer or Minister  
5 to comply.
- 6 (2) The application may be made by:  
7 (a) the Information Commissioner; or  
8 (b) the IC review applicant.
- 9 (3) The court may make any other orders that it thinks fit to secure  
10 compliance by the principal officer or the Minister.
- 11 (4) An application under subsection (1) may only be made if:  
12 (a) the time has ended for making an application to the Tribunal  
13 under section 57A for review of the Information  
14 Commissioner's decision; and  
15 (b) such an application is not made before the end of the time.

16 **55Q Decision on IC review—correction of errors**

- 17 (1) The Information Commissioner may correct an obvious error in a  
18 decision under section 55K of the Information Commissioner on an  
19 IC review.
- 20 Example: The following are examples of obvious errors:  
21 (a) an obvious clerical or typographical error in the text of the  
22 decision or statement of reasons;  
23 (b) an inconsistency between the decision and the statement of  
24 reasons.
- 25 (2) The Information Commissioner may correct an obvious error:  
26 (a) on an application by a review party; or  
27 (b) on the Information Commissioner's initiative.

1 **Division 8—Information gathering powers**

2 **55R Information gathering powers—obliging production of**  
3 **information and documents**

4 *Scope*

- 5 (1) This section applies if the Information Commissioner has reason to  
6 believe that a person has information, or a document, relevant to an  
7 IC review.
- 8 (2) This section applies subject to sections 55T (exempt documents  
9 generally) and 55U (particular exempt documents).

10 *Notice to produce*

- 11 (3) The Information Commissioner may, by written notice, require a  
12 person to, for the purposes of an IC review:
- 13 (a) give the Information Commissioner information of a kind  
14 specified by the notice; or
- 15 (b) produce to the Information Commissioner a document  
16 specified by the notice.
- 17 (4) The notice must:
- 18 (a) be in writing; and
- 19 (b) specify the place at which the person must comply with the  
20 notice; and
- 21 (c) state that the person must comply with the notice:
- 22 (i) within a specified period that is not less than 14 days  
23 after the day on which the person is given the notice; or
- 24 (ii) at a specified time that is not less than 14 days after the  
25 time at which the person is given the notice.

26 *Offence for failure to comply*

- 27 (5) A person commits an offence if:
- 28 (a) the person is subject to a requirement specified in a notice  
29 under subsection (3); and
- 30 (b) the person engages in conduct; and
- 31 (c) the person's conduct breaches the requirement.

1 Penalty for a contravention of this subsection: Imprisonment for 6  
2 months.

3 Note: Chapter 2 of the *Criminal Code* sets out the general principles of  
4 criminal responsibility.

5 **55S Information gathering powers—dealings with documents**

6 *What the Information Commissioner may do with documents*

7 (1) The Information Commissioner may do any of the following in  
8 relation to any documents produced in accordance with a notice  
9 under subsection 55R(3):

- 10 (a) take possession of the documents;  
11 (b) make copies of the documents;  
12 (c) take extracts from the documents;  
13 (d) hold the documents for a period that is necessary for the  
14 purposes of the IC review.

15 *Information Commissioner must permit access by those entitled*

16 (2) For the purposes of an IC review, the Information Commissioner  
17 must permit a person to inspect a document that the person would  
18 be entitled to inspect if the document were not held by the  
19 Information Commissioner.

20 (3) The Information Commissioner must permit the person to inspect  
21 the document at any reasonable time.

22 **55T Information gathering powers—production of exempt  
23 documents generally**

24 *Scope*

25 (1) This section applies to an IC review of a decision in relation to a  
26 document if:

- 27 (a) the principal officer of an agency or a Minister claims that  
28 the document is an exempt document; and  
29 (b) section 55U does not apply to the document.

30 Note: Section 55U deals with the production of documents that are claimed  
31 to be exempt documents under section 33 (national security etc.) or 34  
32 (Cabinet documents).

1                                    *Exempt document produced under obligation*

2                                    (2) The Information Commissioner may, for the purposes of deciding  
3                                    whether the document is an exempt document, require the  
4                                    document to be produced.

5                                    (3) If the Information Commissioner is satisfied that the document is  
6                                    an exempt document, the Information Commissioner must return  
7                                    the document to the person by whom it was produced.

8                                    *Production to determine whether access can be given to part of*  
9                                    *document*

10                                   (4) The Information Commissioner may require the production of an  
11                                   exempt document for the purpose of determining whether it is  
12                                   practicable for an agency or a Minister to give access to an edited  
13                                   copy of the document.

14                                   (5) If the document is produced to the Information Commissioner  
15                                   (whether under this section or voluntarily), only the following  
16                                   persons may have access to the document, or to the contents of the  
17                                   document:

18                                        (a) the Information Commissioner;

19                                        (b) a member of the staff of the Information Commissioner in the  
20                                        course of the performance of his or her duties as a member of  
21                                        that staff.

22                                   **55U Information gathering powers—production of national security**  
23                                   **and cabinet documents**

24                                   (1) This section applies to an IC review of a decision in relation to a  
25                                   document that is claimed to be an exempt document under  
26                                   section 33 (national security documents) or 34 (cabinet  
27                                   documents).

28                                   (2) The Information Commissioner may only require the production of  
29                                   the document in accordance with this section.

30                                   (3) If the Information Commissioner is not satisfied by evidence on  
31                                   affidavit or otherwise that the document is an exempt document  
32                                   under section 33 or 34, the Information Commissioner may require  
33                                   the document to be produced for inspection by the Information  
34                                   Commissioner.

- 1 (4) If the Information Commissioner is satisfied that the document is  
2 an exempt document, the Information Commissioner must return  
3 the document to the person by whom it was produced without  
4 permitting a person to have access to the document or disclosing  
5 the contents of the document to a person, unless the person is:  
6 (a) the Information Commissioner; or  
7 (b) a member of the staff of the Information Commissioner in the  
8 course of the performance of his or her duties as a member of  
9 that staff; or  
10 (c) in the circumstances permitted under paragraph  
11 55ZD(3)(a)—the Inspector-General of Intelligence and  
12 Security.

13 **55V Information gathering powers—further searches for a**  
14 **document**

- 15 (1) This section applies to an IC review in relation to a request for  
16 access to a document if:  
17 (a) access to the document is refused under section 24A  
18 (document cannot be found etc.); or  
19 (b) access is purportedly given to the document (amongst others  
20 to which the request relates), but is not actually given.  
21 (2) The Information Commissioner may require the agency or Minister  
22 concerned to conduct further searches for the document.

23 **55W Information gathering powers—obliging persons to appear**

24 *Notice to appear*

- 25 (1) The Information Commissioner may, by written notice, require a  
26 person to appear before the Information Commissioner to answer  
27 questions for the purposes of an IC review.  
28 (2) The notice must:  
29 (a) be in writing; and  
30 (b) state that the person must comply with the notice at a  
31 specified time that is not less than 14 days after the time at  
32 which the person is given the notice; and  
33 (c) specify the place at which the person must comply with the  
34 notice.

*Offence for failure to comply*

- (3) A person commits an offence if:
- (a) the person is subject to a requirement specified in a notice under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty for a contravention of this subsection: 6 months imprisonment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**55X Information gathering powers—administration of oath or affirmation**

- (1) If, by a notice under subsection 55W(1), the Information Commissioner requires a person to appear before him or her, the Information Commissioner may:
- (a) administer an oath or affirmation to the person; and
  - (b) examine the person on oath or affirmation.
- (2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.
- (3) A person commits an offence if:
- (a) the person is required under this section to be examined on oath or affirmation; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches that requirement.

Penalty for a contravention of this subsection: 6 months imprisonment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.



1 **55Y Information gathering powers—no loss of legal professional**  
2 **privilege**

3 Information or a document does not cease to be the subject of legal  
4 professional privilege merely because it is given, provided,  
5 produced or referred to for the purposes of this Part.

6 **55Z Information gathering powers—protection from liability**

- 7 (1) This section applies if a person does any of the following in good  
8 faith for the purposes of an IC review:
- 9 (a) gives information;
  - 10 (b) produces a document;
  - 11 (c) answers a question.
- 12 (2) If this section applies, then:
- 13 (a) civil proceedings do not lie against a person because the  
14 person does any of the matters mentioned in  
15 paragraphs (1)(a) to (c); and
  - 16 (b) the person is not liable for a penalty under a provision of any  
17 law because the person does any of those matters.
- 18 (3) This section applies whether or not the person is required to do a  
19 thing mentioned in subsection (1) in accordance with this Division.

20 **Division 9—Evidence by Inspector-General of Intelligence**  
21 **and Security**

22 **55ZA Evidence by Inspector-General of Intelligence and Security—**  
23 **scope**

24 This Division applies in an IC review of a decision in relation to a  
25 document that is claimed to be an exempt document under  
26 section 33 (national security documents).

27 **55ZB Evidence by Inspector-General of Intelligence and Security—**  
28 **request to give evidence**

- 29 (1) Before determining that a document is not an exempt document  
30 under section 33, the Information Commissioner must request the

- 1 Inspector-General of Intelligence and Security to appear personally  
2 and give evidence on:
- 3 (a) the damage that would, or could reasonably be expected to,  
4 be caused to:
- 5 (i) the security of the Commonwealth; or  
6 (ii) the defence of the Commonwealth; or  
7 (iii) the international relations of the Commonwealth;  
8 if access to the document were given in accordance with the  
9 request; or
- 10 (b) whether giving access to the document in accordance with  
11 the request would divulge any information or matter  
12 communicated in confidence by, or on behalf of, a foreign  
13 government, an authority of a foreign government or an  
14 international organisation to the Government of the  
15 Commonwealth, to an authority of the Commonwealth or to a  
16 person receiving the communication on behalf of the  
17 Commonwealth or of an authority of the Commonwealth.
- 18 (2) Before determining that an agency or Minister must grant access to  
19 a copy of the document with deletions, the Information  
20 Commissioner must request the Inspector-General to appear  
21 personally and give evidence on:
- 22 (a) the damage that would, or could reasonably be expected to,  
23 be caused to:
- 24 (i) the security of the Commonwealth; or  
25 (ii) the defence of the Commonwealth; or  
26 (iii) the international relations of the Commonwealth;  
27 if the proposed deletions were not made; or
- 28 (b) whether giving access to the document without the proposed  
29 deletions would divulge any information or matter  
30 communicated in confidence by, or on behalf of, a foreign  
31 government, an authority of a foreign government or an  
32 international organisation to the Government of the  
33 Commonwealth, to an authority of the Commonwealth or to a  
34 person receiving the communication on behalf of the  
35 Commonwealth or of an authority of the Commonwealth.
- 36 (3) Before hearing the evidence of the Inspector-General, the  
37 Information Commissioner must hear any evidence to be given or  
38 submissions to be made by, or on behalf of, the agency to which, or

1 the Minister to whom, the request was made for access to the  
2 document.

3 (4) The Information Commissioner is not bound by any opinion of the  
4 Inspector-General expressed while giving evidence under this  
5 Division.

6 **55ZC Evidence by Inspector-General of Intelligence and Security—**  
7 **compliance with request**

8 The Inspector-General of Intelligence and Security must comply  
9 with a request under section 55ZB unless, in the opinion of the  
10 Inspector-General, the Inspector-General is not appropriately  
11 qualified to give evidence on the matters in relation to which the  
12 Inspector-General has been requested to give evidence.

13 **55ZD Evidence by Inspector-General of Intelligence and Security—**  
14 **procedural matters**

15 (1) This section applies for the purposes of enabling the  
16 Inspector-General of Intelligence and Security to comply with a  
17 request under section 55ZB.

18 (2) The Information Commissioner must allow the Inspector-General  
19 to take possession of, and make copies of or take extracts from, any  
20 document given to the Information Commissioner for the purposes  
21 of the proceeding.

22 (3) The Inspector-General may require the production of the  
23 following:

24 (a) the document that is claimed to be an exempt document  
25 under section 33 by the agency to which or the Minister to  
26 whom the request was made for access to the document;

27 (b) any document of an agency or official document of a  
28 Minister that relates to the document mentioned in  
29 subsection (2) by the agency or Minister.

30 (4) The Inspector-General may make copies of, or take extracts from,  
31 the documents mentioned in subsection (3).

32 (5) After the period that is reasonably necessary for the purposes of  
33 giving evidence to the Information Commissioner, the  
34 Inspector-General must:

- 1 (a) return the original of any document to the Information  
2 Commissioner or to the agency or Minister; and  
3 (b) destroy any copies of or extracts taken from any document.
- 4 (6) The Inspector-General must permit a person to inspect a document  
5 that the person would be entitled to inspect if the document were  
6 not held by the Inspector-General.
- 7 (7) The Inspector-General must permit the person to inspect the  
8 document at all reasonable times.
- 9 (8) The Information Commissioner must allow the Inspector-General a  
10 period within which to consider the documents mentioned in  
11 subsections (2) to (4) that is reasonable having regard to:  
12 (a) the nature of the evidence that the Inspector-General has been  
13 requested to give; and  
14 (b) the time required by the Inspector-General to perform the  
15 Inspector-General's other functions.

## 16 **Division 10—Appeals**

### 17 **56 Appeals—appeals to Federal Court of Australia on questions of** 18 **law**

- 19 (1) A review party may appeal to the Federal Court of Australia, on a  
20 question of law, from a decision of the Information Commissioner  
21 on an IC review.
- 22 (2) An appeal under this section must be instituted:  
23 (a) either:  
24 (i) not later than 28 days after the day a decision under  
25 section 55K of the Information Commissioner on an IC  
26 review is given to the review party; or  
27 (ii) within the further time that the Federal Court of  
28 Australia allows; and  
29 (b) in any way that is prescribed by rules of court made under the  
30 *Federal Court of Australia Act 1976*.
- 31 (3) The Federal Court of Australia has jurisdiction to hear and  
32 determine appeals instituted under this section.

- 1 (4) The jurisdiction of the Federal Court of Australia under  
2 subsection (3) includes jurisdiction to make findings of fact under  
3 section 56A.
- 4 (5) The Federal Court of Australia:  
5 (a) must hear and determine the appeal; and  
6 (b) may make any order or orders that it thinks appropriate by  
7 reason of its decision.
- 8 (6) Without limiting subsection (5), the orders that the Federal Court  
9 of Australia may make include the following:  
10 (a) an order affirming the decision of the Information  
11 Commissioner;  
12 (b) an order setting aside the decision of the Information  
13 Commissioner and making a decision in substitution for the  
14 decision;  
15 (c) an order remitting the case to be considered and decided  
16 again by the Information Commissioner in accordance with  
17 the directions of the Court:  
18 (i) with or without the holding of a hearing; and  
19 (ii) with or without the hearing of further evidence.

#### 20 **56A Appeals—Federal Court of Australia may make findings of fact**

- 21 (1) If a review party appeals to the Federal Court of Australia under  
22 section 56, the Court may make findings of fact if:  
23 (a) the findings of fact are not inconsistent with findings of fact  
24 made by the Information Commissioner (other than findings  
25 made by the Information Commissioner as the result of an  
26 error of law); and  
27 (b) it appears to the Court that it is convenient for the Court to  
28 make the findings of fact, having regard to all of the  
29 following:  
30 (i) the extent (if any) to which it is necessary for facts to be  
31 found;  
32 (ii) the means by which those facts might be established;  
33 (iii) the expeditious and efficient resolution of the whole of  
34 the matter to which the IC review relates;

- 1 (iv) the relative expense to the parties of the Court, rather  
2 than the Information Commissioner, making the  
3 findings of fact;
- 4 (v) the relative delay to the parties of the Court, rather than  
5 the Information Commissioner, making the findings of  
6 fact;
- 7 (vi) whether any of the parties considers that it is  
8 appropriate for the Court, rather than the Information  
9 Commissioner, to make the findings of fact;
- 10 (vii) such other matters (if any) as the Court considers  
11 relevant.
- 12 (2) For the purposes of making findings of fact under subsection (1),  
13 the Federal Court of Australia may:
- 14 (a) have regard to the evidence given in the IC review; and  
15 (b) receive further evidence.
- 16 (3) Subsection (2) does not limit the Federal Court of Australia's  
17 power under subsection 56(6) to make an order remitting the case  
18 to be heard and decided again by the Information Commissioner.

## 19 **Part VIIA—Review by the Tribunal**

### 20 **Division 1—Guide to this Part**

#### 21 **57 Review by the Tribunal—guide**

22 An application may be made to the Administrative Appeals  
23 Tribunal for the review of certain decisions (see section 57A).

24 Division 3 sets out the powers of the Tribunal in a review.

25 Division 4 deals with the procedure to be followed in a review by  
26 the Tribunal.

27 Division 5 deals with ensuring that exempt matter that comes  
28 before the Tribunal is protected from disclosure.

29 Division 6 deals with the circumstances in which the Tribunal may  
30 make recommendations as to costs.

1 Division 7 deals with the stay of decisions pending appeal to the  
2 Federal Court of Australia.

## 3 **Division 2—Tribunal reviewable decisions**

### 4 **57A Tribunal reviewable decisions—which decisions are** 5 **reviewable?**

6 An application may be made to the Tribunal for review of the  
7 following decisions:

- 8 (a) a decision of the Information Commissioner under  
9 section 55K on an IC review;
- 10 (b) if the Information Commissioner makes a decision under  
11 paragraph 54W(b) (matters inappropriate for IC review)—the  
12 IC reviewable decision in relation to which the Information  
13 Commissioner makes the decision.

14 Note 1: An application for the review of a decision may be made by a person  
15 whose interests are affected by the decision (see section 27 of the  
16 *Administrative Appeals Tribunal Act 1975*).

17 Note 2: Subsection 29(2) of the *Administrative Appeals Tribunal Act 1975* sets  
18 out the time within which the application for review must be made.

## 19 **Division 3—Powers of Tribunal**

### 20 **35 Subsection 58(7)**

21 Repeal the subsection.

### 22 **36 After section 58**

23 Insert:

### 24 **58A Powers of Tribunal—requiring further searches**

- 25 (1) This section applies to a review on an application to the Tribunal  
26 under section 57A if:
- 27 (a) access to the document is refused under section 24A  
28 (document cannot be found etc.); or
- 29 (b) access is purportedly given to the document (amongst others  
30 to which the request relates), but is not actually given.

- 1 (2) For the purposes of the review, the Tribunal may require the  
2 agency or Minister concerned to conduct further searches for the  
3 document.

4 **58AA Powers of Tribunal—limitation on amending records**

- 5 (1) The Tribunal may, in a decision on an application to the Tribunal  
6 under section 57A, make a decision that requires, or that has the  
7 effect of requiring, that an amendment be made to a record that  
8 relates to a record of an opinion only if the Tribunal is satisfied of  
9 either (or both) of the following:  
10 (a) the opinion was based on a mistake of fact;  
11 (b) the author of the opinion was biased, unqualified to form the  
12 opinion or acted improperly in conducting the factual  
13 inquiries that led to the formation of the opinion.
- 14 (2) The Tribunal must not, in a decision on an application under  
15 section 57A, make a decision that requires, or that has the effect of  
16 requiring, that an amendment be made to a record if it is satisfied  
17 of either of the following:  
18 (a) the record is a record of a decision, under an enactment, by a  
19 court, tribunal, authority or person;  
20 (b) the decision whether to amend the record involves the  
21 determination of a question that the person seeking  
22 amendment of the record is, or has been, entitled to have  
23 determined by the agency (on internal review), the  
24 Information Commissioner, a court or tribunal.

25 **37 Before section 58B**

26 Insert:

27 **Division 4—Procedure in Tribunal**

28 **38 Subsection 58B(1)**

29 Omit “the review of a decision”, substitute “review in relation to a  
30 decision”.

31 **39 Section 58D**

32 After “of the majority”, insert:



1 ; and (c) in a case where 3 of those members are Deputy Presidents—  
2 be decided according to the opinion of the majority.

3 **40 Sections 58F, 59 and 59A**

4 Repeal the sections.

5 **41 Section 60**

6 Repeal the section, substitute:

7 **60 Procedure in Tribunal—parties**

8 (1) This section applies for the purposes of this Part and of the  
9 application of the *Administrative Appeals Tribunal Act 1975* in  
10 relation to proceedings under this Part.

11 (2) A decision given by a person on behalf of an agency is taken to  
12 have been given by the agency.

13 (3) The parties to a proceeding before the Tribunal for a review of a  
14 decision are as follows:

15 (a) the person who applied to the Tribunal for a review of the  
16 decision under section 57A;

17 (b) the person who made the request or application in respect of  
18 which the decision was made;

19 (c) the principal officer of the agency, or the Minister, to whom  
20 the request or application was made;

21 (d) any other person who is made a party to the proceeding by  
22 the Tribunal under subsection 30(1A) of the *Administrative*  
23 *Appeals Tribunal Act 1975*.

24 **60AA Procedure in Tribunal—requirement to notify affected third**  
25 **parties**

26 *Scope*

27 (1) This section applies if an application is made to the Tribunal under  
28 section 57A for the review of a decision not to give access to a  
29 document to which a consultation requirement applies under  
30 section 26A, 27 or 27A (whether the decision is made by the  
31 Information Commissioner, an agency or a Minister).

1                                    *Requirement to notify*

2                    (2) The agency to which, or the Minister to whom, the request was  
3                    made for access to the document must, as soon as practicable, take  
4                    all reasonable steps to notify the affected third party for the  
5                    document of the application to the Tribunal.

6                    Note 1:    For *affected third party*, see section 53C.

7                    Note 2:    Notice is not required to be given in certain circumstances (see  
8                    section 60AB).

9                    Note 3:    The affected third party may apply to be made a party to the  
10                    proceeding by the Tribunal under subsection 30(1A) of the  
11                    *Administrative Appeals Tribunal Act 1975*.

12                    **60AB Procedure in Tribunal—circumstances in which not giving**  
13                    **notice is appropriate**

14                    (1) This section applies in relation to a document to which a  
15                    consultation requirement applies under section 27 or 27A.

16                    (2) An agency or Minister is not required to notify an affected third  
17                    party for the document under subsection 60AA(2) if:

18                    (a) the agency or the Minister applies to the Tribunal for an order  
19                    that it would not be appropriate to notify the affected third  
20                    party in the circumstances covered by subsection (3); and

21                    (b) the Tribunal makes the order.

22                    Note:       For *affected third party*, see section 53C.

23                    (3) The circumstances covered by this subsection are whether  
24                    notifying the affected third party would, or could reasonably be  
25                    expected to, do any of the following:

26                    (a) prejudice the conduct of an investigation of a breach, or  
27                    possible breach, of the law, or a failure, or possible failure, to  
28                    comply with a law relating to taxation;

29                    (b) prejudice the enforcement or proper administration of the law  
30                    in a particular instance;

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

35                    (d) endanger the life or physical safety of any person;

1 (e) cause damage to the security, defence or international  
2 relations of the Commonwealth.

3 **42 Section 61**

4 Repeal the section, substitute:

5 **61 Onus**

- 6 (1) In proceedings under this Part, the person who applied to the  
7 Tribunal has the onus of establishing that:
- 8 (a) a decision given in respect of the relevant request or  
9 application is not justified; or
  - 10 (b) the Tribunal should give a decision adverse to a party to the  
11 proceeding.
- 12 (2) However, in proceedings under this Part that relate to a decision to  
13 give access to a document to which a consultation requirement  
14 applies under section 26A, 27 or 27A, an affected third party for  
15 the document in relation to which the decision was made has, if the  
16 affected third party is a party to the proceeding, the onus of  
17 establishing that:
- 18 (a) a decision refusing to give access to the document is  
19 justified; or
  - 20 (b) the Tribunal should give a decision adverse to the person  
21 who made the relevant request.

22 Note: For *affected third party*, see section 53C.

23 **61A Modification of the *Administrative Appeals Tribunal Act 1975***

- 24 (1) The *Administrative Appeals Tribunal Act 1975* applies to  
25 proceedings under this Part in the way set out in the following  
26 table:

27

---

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

---

| <b>Item</b> | <b>A reference to ...</b>           | <b>in the following<br/>provision of the<br/><i>Administrative Appeals<br/>Tribunal Act 1975</i>:</b> | <b>is taken to be a<br/>reference to ...</b> |
|-------------|-------------------------------------|---|--|
| 1           | the person who made<br>the decision | subsection 29(11)<br>(notification of review  | each of the review<br>parties.               |

---

**Schedule 4** Information Commissioner amendments  
**Part 1** Main amendments

---

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

---

| <b>Item</b> | <b>A reference to ...</b>  | <b>in the following provision of the <i>Administrative Appeals Tribunal Act 1975</i>:</b>                   | <b>is taken to be a reference to ...</b>                    |
|-------------|--|---|---|
|             |  | application)  |   |
| 2           | the person who made the decision   | (a) subsection 33(1AA) (requirement to assist Tribunal);<br>(b) paragraph 33(2A)(b) (procedural directions) | the agency or Minister who made the IC reviewable decision. |
| 3           | the person who made the decision that is the subject of the application for a review by the Tribunal | subsection 37(1) or (1AF) (lodging material with Tribunal)  | the agency or Minister who made the IC reviewable decision. |
| 4           | the person who made the decision   | subsection 37(1A) or (1B) (deadlines for lodging documents)   | the agency or Minister who made the IC reviewable decision. |
| 5           | the person who made the decision to which the relevant proceeding relates                            | subsection 41(4) (stay of decisions being reviewed)   | each of the review parties.                                 |
| 6           | the person who made the decision   | subsection 41(5) (stay of decisions being reviewed)   | each of the review parties.                                 |
| 7           | the person who made the decision   | subsection 42A(2) (dismissal for failure to appear)   | the agency or Minister who made the IC reviewable decision. |
| 8           | the person who made a decision   | section 67A (giving of notices)   | the person who made the decision or an agency.              |

1 (2) The agency or Minister who made the IC reviewable decision is  
2 taken to have complied with the obligation under paragraph  
3 37(1)(a) of the *Administrative Appeals Tribunal Act 1975* if the  
4 agency or Minister gives the AAT the number of copies prescribed  
5 by the regulations of the decision under section 55K in relation to  
6 which an application has been made to the Tribunal.

1 (3) Subsection (2) does not limit the powers of the Tribunal under  
2 section 38 of the *Administrative Appeals Tribunal Act 1975*.

3 **43 Before section 63**

4 Insert:

5 **Division 5—Protection of information in Tribunal**

6 **44 Before section 66**

7 Insert:

8 **Division 6—Recommendations as to costs**

9 **45 Paragraph 66(1)(a)**

10 Repeal the paragraph, substitute:

11 (a) a person applies, under section 57A, to the Tribunal for  
12 review of a decision of the Information Commissioner on an  
13 IC review; and

14 **46 Subsections 66(1) and (3)**

15 Omit “Attorney-General”, substitute “responsible Minister”.

16 **47 Before section 67**

17 Insert:

18 **Division 7—Automatic stay of certain decisions**

19 **48 Paragraph 67(1)(a)**

20 Omit “under section 55, to the Tribunal for review of a decision”,  
21 substitute “under section 57A, to the Tribunal for review in relation to a  
22 decision”.

23 **49 Before Part VIII**

24 Insert:

1 **Part VIIB—Investigations and complaints**

2 **Division 1—Guide to this Part**

3 **68 Investigations and complaints—guide**

4 This Part is about investigations by the Information Commissioner  
5 and by the Ombudsman.

6 Division 2 sets up a system for investigations by the Information  
7 Commissioner.

8 The Information Commissioner may investigate an action taken by  
9 an agency in the performance of functions or the exercise of  
10 powers under this Act on a complaint from a person, or on the  
11 Information Commissioner’s initiative.

12 If a person disputes the merits of an access refusal decision or an  
13 access grant decision, this Act provides elsewhere for the review of  
14 that decision (see Parts VI, VII and VIIA).

15 However, this does not prevent a person from making a complaint  
16 to the Information Commissioner about the way in which the  
17 agency has handled the decision.

18 The Information Commissioner has powers to obtain documents, to  
19 question persons and to enter premises (see Subdivision D of  
20 Division 2).

21 At the conclusion of the investigation, the Information  
22 Commissioner must give a notice to the complainant and to the  
23 respondent agency about the Information Commissioner’s findings,  
24 with any recommendations that the Information Commissioner  
25 believes the agency ought to implement (see section 86).

26 If the Information Commissioner is not satisfied that the agency  
27 has taken adequate and appropriate action to implement the  
28 recommendations, the Information Commissioner may take further  
29 steps (see sections 89, 89A and 89B).

1  
2

|  |
|--|
| Division 3 deals with the investigation of complaints by the<br>Ombudsman about action taken under this Act. |
|--|

3 **Division 2—Information Commissioner investigations**

4 **Subdivision A—Power to investigate**

5 **69 Information Commissioner investigations—power to investigate**

6 *Obligation to investigate*

- 7 (1) The Information Commissioner must, subject to this Division,  
8 investigate a complaint made under section 70.

9 *Discretion to investigate*

- 10 (2) The Information Commissioner may, at the Information  
11 Commissioner's initiative, investigate an action taken by an agency  
12 (the *respondent agency*) in the performance of functions, or the  
13 exercise of powers, under this Act.

14 **Subdivision B—Making complaints**

15 **70 Information Commissioner investigations—making complaints**

- 16 (1) A person (the *complainant*) may complain to the Information  
17 Commissioner about an action taken by an agency in the  
18 performance of functions, or the exercise of powers, under this  
19 Act.

- 20 (2) A complaint must:

21 (a) be in writing; and

22 (b) identify the agency (also the *respondent agency*) in respect  
23 of which the complaint is made.

- 24 (3) The Office of the Information Commissioner must provide  
25 appropriate assistance to a person who:

26 (a) wishes to make a complaint; and

27 (b) requires assistance to formulate the complaint.

1 **Subdivision C—Decision to investigate**

2 **71 Information Commissioner investigations—interpretation**

3 This Subdivision applies to a part of a complaint as if:

- 4 (a) a reference to a complaint were a reference to the part of the  
5 complaint; and  
6 (b) a reference to an action were a reference to an action to  
7 which the part of the complaint relates.

8 **72 Information Commissioner investigations—preliminary inquiries**

9 The Information Commissioner may make inquiries of the  
10 respondent agency for the purpose of determining whether or not to  
11 investigate a complaint made (or purported to be made) under  
12 section 70.

13 **73 Information Commissioner investigations—discretion not to**  
14 **investigate**

15 The Information Commissioner may decide not to investigate, or  
16 not to continue to investigate, a complaint about an action made  
17 under section 70 if the Information Commissioner is satisfied of  
18 any of the following:

- 19 (a) that the action is not taken by an agency in the performance  
20 of the agency's functions or the exercise of the agency's  
21 powers under this Act;  
22 (b) that:  
23 (i) the complainant has or had a right to cause the action to  
24 be reviewed by the respondent agency, the Information  
25 Commissioner, a court or a tribunal; and  
26 (ii) the complainant has not exercised, or did not exercise,  
27 the right; and  
28 (iii) it would be, or would have been, reasonable for the  
29 complainant to exercise the right;  
30 (c) that:  
31 (i) the complainant has or had a right to complain about the  
32 action to another body; and  
33 (ii) the complainant has not exercised, or did not exercise  
34 the right; and



- 1 (iii) it would be, or would have been, reasonable for the  
2 complainant to exercise the right;
- 3 (d) that the complainant has complained to the respondent  
4 agency, and the respondent agency:
- 5 (i) has dealt, or is dealing, adequately with the complaint;  
6 or  
7 (ii) has not yet had an adequate opportunity to deal with the  
8 complaint;
- 9 (e) that the complaint is frivolous, vexatious, misconceived,  
10 lacking in substance or not made in good faith;
- 11 (f) that the complainant does not have a sufficient interest in the  
12 subject matter of the complaint.

13 Note: The Information Commissioner may make a decision under this  
14 section to investigate only part of a complaint (see section 71).

## 15 **74 Information Commissioner investigations—transfer to** 16 **Ombudsman**

### 17 *Scope*

- 18 (1) This section applies if the Information Commissioner is satisfied  
19 that a complaint about an action could be more effectively or  
20 appropriately dealt with by the Ombudsman under the *Ombudsman*  
21 *Act 1976*.

22 Example 1: A complaint about the way in which the Information Commissioner  
23 has dealt with an IC review.

24 Example 2: A complaint relates to an action under this Act, but is part of a  
25 complaint that relates to other matters that can be more appropriately  
26 dealt with by the Ombudsman.

### 27 *Transfer of complaints to Ombudsman*

- 28 (2) The Information Commissioner:
- 29 (a) must consult the Ombudsman about the complaint with a  
30 view to avoiding inquiries being conducted into that matter  
31 by both the Information Commissioner and the Ombudsman;  
32 and  
33 (b) may decide not to investigate the action, or not to continue to  
34 investigate the action.

- 1 (3) If the Information Commissioner decides not to investigate, or not  
2 to continue to investigate, the action under paragraph (2)(b), the  
3 Information Commissioner must:  
4 (a) transfer the complaint to the Ombudsman; and  
5 (b) give the Ombudsman any information or documents that  
6 relate to the complaint in the possession, or under the control,  
7 of the Information Commissioner; and  
8 (c) notify the complainant in writing that the complaint has been  
9 transferred.
- 10 (4) A notice under paragraph (3)(c) must state the reasons for the  
11 Information Commissioner's decision.
- 12 (5) A complaint transferred under subsection (3) is taken to be a  
13 complaint made to the Ombudsman under the *Ombudsman Act*  
14 *1976*.
- 15 Note: The Information Commissioner may make a decision under this  
16 section to investigate only part of a complaint (see section 71).

## 17 **75 Information Commissioner investigations—notice requirements**

### 18 *Notice to respondent agency before commencing investigation*

- 19 (1) Before beginning an investigation, the Information Commissioner  
20 must notify the respondent agency in writing.

### 21 *Notice of decision not to investigate, or not to continue to* 22 *investigate*

- 23 (2) Subsection (3) applies if the Information Commissioner decides:  
24 (a) not to investigate, or not to continue to investigate, a  
25 complaint made under section 70; or  
26 (b) not to continue an investigation commenced at the  
27 Information Commissioner's initiative.
- 28 (3) The Information Commissioner must, as soon as practicable, notify  
29 the complainant (if any) and the respondent agency of the decision  
30 in writing.
- 31 (4) A notice under subsection (3) must state the reasons for the  
32 Information Commissioner's decision.

1 **Subdivision D—Investigation procedure**

2 **76 Information Commissioner investigations—conduct of**  
3 **investigation**

- 4 (1) An investigation must be conducted in private and in a way the  
5 Information Commissioner thinks fit.
- 6 (2) For the purposes of an investigation, the Information  
7 Commissioner may obtain information from any officer of an  
8 agency, and make any inquiry, that he or she thinks is relevant to  
9 the investigation.

10 **77 Information Commissioner investigations—general power to**  
11 **enter premises**

- 12 (1) If a consenting person consents to entry under paragraph (2)(a), an  
13 authorised person may, at any reasonable time of day arranged  
14 with the consenting person:
- 15 (a) enter and remain at the place; or
  - 16 (b) carry on the investigation at that place; or
  - 17 (c) inspect any documents relevant to the investigation kept at  
18 the place.

19 Note: For *consenting person*, see subsection (3).

20 *Authority to enter premises*

- 21 (2) The authorised person may enter a place that:
- 22 (a) is occupied by an agency; or
  - 23 (b) is occupied by a contracted service provider and used by the  
24 contracted service provider predominantly for the purposes of  
25 a Commonwealth contract.
- 26 (3) The authorised person may enter a place only if:
- 27 (a) consent to the entry has been given by the person (the  
28 *consenting person*) who is:
    - 29 (i) in the case of an agency—the principal officer of the  
30 agency; or
    - 31 (ii) in the case of a contracted service provider—the person  
32 in charge (however described) of the contracted service  
33 provider; and

1 (b) before giving the consent, the authorised person informed the  
2 consenting person that he or she may refuse consent.

3 (4) The authorised person must leave the premises if the consenting  
4 person asks the authorised person to do so.

5 (5) This section is subject to section 78.

6 *Who is an authorised person?*

7 (6) An *authorised person* is:

8 (a) an information officer (within the meaning of the *Information*  
9 *Commissioner Act 2009*); or

10 (b) an APS employee who:

11 (i) is performing the duties of an Executive Level 2, or  
12 equivalent, position (or a higher position) in the Office  
13 of the Information Commissioner; and

14 (ii) is authorised by the Information Commissioner for the  
15 purposes of this section.

16 **78 Information Commissioner investigations—places for which**  
17 **approval required before entry**

18 *Specific places and areas*

19 (1) Subsection (2) applies if an authorised person proposes to enter, or  
20 carry on an investigation, at any of the following:

21 (a) a place referred to in paragraph 80(c) of the *Crimes Act 1914*;

22 (b) a place that is a prohibited area for the purposes of the  
23 *Defence (Special Undertakings) Act 1952* because of  
24 section 7 of that Act;

25 (c) an area of land or water or an area of land and water that is  
26 declared under section 14 of the *Defence (Special*  
27 *Undertakings) Act 1952* to be a restricted area for the  
28 purposes of that Act.

29 (2) If this subsection applies, the authorised person must not enter, or  
30 carry on an investigation, unless:

31 (a) the Minister administering that Act, or another Minister  
32 acting for and on behalf of the Minister, has, in writing,  
33 approved the entry or carrying on of the investigation; and

- 1 (b) the authorised person complies with any conditions specified  
2 in the approval.

3 *Places in respect of which Attorney-General makes declaration*

- 4 (3) The Attorney-General may, by notice in writing to the Information  
5 Commissioner, declare a place to be a prohibited place if the  
6 Attorney-General is satisfied that the carrying on of an  
7 investigation at the place might prejudice the security or defence of  
8 the Commonwealth.
- 9 (4) If a declaration under subsection (3) is in force, an authorised  
10 person must not enter, or carry on an investigation at, the  
11 prohibited place unless:
- 12 (a) a Minister specified in the declaration, or another Minister  
13 acting for and on behalf of the Minister, has, in writing,  
14 approved the entry or carrying on of the investigation; and  
15 (b) the authorised person complies with any conditions specified  
16 in the approval.

17 **79 Information Commissioner investigations—obliging production**  
18 **of information and documents**

19 *Scope*

- 20 (1) This section applies if the Information Commissioner has reason to  
21 believe that a person has information, or a document, relevant to an  
22 investigation under this Part.
- 23 (2) This section applies subject to section 81 (production of exempt  
24 documents).

25 *Notice to produce*

- 26 (3) The Information Commissioner may, by written notice, require a  
27 person, for the purposes of the investigation:
- 28 (a) to give the Information Commissioner information of the  
29 kind referred to in the notice; or  
30 (b) to produce to the Information Commissioner the document  
31 referred to in the notice.
- 32 (4) The notice must:
- 33 (a) be in writing; and

- 1 (b) specify the place at which the person must comply with the  
2 notice; and  
3 (c) state that the person must comply with the notice:  
4 (i) within a specified period that is not less than 14 days  
5 after the day on which the person is given the notice; or  
6 (ii) at a specified time that is not less than 14 days after the  
7 time at which the person is given the notice.

8 *Offence for failure to comply*

- 9 (5) A person commits an offence if:  
10 (a) the person is subject to a requirement specified in a notice  
11 under subsection (3); and  
12 (b) the person engages in conduct; and  
13 (c) the person's conduct breaches the requirement.

14 Penalty for a contravention of this subsection: Imprisonment for 6  
15 months.

16 Note: Chapter 2 of the *Criminal Code* sets out the general principles of  
17 criminal responsibility.

18 **80 Information Commissioner investigations—dealings with**  
19 **documents**

20 *What the Information Commissioner may do with documents*

- 21 (1) The Information Commissioner may do one or more of the  
22 following with respect to any documents produced in accordance  
23 with a notice under subsection 79(3):  
24 (a) take possession of the documents;  
25 (b) make copies of the documents;  
26 (c) take extracts from the documents;  
27 (d) hold the documents for a period that is necessary for the  
28 purposes of the investigation.

29 *Information Commissioner must permit access by those entitled*

- 30 (2) During an investigation the Information Commissioner must  
31 permit a person to inspect a document that the person would be  
32 entitled to inspect if the document were not held by the  
33 Information Commissioner.

- 1 (3) The Information Commissioner must permit the person to inspect  
2 the document at any reasonable time.

3 **81 Information Commissioner investigations—exempt documents**

4 Sections 55T and 55U apply to an investigation under this Part as if  
5 a reference in those sections to an IC review of a decision were a  
6 reference to an investigation of a complaint made under section 70.

7 Note: Sections 55T and 55U deal with access by the Information  
8 Commissioner to exempt documents.

9 **82 Information Commissioner investigations—obliging persons to**  
10 **appear**

11 *Notice to require person to appear*

- 12 (1) The Information Commissioner may, by written notice, require a  
13 person to appear before the Information Commissioner to answer  
14 questions for the purposes of an investigation.
- 15 (2) The notice must:
- 16 (a) be in writing; and
- 17 (b) state that the person must comply with the notice at a  
18 specified time that is not less than 14 days after the time at  
19 which the person is given the notice; and
- 20 (c) specify the place at which the person must comply with the  
21 notice.

22 *Offence for failure to comply*

- 23 (3) A person commits an offence if:
- 24 (a) the person is subject to a requirement specified in a notice  
25 under subsection (1); and
- 26 (b) the person engages in conduct; and
- 27 (c) the person's conduct breaches the requirement.

28 Penalty for a contravention of this subsection: 6 months  
29 imprisonment.

30 Note: Chapter 2 of the *Criminal Code* sets out the general principles of  
31 criminal responsibility.

1 **83 Information Commissioner investigations—administration of**  
2 **oath or affirmation**

- 3 (1) If, by a notice under subsection 82(1), the Information  
4 Commissioner requires a person to appear before him or her, the  
5 Information Commissioner may:  
6 (a) administer an oath or affirmation to the person; and  
7 (b) examine the person on oath or affirmation.

- 8 (2) The oath or affirmation to be taken or made by a person for the  
9 purposes of this section is an oath or affirmation that the answers  
10 the person will give will be true.

- 11 (3) A person commits an offence if:  
12 (a) the person is required under this section to be examined on  
13 oath or affirmation; and  
14 (b) the person engages in conduct; and  
15 (c) the person's conduct breaches that requirement.

16 Penalty for a contravention of this subsection: 6 months  
17 imprisonment.

18 Note: Chapter 2 of the *Criminal Code* sets out the general principles of  
19 criminal responsibility.

20 **84 Information Commissioner investigations—no loss of legal**  
21 **professional privilege**

22 Information or a document does not cease to be the subject of legal  
23 professional privilege merely because it is given, provided,  
24 produced or referred to for the purposes of this Part.

25 **85 Information Commissioner investigations—protection from**  
26 **liability**

- 27 (1) This section applies if a person does any of the following in good  
28 faith for the purposes of an investigation:  
29 (a) gives information;  
30 (b) produces a document;  
31 (c) answers a question.  
32 (2) If this section applies, then:



- 1 (a) civil proceedings do not lie against a person because the  
2 person does any of the matters mentioned in  
3 paragraphs (1)(a) to (c); and  
4 (b) the person is not liable for a penalty under a provision of any  
5 law because the person does any of those matters.
- 6 (3) This section applies whether or not the person is required to do a  
7 thing mentioned in subsection (1) in accordance with this Division.

8 **Subdivision E—Outcome of investigation**

9 **86 Information Commissioner investigations—notice on completion**

10 *Requirement to notify respondent agency*

- 11 (1) If the Information Commissioner completes an investigation, the  
12 Information Commissioner must, as soon as practicable, notify the  
13 respondent agency.
- 14 (2) The notice must state the following:  
15 (a) the investigation results (see section 87);  
16 (b) the investigation recommendations (if any) (see section 88);  
17 (c) the reasons for the investigation results and the making of the  
18 investigation recommendations.
- 19 (3) The respondent agency may give to the Information Commissioner  
20 any comments about the notice that the agency wishes to make.

21 *Requirement to notify complainant (if any)*

- 22 (4) The Information Commissioner must give a copy (or a copy  
23 prepared in accordance with subsection (5)) of the notice to the  
24 complainant (if any).
- 25 (5) However, if the copy of the notice would contain matters of the  
26 kind mentioned in subsection 89C(2), the Information  
27 Commissioner must prepare a copy of the report to give to the  
28 complainant that excludes those matters.

29 Note: Section 89D sets out further limitations on recommendations to amend  
30 records.

1 **87 Information Commissioner investigations—what are the**  
2 ***investigation results?***

3 The *investigation results*, in relation to the investigation, are the  
4 following:

- 5 (a) the matters that the Information Commissioner has  
6 investigated;
- 7 (b) any opinions that the Information Commissioner has formed  
8 in relation to those matters;
- 9 (c) any conclusions that the Information Commissioner has  
10 reached in relation to those matters;
- 11 (d) any suggestions to the respondent agency the implementation  
12 of which the Information Commissioner believes might  
13 improve the processes of the agency;
- 14 (e) any other information of which the Information  
15 Commissioner believes the respondent agency ought to be  
16 aware.

17 **88 Information Commissioner investigations—what are the**  
18 ***investigation recommendations?***

19 The *investigation recommendations*, in relation to the  
20 investigation, are the formal recommendations to the respondent  
21 agency that the Information Commissioner believes that the  
22 respondent agency ought to implement.

23 **89 Information Commissioner investigations—failure to implement**  
24 **investigation recommendation**

25 *Scope*

- 26 (1) This section applies if:
- 27 (a) the Information Commissioner completes an investigation;  
28 and
- 29 (b) the Information Commissioner gives an agency a notice  
30 under section 86; and
- 31 (c) the Information Commissioner is not satisfied that the agency  
32 has taken action that is adequate and appropriate in the  
33 circumstances to implement the investigation  
34 recommendations for the investigation.

1 *Giving implementation notices*

- 2 (2) The Information Commissioner may, by notice in writing (an  
3 **implementation notice**), require the respondent agency to:  
4 (a) give to the Information Commissioner particulars of any  
5 action that the agency proposes to take to implement the  
6 investigation recommendations for the investigation; and  
7 (b) give the particulars within the time specified in the notice.
- 8 (3) The respondent agency must comply with the implementation  
9 notice.

10 **89A Information Commissioner investigations—failure to take**  
11 **action in response to implementation notice**

12 *Scope*

- 13 (1) This section applies if:  
14 (a) the Information Commissioner gives an implementation  
15 notice to a respondent agency; and  
16 (b) the Information Commissioner is satisfied that:  
17 (i) the agency has not responded to the implementation  
18 notice within the time specified in the notice; or  
19 (ii) the agency has not taken action that is adequate and  
20 appropriate in the circumstances to implement the  
21 investigation recommendations for the investigation.

22 *Report to responsible Minister*

- 23 (2) The Information Commissioner may give a written report to the  
24 responsible Minister that contains the matters set out in  
25 section 89B.

26 Note: For *responsible Minister*, see subsection 4(1).

27 *Report to Minister*

- 28 (3) If the Information Commissioner gives a report to the responsible  
29 Minister under subsection (2), the Information Commissioner must  
30 give a copy (or a copy prepared in accordance with subsection (4))  
31 of the report to the Minister (the **FOI Minister**) responsible for the  
32 administration of this Act.

1 (4) However, if the copy of the report would contain matters of the  
2 kind mentioned in subsection 89C(2), the Information  
3 Commissioner must prepare a copy of the report to give to the FOI  
4 Minister that excludes those matters.

5 (5) The FOI Minister must cause the copy of the report to be laid  
6 before each House of the Parliament.

7 Note: Section 89D sets out further limitations on recommendations to amend  
8 records.

9 **89B Information Commissioner investigations—requirements for**  
10 **report**

11 A report under subsection 89A(2) must:

- 12 (a) include a copy of the notice given to the respondent agency  
13 under subsection 86(2) (notice on completion) and the  
14 implementation notice; and  
15 (b) give details of the respondent agency's response (if any) to  
16 the implementation notice; and  
17 (c) state that the Information Commissioner is not satisfied that  
18 the agency has taken action that is adequate and appropriate  
19 in the circumstances to implement the investigation  
20 recommendations for the investigation; and  
21 (d) state the action that the Information Commissioner believes,  
22 if taken by the agency, would be adequate and appropriate in  
23 the circumstances to implement the investigation  
24 recommendations for the investigation.

25 **89C Information Commissioner investigations—ensuring**  
26 **non-disclosure of certain matters**

27 (1) This section applies to the following documents:

- 28 (a) a notice to a complainant under section 86 (notice on  
29 completion);  
30 (b) a report to the FOI Minister under subsection 89A(3) (failure  
31 to take action).

32 (2) The Information Commissioner must not include in the document:

- 33 (a) exempt matter; or  
34 (b) information of the kind referred to in subsection 25(1).

1 Note: Subsection 25(1) deals with information about the existence or  
2 otherwise of certain documents.

3 **89D Information Commissioner investigations—limitation on**  
4 **amending records**

5 *Scope*

- 6 (1) This section applies to the following documents:  
7 (a) a notice to a complainant under section 86 (notice on  
8 completion);  
9 (b) a report to the FOI Minister under subsection 89A(3) (failure  
10 to take action).

11 *Restrictions on amendments*

- 12 (2) The Information Commissioner may, in the document, recommend  
13 that an amendment be made to a record that relates to a record of  
14 an opinion only if he or she is satisfied of either (or both) of the  
15 following:  
16 (a) the opinion was based on a mistake of fact;  
17 (b) the author of the opinion was biased, unqualified to form the  
18 opinion or acted improperly in conducting the factual  
19 inquiries that led to the formation of the opinion.
- 20 (3) The Information Commissioner must not, in the document,  
21 recommend that an amendment be made to a record if he or she is  
22 satisfied of either of the following:  
23 (a) the record is a record of a decision, under an enactment, by a  
24 court, tribunal, authority or person;  
25 (b) the decision whether to amend the record involves the  
26 determination of a question that the person seeking  
27 amendment of the record is, or has been, entitled to have  
28 determined by the agency (on internal review), the  
29 Information Commissioner, a court or tribunal.

30 **89E Information Commissioner investigations—protection from**  
31 **civil action**

- 32 (1) Civil proceedings do not lie against a person in respect of loss,  
33 damage or injury of any kind suffered by another person because

1 the first-mentioned person complains about an action under  
2 section 70.

3 (2) Subsection (1) only applies if the complaint is made in good faith.

## 4 **Division 3—Complaints to Ombudsman**

### 5 **89F Complaints to Ombudsman—powers not affected**

6 This Part does not prevent the Ombudsman from exercising powers  
7 or performing functions under the *Ombudsman Act 1976* in  
8 accordance with that Act.

### 9 **89G Complaints to Ombudsman—report must not contain certain** 10 **information**

11 A report under subsection 12(3) or section 15 or 17 of the  
12 *Ombudsman Act 1976* in relation to an action taken under this Act  
13 must not include:

- 14 (a) exempt matter; or  
15 (b) information of the kind referred to in subsection 25(1).

16 Note: Subsection 25(1) deals with information about the existence or  
17 otherwise of certain documents.

### 18 **89H Complaints to Ombudsman—certain rights not affected by** 19 **certificates**

- 20 (1) This section applies if:  
21 (a) the Ombudsman has commenced an investigation of a  
22 decision made under this Act not to grant a request for access  
23 to a document; and  
24 (b) the Attorney-General furnishes a certificate to the  
25 Ombudsman under paragraph 9(3)(a), (c) or (d) of the  
26 *Ombudsman Act 1976* in relation to that investigation.
- 27 (2) The certificate does not affect the Ombudsman's right to:  
28 (a) seek from any person the reasons for a decision made under  
29 this Act not to give access to an exempt document; or  
30 (b) require any person to give any information or to answer any  
31 questions concerning the decision.

1 **89J Complaints to Ombudsman—limitation on amending records in**  
2 **reports under the *Ombudsman Act 1976***

3 (1) The Ombudsman may, in a report under section 15 of the  
4 *Ombudsman Act 1976*, recommend that an amendment be made to  
5 a record that relates to a record of an opinion only if he or she is  
6 satisfied of either (or both) of the following:

- 7 (a) the opinion was based on a mistake of fact;  
8 (b) the author of the opinion was biased, unqualified to form the  
9 opinion or acted improperly in conducting the factual  
10 inquiries that led to the formation of the opinion.

11 (2) The Ombudsman must not, in a report under section 15 of the  
12 *Ombudsman Act 1976*, recommend that an amendment be made to  
13 a record if he or she is satisfied of either of the following:

- 14 (a) the record is a record of a decision, under an enactment, by a  
15 court, tribunal, authority or person;  
16 (b) the decision whether to amend the record involves  
17 determination of a question that the person seeking  
18 amendment of the record is, or has been, entitled to have  
19 determined by the agency (on internal review), the  
20 Information Commissioner, a court or tribunal.

21 **50 Before section 91**

22 Insert:

23 **Division 1—Vexatious applicants**

24 **89K Vexatious applicants—declaration**

25 (1) The Information Commissioner may, by written instrument (a  
26 *vexatious applicant declaration*), declare a person to be a  
27 vexatious applicant.

28 Note 1: Section 89L sets out the grounds on which a declaration may be made.

29 Note 2: For variation and revocation of the instrument, see subsection 33(3) of  
30 the *Acts Interpretation Act 1901*.

31 (2) The Information Commissioner may make a declaration:

- 32 (a) on the application of an agency or Minister; or  
33 (b) on the Information Commissioner's initiative.

- 1 (3) If an agency or Minister has applied for a declaration, the agency  
2 or Minister has the onus of establishing that the Information  
3 Commissioner should make the declaration.
- 4 (4) The Information Commissioner must, as soon as practicable, given  
5 written notice to the person in relation to whom the vexatious  
6 applicant declaration is made.

7 **89L Vexatious applicants—grounds for declaration**

- 8 (1) The Information Commissioner may make a vexatious applicant  
9 declaration in relation to a person only if the Information  
10 Commissioner is satisfied of any of the following:  
11 (a) that:  
12 (i) the person has repeatedly engaged in access actions; and  
13 (ii) the repeated engagement involves an abuse of the  
14 process for the access action;  
15 (b) a particular access action in which the person engages  
16 involves, or would involve, an abuse of the process for that  
17 access action;  
18 (c) a particular access action in which the person engages would  
19 be manifestly unreasonable.
- 20 (2) A person engages in an *access action* if the person does any of the  
21 following:  
22 (a) makes a request;  
23 (b) makes an application under section 48;  
24 (c) makes an application for internal review;  
25 (d) makes an IC review application.
- 26 (3) The Information Commissioner must not make a declaration in  
27 relation to a person without giving the person an opportunity to  
28 make written or oral submissions.
- 29 (4) In this section:  
30 *abuse of the process for an access action* includes, but is not  
31 limited to, the following:  
32 (a) harassing or intimidating an individual or an employee of an  
33 agency;  
34 (b) unreasonably interfering with the operations of an agency;



- 1 (c) seeking to use the Act for the purpose of circumventing  
2 restrictions on access to a document (or documents) imposed  
3 by a court.

4 **89M Vexatious applicants—effect of declaration**

- 5 (1) A vexatious applicant declaration has effect in accordance with the  
6 terms and conditions stated in the declaration.
- 7 (2) Without limiting subsection (1), a vexatious applicant declaration  
8 in relation to a person may provide that:
- 9 (a) an agency or Minister may refuse to consider any of the  
10 following if made by the person without the written  
11 permission of the Information Commissioner:
- 12 (i) a request;
- 13 (ii) an application under section 48 (amendment of records);
- 14 (iii) an application for internal review; and
- 15 (b) the Information Commissioner may refuse to consider an IC  
16 review application made by the person.
- 17 (3) If a decision is made as mentioned in subsection (2), the agency,  
18 Minister or the Information Commissioner (as the case requires)  
19 must, as soon as practicable, notify the vexatious applicant of the  
20 decision.

21 **89N Vexatious applicants—review by Tribunal**

22 An application may be made to the Tribunal for a review of a  
23 decision under section 89K of the Information Commissioner to  
24 make a vexatious applicant declaration.

25 Note 1: An application for the review of a decision may be made by a person  
26 whose interests are affected by the decision (see section 27 of the  
27 *Administrative Appeals Tribunal Act 1975*).

28 Note 2: Subsection 29(2) of the *Administrative Appeals Tribunal Act 1975* sets  
29 out the time within which the application for review must be made.

30 Note 3: Section 30 of the *Administrative Appeals Tribunal Act 1975* sets out  
31 who the parties are to a proceeding before the Tribunal.

1 **Division 2—General**

2 **89P Staff to hold appropriate security clearance**

3 The Information Commissioner must take all reasonable steps to  
4 ensure that a member of the staff of the Office of the Information  
5 Commissioner who performs functions or exercises powers for the  
6 purposes of this Act is given a security clearance at an appropriate  
7 level.

8 Note: Security clearances are given in accordance with the Australian  
9 Government Protective Security Manual.

10 **90 Protection against civil liability—general**

11 (1) No action for defamation, breach of confidence or infringement of  
12 copyright lies against the Commonwealth, a Minister, an agency or  
13 an officer of an agency because the Minister, or an officer of the  
14 agency:

15 (a) publishes a document in good faith, in the belief that the  
16 publication is required or permitted under Part II  
17 (information publication scheme) or section 11C (publication  
18 of information in accessed documents); or

19 (b) gives access to a document in good faith, in the belief that the  
20 access is required or permitted to be given in response to a  
21 request; or

22 (c) publishes, or gives access to, a document in good faith, in the  
23 belief that the publication or access is required or permitted  
24 otherwise than under this Act (whether or not under an  
25 express legislative power).

26 (2) No action for defamation, or breach of confidence, in respect of the  
27 publication of a document covered by subsection (3), lies against a  
28 person (including the author of the document) because the person  
29 supplied the document to a Minister or an agency.

30 (3) The publication of a document is covered by this subsection if:

31 (a) it is published as mentioned in paragraph (1)(a) or (c); or

32 (b) its publication is involved in, or results from, the giving of  
33 access to the document (or another document) as mentioned  
34 in paragraph (1)(b) or (c).

35 **51 Subsection 91(1)**

---

1 Repeal the subsection.

2 Note: The heading to section 91 is replaced by the heading “**Protection against civil**  
3 **liability—particular situations**”.

4 **52 Subsection 91(1A)**

5 Omit “Subsection (1)”, substitute “Section 90”.

6 **53 Paragraph 91(1C)(a)**

7 Omit “26A(1)”, substitute “26A(2)”.

8 **54 Paragraph 91(1C)(b)**

9 Omit “27(1)”, substitute “27(4)”.

10 **55 Paragraph 91(1C)(c)**

11 Omit “27A(1)”, substitute “27A(3)”.

12 **56 Section 92**

13 Repeal the section, substitute:

14 **92 Protection against criminal liability**

15 (1) A Minister, or an officer of an agency, is not guilty of a criminal  
16 offence only because the Minister or officer:

17 (a) publishes a document in good faith, in the belief that the  
18 publication is required or permitted under Part II  
19 (information publication scheme) or section 11C (publication  
20 of information in accessed documents); or

21 (b) gives access to a document in good faith, in the belief that the  
22 access is required or permitted to be given in response to a  
23 request; or

24 (c) publishes, or gives access to, a document in good faith, in the  
25 belief that the publication or access is required or permitted  
26 otherwise than under this Act (whether or not under an  
27 express legislative power).

28 (2) A person is not guilty of a criminal offence only because the  
29 person shows a document, or is concerned in the showing of a  
30 document, to another person or organisation for any of the  
31 following purposes:

32 (a) consultation with a State under subsection 26A(2);

- 1 (b) enabling the other person or the organisation to make a  
2 submission under subsection 27(4);  
3 (c) enabling the other person to make a submission under  
4 subsection 27A(3).

5 **57 Section 93**

6 Repeal the section, substitute:

7 **93 Agencies to provide information to Information Commissioner**

- 8 (1) This section applies to:  
9 (a) an agency, in relation to documents of the agency; and  
10 (b) each Minister, in relation to his or her official documents.
- 11 (2) The agency or Minister must give to the Information  
12 Commissioner the information that the Information Commissioner  
13 requires to prepare reports under section 30 of the *Information*  
14 *Commissioner Act 2009*.
- 15 (3) The agency or Minister must comply with any requirements  
16 prescribed by the regulations regarding:  
17 (a) the giving of the information; and  
18 (b) the keeping of records for the purposes of this section.

19 **93A Guidelines**

- 20 (1) The Information Commissioner may, by instrument in writing,  
21 issue guidelines for the purposes of this Act.
- 22 Note: For variation and revocation of the instrument, see subsection 33(3) of  
23 the *Acts Interpretation Act 1901*.
- 24 (2) For the purposes of the performance of a function, or the exercise  
25 of a power, under this Act, regard must be had to any guidelines  
26 issued by the Information Commissioner under this section  
27 including, but not limited to, guidelines issued for the purposes of  
28 the following provisions:  
29 (a) paragraph 9A(b) (information publication scheme);  
30 (b) subsection 11B(5) (public interest factors);  
31 (c) subsection 15(5A) (decisions on requests).
- 32 (3) Guidelines are not legislative instruments.

1 **93B Review of operation of Act**

2 (1) The Minister must cause a review of the operation of this Act to be  
3 undertaken.

4 (2) The review must:

5 (a) start 2 years after the commencement of this section; and

6 (b) be completed within 6 months.

7 Note: This section commences immediately after the commencement of  
8 section 3 of the *Information Commissioner Act 2009*.

9 (3) The Minister must cause a written report about the review to be  
10 prepared.

11 (4) The Minister must cause a copy of the report to be laid before each  
12 House of the Parliament within 15 sitting days of that House after  
13 the Minister receives the report.

1

2 **Part 2—Other amendments**

3 ***Ombudsman Act 1976***

4 **58 Subsection 3(1)**

5 Insert:

6 *Information Commissioner* has the meaning given by the  
7 *Information Commissioner Act 2009*.

8 **59 Subsections 6(4A) to (4C)**

9 Repeal the subsections.

10 **60 After section 6B**

11 Insert:

12 **6C Transfer of complaints to Information Commissioner**

13 *Scope*

14 (1) This section applies if the Ombudsman is satisfied of either of the  
15 following:

16 (a) that:

17 (i) a complainant has complained, or could complain, to the  
18 Information Commissioner about an action taken by a  
19 Department or prescribed authority under Part V of the  
20 *Privacy Act 1988* or Part VIIB of the *Freedom of*  
21 *Information Act 1982*; and

22 (ii) the action could be more appropriately or effectively  
23 dealt with by the Information Commissioner;

24 (b) a complaint about an action taken by a Department or  
25 prescribed authority has been the subject of a completed  
26 investigation by the Information Commissioner under Part V  
27 of the *Privacy Act 1988* or Part VIIB of the *Freedom of*  
28 *Information Act 1982*.

1 *Requirement to consult with Information Commissioner*

2 (2) The Ombudsman:

3 (a) must consult the Information Commissioner about the  
4 complaint with a view to avoid inquiries being conducted  
5 into that matter by both the Information Commissioner and  
6 the Ombudsman; and

7 (b) may decide not to investigate the action, or not to continue to  
8 investigate the action.

9 *Transfer to Information Commissioner*

10 (3) If the Ombudsman decides not to investigate, or not to continue to  
11 investigate, an action under paragraph (2)(b), the Ombudsman  
12 must:

13 (a) transfer the complaint to the Information Commissioner; and

14 (b) notify the complainant in writing that the complaint has been  
15 transferred; and

16 (c) give the Information Commissioner any information or  
17 documents that relate to the complaint in the possession, or  
18 under the control of, the Ombudsman.

19 (4) A complaint transferred under subsection (3) is taken to be a  
20 complaint made to the Information Commissioner under Part V of  
21 the *Privacy Act 1988* or Part VIIB of the *Freedom of Information*  
22 *Act 1982*, as the case requires.

23 **61 Subsection 19(4)**

24 Omit “paragraph (1)(a) or under subsection (2)”, substitute  
25 “subsection (1) or (2)”.

26 **62 Subparagraph 19R(3)(b)(iii)**

27 Omit “(4A)”, substitute “(4D)”.

28 **63 Subsection 19R(4) (table item 4, column 2)**

29 Omit “6(4A)(e) or (4D)(e)”, substitute “6(4D)(e)”.

30 **64 Subsection 35(6A)**

31 Omit “6(4A)(e) or (4D)(e)”, substitute “6(4D)(e)”.

1

2

## Part 3—Application and transitional provisions

3

### 65 Application—Part 1

4

#### *Internal review and IC review*

5

(1) An amendment made by an item in Part 1 (other than an amendment covered by subitem (2), (3) or (4)) applies in relation to the following:

6

7

(a) requests for access made under section 15 of the *Freedom of Information 1982* that are received at or after the commencement of that item;

8

9

10

(b) applications under section 48 of that Act that are received at or after the commencement of that item.

11

12

#### *Tribunal review*

13

(2) The amendments made by items 44 and 46 apply in relation to applications to the Tribunal under section 57A of the *Freedom of Information Act 1982* (as amended by this Act) made at or after the commencement of those items.

14

15

16

17

#### *Investigation by the Information Commissioner*

18

(3) The amendments made by item 49 to insert new Part VIIB of the *Freedom of Information Act 1982* apply in relation to action taken by an agency (within the meaning of the *Freedom of Information Act 1982*, as amended by this Schedule) before, at or after the commencement of that item.

19

20

21

22

23

#### *Indemnity amendments*

24

(4) The following amendments apply in relation to the publication of, or the giving of access to, a document at or after the commencement of those amendments:

25

26

27

(a) the amendment made by item 50 to insert new section 90 of the *Freedom of Information Act 1982*;

28

29

(b) the amendments made by items 51, 52 and 56.

30

### 66 Application—Part 2

---



1           The amendments made by Part 2 apply in relation to a complaint made  
2           to the Ombudsman under the *Ombudsman Act 1976* at or after the  
3           commencement of that Part (whether or not the action to which the  
4           complaint relates was taken before, at or after that commencement).

5           **67 Savings—complaints on foot continue under old law**

- 6           (1)     This item applies if:
- 7                     (a) before the commencement of Part 2, a complaint is made to  
8                     the Ombudsman under the *Ombudsman Act 1976*; and
- 9                     (b) at the commencement of that Part, the Ombudsman has not  
10                    informed the complainant of the result of the complaint under  
11                    section 12 of that Act.
- 12          (2)     Despite the amendments made to the *Ombudsman Act 1976* by Part 2,  
13          the Ombudsman must continue to deal with the complaint under the  
14          *Ombudsman Act 1976* as if those amendments had not been made.

1  
2 **Schedule 5—Amendments consequential on**  
3 **the establishment of the Office of the**  
4 **Information Commissioner**  
5

6 *Anti-Money Laundering and Counter-Terrorism Financing*  
7 *Act 2006*

8 **1 Subparagraph 212(2)(a)(vi)**

9 Omit “Privacy Commissioner”, substitute “Information Commissioner  
10 in relation to matters that relate to the privacy functions (within the  
11 meaning of the *Information Commissioner Act 2009*)”.

12 *Australian Citizenship Act 2007*

13 **2 Paragraph 43(2)(g)**

14 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

15 *Australian Human Rights Commission Act 1986*

16 **3 Subsection 3(1)**

17 Insert:

18 *Information Commissioner* means the Information Commissioner  
19 appointed under the *Information Commissioner Act 2009*.

20 **4 Subsection 3(1) (definition of *Privacy Commissioner*)**

21 Repeal the definition.

22 **5 Paragraphs 20(4A)(b), (c) and (e)**

23 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

24 **6 Subsection 20(4B)**

25 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

26 **7 Section 43A**

---

---

1 Omit “Privacy Commissioner” (wherever occurring), substitute  
2 “Information Commissioner”.

3 Note: The heading to section 43A is altered by omitting “**Privacy Commissioner**” and  
4 substituting “**Information Commissioner**”.

5 **8 Section 43A**

6 Omit “*Privacy Act 1988*”, substitute “*Information Commissioner Act*  
7 *2009*”.

8 ***Aviation Legislation Amendment (2008 Measures No. 2) Act***  
9 ***2009***

10 **9 Subsections 4(1), (2) and (4)**

11 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

12 Note: The heading to section 4 is altered by omitting “**Privacy Commissioner**” and  
13 substituting “**Information Commissioner**”.

14 **10 Subsection 4(4)**

15 Omit “, and may delegate any matter to a member of his or her staff as  
16 provided for by section 99 of that Act”.

17 ***Child Care Act 1972***

18 **11 Subsection 12P(3)**

19 Omit “Privacy Commissioner”, substitute “Information Commissioner  
20 in relation to matters that relate to the privacy functions (within the  
21 meaning of the *Information Commissioner Act 2009*)”.

22 ***Crimes Act 1914***

23 **12 Paragraph 3ZQJ(2)(c)**

24 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

25 **13 Paragraph 23YDAE(2)(g)**

26 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

27 **14 Paragraph 23YO(2)(g)**

28 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

---

1 **15 Subsection 23YUK(4) (paragraph (b) of the definition of**  
2 ***independent review*)**

3 Omit “nominee of the Privacy Commissioner”, substitute “a person  
4 nominated by the Information Commissioner in the performance of the  
5 privacy functions (within the meaning of the *Information Commissioner*  
6 *Act 2009*)”.

7 **16 Subsection 23YV(4) (paragraph (b) of the definition of**  
8 ***independent review*)**

9 Omit “nominee of the Privacy Commissioner”, substitute “a person  
10 nominated by the Information Commissioner in the performance of the  
11 privacy functions (within the meaning of the *Information Commissioner*  
12 *Act 2009*)”.

13 **17 Division 5 of Part VIIC (heading)**

14 Repeal the heading, substitute:

15 **Division 5—Complaints to Information Commissioner**

16 **18 Subsection 85ZZ(1)**

17 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

18 Note: The heading to section 85ZZ is altered by omitting “**Privacy Commissioner’s**” and  
19 substituting “**Information Commissioner’s**”.

20 **19 After subsection 85ZZ(1)**

21 Insert:

22 (1A) The functions conferred by subsection (1) are privacy functions for  
23 the purposes of the *Information Commissioner Act 2009*.

24 **20 Subsection 85ZZ(2)**

25 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

26 **21 Subsection 85ZZA(1)**

27 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

28 Note: The heading to section 85ZZA is altered by omitting “**Privacy Commissioner**” and  
29 substituting “**Information Commissioner**”.

30 **22 Subsection 85ZZA(3)**

---

1 Omit “Privacy Commissioner’s”, substitute “Information  
2 Commissioner’s”.

3 **23 Subsections 85ZZC(1) and (2)**

4 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

5 **24 Subsection 85ZZD(1)**

6 Before “Commissioner”, insert “Information”.

7 Note: The heading to section 85ZZD is altered by omitting “Privacy Commissioner” and  
8 substituting “Information Commissioner”.

9 **25 Subsections 85ZZD(2) to (4)**

10 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

11 **26 Subsection 85ZZF(1)**

12 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

13 ***Data-matching Program (Assistance and Tax) Act 1990***

14 **27 Subsection 10(5) (definition of *sampling procedures*)**

15 Omit “Privacy Commissioner”, substitute “Information Commissioner  
16 in relation to matters that relate to the privacy functions (within the  
17 meaning of the *Information Commissioner Act 2009*)”.

18 **28 Section 12**

19 Repeal the section, substitute:

20 **12 Guidelines relating to privacy**

21 (1) The matching agency and the source agencies must comply with  
22 guidelines issued under this section.

23 (2) The Information Commissioner may, by legislative instrument,  
24 issue guidelines relating to the matching of data under this Act.

25 (3) The function conferred by subsection (2) is a privacy function for  
26 the purposes of the *Information Commissioner Act 2009*.

27 (4) After the end of each financial year, each agency must give the  
28 Information Commissioner, and cause to be laid before each House  
29 of the Parliament, a report including the matters relating to the

1 data-matching program carried out during the financial year that  
2 are specified for the purposes of this subsection in guidelines  
3 issued under this section.

4 (5) After the 3-year period ending on 30 June 1998, and after each  
5 successive 3-year period, each agency must give the Minister  
6 responsible for the agency a report for presentation to the  
7 Parliament including all the details relating to the data-matching  
8 program carried out during the period that are specified for the  
9 purposes of this subsection in guidelines issued under this section.

10 Note: Section 34C of the *Acts Interpretation Act 1901* sets time limits for  
11 giving reports to Ministers and for presentation of reports to the  
12 Parliament.

13 (6) Despite section 12 of the *Legislative Instruments Act 2003*,  
14 guidelines issued under this section take effect from:  
15 (a) the first day on which the guidelines are no longer subject to  
16 disallowance; or  
17 (b) if the guidelines make provision for their commencement  
18 after that day—in accordance with that provision.

### 19 **29 Subsection 13(1) (definition of Commissioner)**

20 Omit “Privacy Commissioner”, substitute “Information Commissioner  
21 acting in the performance of the privacy functions (within the meaning  
22 of the *Information Commissioner Act 2009*)”.

### 23 **30 Subsection 14(2)**

24 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

### 25 **31 Schedule**

26 Repeal the Schedule.

## 27 ***Environment Protection and Biodiversity Conservation Act*** 28 ***1999***

### 29 **32 Paragraph 42(2)(e) of Schedule 1**

30 Omit “Privacy Commissioner”, substitute “Information Commissioner  
31 under the *Privacy Act 1988*”.

### 32 **33 Paragraph 53(2)(g) of Schedule 1**

---

1 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

2 ***Fair Work Act 2009***

3 **34 Paragraph 510(1)(c)**

4 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

5 ***Fisheries Management Act 1991***

6 **35 Paragraph 42(2)(e) of Schedule 1A**

7 Omit “Privacy Commissioner”, substitute “Information Commissioner  
8 under the *Privacy Act 1988*”.

9 **36 Paragraph 53(2)(g) of Schedule 1A**

10 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

11 ***Migration Act 1958***

12 **37 Paragraph 261AKD(2)(e)**

13 Omit “Privacy Commissioner”, substitute “Information Commissioner  
14 under the *Privacy Act 1988*”.

15 **38 Paragraph 336E(2)(g)**

16 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

17 ***National Health Act 1953***

18 **39 Subsection 135AA(3)**

19 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

20 **40 Subsection 135AA(3)**

21 Omit “written notice”, substitute “legislative instrument”.

22 **41 After subsection 135AA(3)**

23 Insert:

24 (3A) The issuing of guidelines under this section is a privacy function  
25 for the purposes of the *Information Commissioner Act 2009*.

---

1 **42 Subsection 135AA(4)**

2 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

3 **43 Subsection 135AA(4)**

4 Omit “written notice”, substitute “legislative instrument”.

5 **44 Subsections 135AA(5A) and (6)**

6 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

7 **45 Subsections 135AA(7) to (10)**

8 Repeal the subsections, substitute:

9 *When guidelines take effect*

10 (8) Despite section 12 of the *Legislative Instruments Act 2003*,  
11 guidelines take effect from:

12 (a) the first day on which they are no longer liable to be  
13 disallowed; or

14 (b) if the guidelines provide for their commencement after that  
15 day—in accordance with that provision.

16 **46 Subsection 135AB(2)**

17 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

18 ***National Health and Medical Research Council Act 1992***

19 **47 Section 4**

20 Insert:

21 *Information Commissioner* means the Information Commissioner  
22 within the meaning of the *Information Commissioner Act 2009*.

23 **48 Section 4 (definition of *Privacy Commissioner*)**

24 Repeal the definition.

25 **49 Subparagraphs 61(4)(b)(i) and (ii)**

26 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

27 **50 Paragraphs 61(5)(c) and (d)**

---



1 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

2 **51 Subsection 61(6)**

3 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

4 ***Privacy Act 1988***

5 **52 Subsection 6(1) (definition of *Commissioner*)**

6 Repeal the definition, substitute:

7 *Commissioner* means the Information Commissioner within the  
8 meaning of the *Information Commissioner Act 2009*.

9 **53 Part IV (heading)**

10 Repeal the heading, substitute:

11 **Part IV—Functions of the Information**  
12 **Commissioner**

13 **54 Division 1 of Part IV**

14 Repeal the Division.

15 **55 Subsections 31(4), 32(2) and 36(1)**

16 Omit “Privacy”.

17 **56 Sections 96, 97 and 99**

18 Repeal the sections.

19 **57 Introduction to Schedule 2**

20 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

21 **58 Clause 6.1 of Schedule 2**

22 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

23 ***Telecommunications Act 1997***

24 **59 Paragraphs 117(1)(j) and (k)**

25 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

---

---

1 **60 Subsection 118(1) (note)**

2 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

3 **61 Subsection 118(4A)**

4 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

5 **62 Subsection 121(1A)**

6 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

7 **63 Subsection 122(3)**

8 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

9 **64 Subsection 130(1) (note)**

10 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

11 **65 Subsections 134(2) and (3)**

12 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

13 Note: The heading to section 134 is altered by omitting “**Privacy**” and substituting  
14 “**Information**”.

15 **66 Paragraph 295M(1)(a)**

16 Omit “Privacy Commissioner” (first occurring), substitute “Information  
17 Commissioner in relation to matters that relate to the privacy functions  
18 (within the meaning of the *Information Commissioner Act 2009*)”.

19 **67 Paragraph 295M(1)(a)**

20 Omit “Privacy Commissioner” (last occurring), substitute “Information  
21 Commissioner”.

22 **68 Section 295ZC**

23 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

24 Note: The heading to section 295ZC is altered by omitting “**Privacy Commissioner**” and  
25 substituting “**Information Commissioner**”.

26 **69 Subsection 309(1)**

27 Omit “Privacy Commissioner” (wherever occurring), substitute  
28 “Information Commissioner”.

29 Note: The heading to section 309 is altered by omitting “**Privacy Commissioner**” and  
30 substituting “**Information Commissioner**”.

1 **70 After subsection 309(1)**

2 Insert:

3 (1A) The function conferred on the Information Commissioner by  
4 subsection (1) is a privacy function for the purposes of the  
5 *Information Commissioner Act 2009*.

6 **71 Subsections 309(2) to (4)**

7 Omit “Privacy Commissioner” (wherever occurring), substitute  
8 “Information Commissioner”.

9 **72 Subsection 309(5)**

10 Repeal the subsection (including the note).

11 **73 Paragraphs 515A(2)(a) and (b)**

12 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

13 Note: The heading to section 515A is altered by omitting “**Privacy Commissioner**” and  
14 substituting “**Information Commissioner**”.

15 **74 Paragraphs 515A(3)(a) and (c)**

16 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

17 **75 Subsection 515A(4)**

18 Omit “Privacy Commissioner” (wherever occurring), substitute  
19 “Information Commissioner”.

20 ***Telecommunications (Interception and Access) Act 1979***

21 **76 Subsection 183(3)**

22 Omit “Privacy Commissioner”, substitute “Information Commissioner  
23 in relation to matters that relate to the privacy functions (within the  
24 meaning of the *Information Commissioner Act 2009*)”.

25 ***Torres Strait Fisheries Act 1984***

26 **77 Paragraph 42(2)(e) of Schedule 2**

27 Omit “Privacy Commissioner”, substitute “Information Commissioner  
28 under the *Privacy Act 1988*”.

---

1 **78 Paragraph 53(2)(g) of Schedule 2**

2 Omit “Privacy Commissioner”, substitute “Information Commissioner”.

1  
2 **Schedule 6—Other amendments**

3 **Part 1—Amendments to the Freedom of Information**  
4 **Act 1982**

5 *Freedom of Information Act 1982*

6 **1 Subsection 4(1) (definition of agency)**

7 Omit “, a prescribed authority or an eligible case manager”, substitute  
8 “or a prescribed authority”.

9 **2 Subsection 4(1)**

10 Insert:

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

- 13 (a) the Commonwealth or an agency is, or was, a party to the  
14 contract;
- 15 (b) under the contract, services are, or were, to be provided:  
16 (i) by another party; and  
17 (ii) for or on behalf of an agency; and  
18 (iii) to a person who is not the Commonwealth or an agency;
- 19 (c) the services are in connection with the performance of the  
20 functions, or the exercise of the powers, of an agency.

21 **3 Subsection 4(1)**

22 Insert:

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

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

28 **4 Subsection 4(1)**

29 Insert:

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

3                    **5 Subsection 4(1) (definition of *Department*)**

4                    Omit all the words after “Commonwealth”.

5                    **6 Subsection 4(1) (paragraph (d) of the definition of**  
6                    ***document*)**

7                    Repeal the paragraph, substitute:

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

10                  **7 Subsection 4(1) (definition of *document of an agency*)**

11                  Repeal the definition, substitute:

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

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

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

18                  **8 Subsection 4(1)**

19                  Insert:

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

22                  **9 Subsection 4(1) (definition of *eligible case manager*)**

23                  Repeal the definition.

24                  **10 Subsection 4(1)**

25                  Insert:

26                  *intelligence agency document* has the meaning given by paragraph  
27                  7(2A)(a).

28                  **11 Subsection 4(1)**

29                  Insert:

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

---

1 **12 Subsection 4(1) (paragraphs (b) and (c) of the definition of**  
2 ***principal officer*)**

3 Repeal the paragraphs, substitute:

4 (b) in relation to a prescribed authority:

- 5 (i) if the regulations declare an office to be the principal  
6 office of the authority—the person holding, or  
7 performing the duties of, that office;
- 8 (ii) if the authority is an Agency (within the meaning of the  
9 *Public Service Act 1999*) other than a Department and  
10 subparagraph (i) does not apply—the Agency Head  
11 (within the meaning of the *Public Service Act 1999*) of  
12 the authority;
- 13 (iii) if neither subparagraph (i) nor (ii) applies—the person  
14 responsible for the day-to-day management of the  
15 authority;
- 16 (iv) if the authority is constituted by one person and none of  
17 subparagraphs (i) to (iii) applies—that person;
- 18 (v) if the authority is constituted by 2 or more persons and  
19 none of subparagraphs (i) to (iv) applies—the person  
20 who is entitled to preside at any meeting of the authority  
21 at which he or she is present.

22 **13 Subsection 4(1)**

23 Insert:

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

26 **14 Subsection 4(1) (paragraph (d) of the definition of**  
27 ***responsible Minister*)**

28 Omit “or”.

29 **15 Subsection 4(1) (paragraph (e) of the definition of**  
30 ***responsible Minister*)**

31 Repeal the paragraph.

32 **16 Subsection 4(1)**

33 Insert:

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

---

- 1 (a) that is, or was, a party to a contract (the *subcontract*):  
2 (i) with a contracted service provider for the  
3 Commonwealth contract; or  
4 (ii) with another subcontractor for the Commonwealth  
5 contract (under a previous application of this  
6 definition); and  
7 (b) that is, or was, responsible under the subcontract for the  
8 provision of services for the purposes (whether direct or  
9 indirect) of the Commonwealth contract.

10 **17 Subsection 4(8)**

11 Repeal the subsection.

12 **18 Section 6B**

13 Repeal the section.

14 **19 Before section 7**

15 Insert:

16 **6C Requirement for Commonwealth contracts**

- 17 (1) This section applies to an agency if a service is, or is to be,  
18 provided under a Commonwealth contract in connection with the  
19 performance of the functions or the exercise of the powers of the  
20 agency.
- 21 (2) The agency must take contractual measures to ensure that the  
22 agency receives a document if:  
23 (a) the document is created by, or is in the possession of:  
24 (i) a contracted service provider for the Commonwealth  
25 contract; or  
26 (ii) a subcontractor for the Commonwealth contract; and  
27 (b) the document relates to the performance of the  
28 Commonwealth contract (and not to the entry into that  
29 contract); and  
30 (c) the agency receives a request for access to the document.

31 **20 Subsection 7(2A)**

32 Repeal the subsection, substitute:



1 (2A) An agency is exempt from the operation of this Act in relation to  
2 the following documents:

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

- 6 (i) the Australian Secret Intelligence Service;  
7 (ii) the Australian Security Intelligence Organisation;  
8 (iii) the Inspector-General of Intelligence and Security;  
9 (iv) the Office of National Assessments;  
10 (v) the Defence Imagery and Geospatial Organisation;  
11 (vi) the Defence Intelligence Organisation;  
12 (vii) the Defence Signals Directorate;

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

## 17 **21 Subsection 7(2B)**

18 Repeal the subsection, substitute:

19 (2B) A Minister is exempt from the operation of this Act in relation to  
20 the following documents:

- 21 (a) an intelligence agency document;  
22 (b) a document that contains a summary of, or an extract or  
23 information from, an intelligence agency document, to the  
24 extent that it contains such a summary, extract or  
25 information.

26 (2C) An agency is exempt from the operation of this Act in relation to  
27 the following documents:

- 28 (a) a document (a *defence intelligence document*) that has  
29 originated with, or has been received from, the Department of  
30 Defence and that is in respect of:  
31 (i) the collection, reporting or analysis of operational  
32 intelligence; or  
33 (ii) special access programs, under which a foreign  
34 government provides restricted access to technologies;  
35 (b) a document that contains a summary of, or an extract or  
36 information from, a defence intelligence document, to the

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

3 (2D) A Minister is exempt from the operation of this Act in relation to  
4 the following documents:

5 (a) a defence intelligence document;

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

## 10 **22 After paragraph 13(1)(d)**

11 Insert:

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

## 15 **23 After paragraph 15(2)(a)**

16 Insert:

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

19 Note 1: The following heading to subsection 15(1) is inserted "*Persons may request access*".

20 Note 2: The following heading to subsection 15(2) is inserted "*Requirements for request*".

## 21 **24 Paragraphs 15(2)(c) to (e)**

22 Repeal the paragraphs, substitute:

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

## 26 **25 After subsection 15(2)**

27 Insert:

28 (2A) The request must be sent to the agency or Minister. The request  
29 may be sent in any of the following ways:

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

- 1 (b) postage by pre-paid post to an address mentioned in  
2 paragraph (a);  
3 (c) sending by electronic communication to an electronic address  
4 specified by the agency or Minister.

5 **26 At the end of subsection 15(3)**

6 Add:

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

10 Note: The following heading to subsection 15(3) is inserted “*Agency required to assist*”.

11 **27 After subsection 15(5)**

12 Insert:

13 (5A) In making a decision on a request, the agency or Minister must  
14 have regard to any guidelines issued by the Information  
15 Commissioner for the purposes of section 93A.

16 Note: The following heading to subsection 15(5) is inserted “*Timeframes for dealing with*  
17 *request*”.

18 **28 Paragraph 15(6)(a)**

19 Omit “to be taken to be”.

20 Note: The following heading to subsection 15(6) is inserted “*Extension of processing period*  
21 *to comply with requirements of section 26A, 27 or 27A*”.

22 **29 At the end of section 15**

23 Add:

24 *Extension of processing period to consult foreign entity*

25 (7) Subsection (8) applies if, in relation to a request, the agency or  
26 Minister determines in writing that it is appropriate to extend the  
27 period referred to in paragraph (5)(b) so that the agency or Minister  
28 can:

- 29 (a) consult one of the following:  
30 (i) a foreign government;  
31 (ii) an authority of a foreign government;  
32 (iii) an international organisation; and

1 (b) determine whether the document that is the subject of the  
2 request is an exempt document under subparagraph 33(a)(iii)  
3 or paragraph 33(b).

4 (8) If this subsection applies:

5 (a) the period referred to in paragraph (5)(b) is extended by a  
6 period of 30 days; and

7 (b) the agency or Minister must, as soon as practicable, inform  
8 the applicant that the period has been extended.

### 9 **30 After section 15**

10 Insert:

#### 11 **15AA Extension of time with agreement**

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

16 (a) the applicant agrees in writing to the extension; and

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

#### 20 **15AB Extension of time for complex or voluminous requests**

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

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

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

- 1           (3) The Information Commissioner must, as soon as practicable,  
2           inform the following persons of the period for which the extension  
3           has been given:  
4           (a) the applicant;  
5           (b) the agency or Minister.

6           **15AC Decision not made on request within time—deemed refusal**

7                           *Scope*

- 8           (1) This section applies if:  
9           (a) a request has been made to an agency or Minister; and  
10           (b) the period (the *initial decision period*) covered by  
11           subsection (2) has ended since the day the request was  
12           received by, or on behalf of, the agency or Minister; and  
13           (c) notice of a decision on the request has not been received by  
14           the applicant.
- 15           (2) The initial decision period covered by this subsection is the period  
16           of 30 days mentioned in paragraph 15(5)(b) (or that period as  
17           extended, otherwise than under this section).

18                           *Deemed refusal*

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

26                           *Agency or Minister may apply for further time*

- 27           (4) However, the agency or Minister concerned may apply, in writing,  
28           to the Information Commissioner for further time to deal with the  
29           request.
- 30           (5) The Information Commissioner may allow further time considered  
31           appropriate by the Information Commissioner for the agency or  
32           Minister to deal with the request.

- 1 (6) If the Information Commissioner allows further time, the  
2 Information Commissioner may impose any condition that he or  
3 she considers appropriate.
- 4 (7) Subsection (3) (deemed refusal) does not apply, and is taken never  
5 to have applied, if the agency or Minister:  
6 (a) makes a decision on the request within the further time  
7 allowed; and  
8 (b) complies with any condition imposed under subsection (6).
- 9 (8) However, subsection (3) (deemed refusal) applies as if the initial  
10 decision period were extended by the time allowed by the  
11 Information Commissioner under subsection (5) if the agency or  
12 Minister:  
13 (a) does not make a decision on the request within the further  
14 time allowed; or  
15 (b) does not comply with any condition imposed under  
16 subsection (6).

17 *No further time allowed*

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

23 **31 Paragraph 17(1)(a)**

24 Omit “of the kind described in subsection 24(1)”, substitute “in relation  
25 to which a practical refusal reason exists”.

26 **32 Section 24**

27 Repeal the section, substitute:

28 **24 Power to refuse request—diversion of resources etc.**

- 29 (1) If an agency or Minister is satisfied, when dealing with a request  
30 for a document, that a practical refusal reason exists in relation to  
31 the request (see section 24AA), the agency or Minister:  
32 (a) must undertake a request consultation process (see  
33 section 24AB); and

- 1 (b) if, after the request consultation process, the agency or  
2 Minister is satisfied that the practical refusal reason still  
3 exists—the agency or Minister may refuse to give access to  
4 the document in accordance with the request.
- 5 (2) For the purposes of this section, the agency or Minister may treat 2  
6 or more requests as a single request if the agency or Minister is  
7 satisfied that:  
8 (a) the requests relate to the same document or documents; or  
9 (b) the requests relate to documents, the subject matter of which  
10 is substantially the same.

11 **24AA When does a *practical refusal reason* exist?**

- 12 (1) For the purposes of section 24, a *practical refusal reason* exists in  
13 relation to a request for a document if either (or both) of the  
14 following applies:  
15 (a) the work involved in processing the request:  
16 (i) in the case of an agency—would substantially and  
17 unreasonably divert the resources of the agency from its  
18 other operations; or  
19 (ii) in the case of a Minister—would substantially and  
20 unreasonably interfere with the performance of the  
21 Minister’s functions;  
22 (b) the request does not satisfy the requirement in paragraph  
23 15(2)(b) (identification of documents).
- 24 (2) Subject to subsection (3), but without limiting the matters to which  
25 the agency or Minister may have regard, in deciding whether a  
26 practical refusal reason exists, the agency or Minister must have  
27 regard to the resources that would have to be used for the  
28 following:  
29 (a) identifying, locating or collating the documents within the  
30 filing system of the agency, or the office of the Minister;  
31 (b) deciding whether to grant, refuse or defer access to a  
32 document to which the request relates, or to grant access to  
33 an edited copy of such a document, including resources that  
34 would have to be used for:  
35 (i) examining the document; or  
36 (ii) consulting with any person or body in relation to the  
37 request;

- 1 (c) making a copy, or an edited copy, of the document;  
2 (d) notifying any interim or final decision on the request.
- 3 (3) In deciding whether a practical refusal reason exists, an agency or  
4 Minister must not have regard to:
- 5 (a) any reasons that the applicant gives for requesting access; or  
6 (b) the agency's or Minister's belief as to what the applicant's  
7 reasons are for requesting access; or  
8 (c) any maximum amount, specified in the regulations, payable  
9 as a charge for processing a request of that kind.

10 **24AB What is a *request consultation process*?**

11 *Scope*

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

14 *Requirement to notify*

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

27 *Assistance to revise request*

- 28 (3) If the applicant contacts the contact person during the consultation  
29 period in accordance with the notice, the agency or Minister must  
30 take reasonable steps to assist the applicant to revise the request so  
31 that the practical refusal reason no longer exists.
- 32 (4) For the purposes of subsection (3), *reasonable steps* includes the  
33 following:
-



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

5 *Extension of consultation period*

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

8 *Outcome of request consultation process*

- 9 (6) The applicant must, before the end of the consultation period, do  
10 one of the following, by written notice to the agency or Minister:  
11 (a) withdraw the request;  
12 (b) make a revised request;  
13 (c) indicate that the applicant does not wish to revise the request.
- 14 (7) The request is taken to have been withdrawn under subsection (6)  
15 at the end of the consultation period if:  
16 (a) the applicant does not consult the contact person during the  
17 consultation period in accordance with the notice; or  
18 (b) the applicant does not do one of the things mentioned in  
19 subsection (6) before the end of the consultation period.

20 *Consultation period to be disregarded in calculating processing*  
21 *period*

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

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

29 *No more than one request consultation process required*

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

33 **33 Section 24A**

---

1 Repeal the section, substitute:

2 **24A Requests may be refused if documents cannot be found, do not**  
3 **exist or have not been received**

4 *Document lost or non-existent*

5 (1) An agency or Minister may refuse a request for access to a  
6 document if:

7 (a) all reasonable steps have been taken to find the document;  
8 and

9 (b) the agency or Minister is satisfied that the document:

10 (i) is in the agency's or Minister's possession but cannot be  
11 found; or

12 (ii) does not exist.

13 *Document not received as required by contract*

14 (2) An agency may refuse a request for access to a document if:

15 (a) in order to comply with section 6C, the agency has taken  
16 contractual measures to ensure that it receives the document;  
17 and

18 (b) the agency has not received the document; and

19 (c) the agency has taken all reasonable steps to receive the  
20 document in accordance with those contractual measures.

21 **34 Subsection 29(1)**

22 Omit "(not being an application fee)".

23 **35 Section 30A**

24 Repeal the section.

25 **36 Section 92A**

26 Repeal the section.

27 **37 Paragraph 94(2)(a)**

28 Omit "the applicant is included in one class of applicant or another class  
29 of applicant or according to whether".

1 **38 Division 1 of Part II of Schedule 2 (after the item relating to**  
2 **the Commonwealth Scientific and Industrial Research**  
3 **Organisation)**

4 Insert:

Department of Defence, in relation to documents in respect of:

- (a) the collection, reporting or analysis of operational intelligence; or
- (b) special access programs, under which a foreign government provides restricted access to technologies.

5 **39 Division 1 of Part II of Schedule 2 (the item relating to the**  
6 **Federal Airports Corporation)**

7 Repeal the item.

1

2 **Part 2—Application provisions**

3 **40 Application—items 2, 3, 7, 16, 19 and 33**

4 The amendments made by items 2, 3, 7, 16, 19 and 33 apply in relation  
5 to contracts entered into at or after the commencement of those items.

6 **41 Application—items 4, 6, 8, 10 to 13, 17, 20 to 32 and 34 to**  
7 **39**

8 The amendments made by items 4, 6, 8, 10 to 13, 17, 20 to 32 and 34 to  
9 39 apply in apply in relation to the following:

- 10 (a) requests for access made under section 15 of the *Freedom of*  
11 *Information 1982* that are received at or after the  
12 commencement of those items;
- 13 (b) applications under section 48 of that Act that are received at  
14 or after the commencement of those items.

1

2 **Part 3—Amendment of other Acts**

3 *Australian Crime Commission Act 2002*

4 **42 Schedule 1**

5 Omit “*Freedom of Information Act 1982*, section 58”.

6 *Environment Protection and Biodiversity Conservation Act*  
7 *1999*

8 **43 Paragraph 93(3A)(a)**

9 Repeal the paragraph, substitute:

10 (a) is:

- 11 (i) an exempt document under subparagraph 33(a)(i) of the  
12 *Freedom of Information Act 1982* (documents affecting  
13 national security, defence or international relations); or  
14 (ii) a conditionally exempt document under section 47C of  
15 that Act (deliberative processes) to which access would,  
16 on balance, be contrary to the public interest for the  
17 purposes of subsection 11A(5) of that Act; or

18 **44 Subparagraph 131AA(4)(a)(i)**

19 Repeal the subparagraph, substitute:

- 20 (i) is an exempt document under subparagraph 33(a)(i) of  
21 the *Freedom of Information Act 1982* (documents  
22 affecting national security, defence or international  
23 relations); or  
24 (ia) is a conditionally exempt document under section 47C  
25 of that Act (deliberative processes) to which access  
26 would, on balance, be contrary to the public interest for  
27 the purposes of subsection 11A(5) of that Act; or

28 **45 Paragraph 133(4)(a)**

29 Repeal the paragraph, substitute:

30 (a) is:

- 1 (i) an exempt document under section 47 of the *Freedom of*  
2 *Information Act 1982* (trade secrets etc.); or  
3 (ii) a conditionally exempt document under section 47G of  
4 that Act (business documents) to which access would,  
5 on balance, be contrary to the public interest for the  
6 purposes of subsection 11A(5) of that Act; or

7 **46 Paragraph 135A(4)(a)**

8 Repeal the paragraph, substitute:

- 9 (a) is:  
10 (i) an exempt document under subparagraph 33(a)(i) of the  
11 *Freedom of Information Act 1982* (documents affecting  
12 national security, defence or international relations); or  
13 (ii) a conditionally exempt document under section 47C of  
14 that Act (deliberative processes) to which access would,  
15 on balance, be contrary to the public interest for the  
16 purposes of subsection 11A(5) of that Act; or

17 **47 Paragraph 143(6)(a)**

18 Repeal the paragraph, substitute:

- 19 (a) is:  
20 (i) an exempt document under section 47 of the *Freedom of*  
21 *Information Act 1982* (trade secrets etc.); or  
22 (ii) a conditionally exempt document under section 47G of  
23 that Act (business documents) to which access would,  
24 on balance, be contrary to the public interest for the  
25 purposes of subsection 11A(5) of that Act; or

26 **48 Paragraph 146B(4)(a)**

27 Repeal the paragraph, substitute:

- 28 (a) is:  
29 (i) an exempt document under section 47 of the *Freedom of*  
30 *Information Act 1982* (trade secrets); or  
31 (ii) a conditionally exempt document under section 47G of  
32 that Act (business documents) to which access would,  
33 on balance, be contrary to the public interest for the  
34 purposes of subsection 11A(5) of that Act; or

1 ***Inspector-General of Intelligence and Security Act 1986***

2 **49 Subsection 34(1AA)**

3 Before “section 60A”, insert “Division 9 of Part VII or”.

4 **50 Paragraph 34(1AA)(a)**

5 Before “section”, insert “Division or”.

6 **51 Subsection 34(5)**

7 Before “section 60A”, insert “Division 9 of Part VII or”.

8 **52 After paragraph 34(5)(c)**

9 Insert:

10 (ca) if the information is obtained by the person because the  
11 person is performing functions or duties or exercising powers  
12 under Division 9 of Part VII of the *Freedom of Information*  
13 *Act 1982*—for the purposes of that Division; and

1  
2 **Schedule 7—Privacy Commissioner transition**

3 **Part 1—Preliminary**

4 **1 Definitions**

5 (1) In this Schedule:

6 *commencement day* means the day on which the new law commences.

7 *Information Commissioner* means the Information Commissioner  
8 appointed under section 14 of the new law.

9 *new law* means the *Information Commissioner Act 2009*.

10 *old law* means Division 1 of Part IV of the *Privacy Act 1988* as in force  
11 immediately before the commencement day.

12 *Privacy Commissioner* means the Privacy Commissioner appointed  
13 under section 19A of the old law.

14 (2) An expression used in this Schedule that is also used in the new law has  
15 the same meaning in this Schedule as it has in the new law.

16 (3) Subject to subitem (2), an expression used in this Schedule that is also  
17 used in the *Privacy Act 1988* has the same meaning in this Schedule as  
18 it has in that Act.

19 (4) Subject to subitems (2) and (3), an expression used in this Schedule that  
20 is also used in the *Freedom of Information Act 1982* has the same  
21 meaning in this Schedule as it has in that Act.

22 (5) To avoid doubt, a reference in this Schedule to an Act, or a provision of  
23 an Act, that is amended by this Act is, in relation to a time on or after  
24 the commencement day, taken to be a reference to the provision as so  
25 amended.



1

2 **Part 2—Office holders, staff and consultants**

3 **2 Privacy Commissioner**

- 4 (1) The person holding office as the Privacy Commissioner under  
5 section 19A of the old law immediately before the commencement day  
6 is taken to have been appointed as the Privacy Commissioner by the  
7 Governor-General under subsection 14(4) of the new law for the  
8 balance of the person's term of appointment that remained immediately  
9 before the commencement day.
- 10 (2) The Privacy Commissioner is taken to have been appointed on the same  
11 terms and conditions as applied immediately before the commencement  
12 day.
- 13 (3) This item does not prevent those terms and conditions being varied after  
14 the commencement day.

15 **3 Staff**

16 *Existing agreements to continue*

- 17 (1) Subitem (2) applies if:
- 18 (a) on or after the commencement day, an APS employee is  
19 moved, because of a determination under section 72 of the  
20 *Public Service Act 1999*, from the Office of the Privacy  
21 Commissioner to the Office of the Information  
22 Commissioner; and
- 23 (b) the employee's employment in the Office of the Privacy  
24 Commissioner was subject to any of the following  
25 agreements:
- 26 (i) a collective agreement;  
27 (ii) an enterprise agreement;  
28 (iii) an ITEA;  
29 (iv) an AWA or pre-reform AWA (and therefore also a  
30 collective agreement which had no effect while the  
31 AWA or pre-reform AWA operated in relation to the  
32 employee);  
33 (v) a pre-reform certified agreement.

- 1 (2) The agreement concerned has effect after the move, in relation to the  
2 employee's employment, as if it had been made with the Information  
3 Commissioner.

4 *Regulations*

- 5 (3) The regulations may provide for other matters of a transitional nature in  
6 relation to the transfer of employees from the Office of the Privacy  
7 Commissioner to the Office of the Information Commissioner.

8 *Definitions*

- 9 (4) In this item:

10 *AWA* has the meaning given by clause 1 of Schedule 7A to the  
11 *Workplace Relations Act 1996* as in force immediately before the  
12 commencement of Schedule 1 to the *Fair Work (Transitional*  
13 *Provisions and Consequential Amendments) Act 2009*.

14 Note: *AWA* is short for Australian workplace agreement.

15 *collective agreement* has the meaning given by section 4 of the  
16 *Workplace Relations Act 1996* as in force immediately before the  
17 commencement of Schedule 1 to the *Fair Work (Transitional*  
18 *Provisions and Consequential Amendments) Act 2009*.

19 *enterprise agreement* has the meaning given by section 12 of the *Fair*  
20 *Work Act 2009*.

21 *ITEA* has the meaning given by section 326 of the *Workplace Relations*  
22 *Act 1996* as in force immediately before the commencement of  
23 Schedule 1 to the *Fair Work (Transitional Provisions and*  
24 *Consequential Amendments) Act 2009*.

25 Note: *ITEA* is short for individual transitional employment agreement.

26 *pre-reform AWA* has the meaning given by clause 1 of Schedule 7 to  
27 the *Workplace Relations Act 1996* as in force immediately before the  
28 commencement of Schedule 1 to the *Fair Work (Transitional*  
29 *Provisions and Consequential Amendments) Act 2009*.

30 *pre-reform certified agreement* has the meaning given by clause 1 of  
31 Schedule 7 to the *Workplace Relations Act 1996* as in force  
32 immediately before the commencement of Schedule 1 to the *Fair Work*  
33 *(Transitional Provisions and Consequential Amendments) Act 2009*.

34 **4 Consultants**

---

- 1 (1) A person engaged as a consultant under subsection 26A(3) of the old  
2 law immediately before the commencement day is taken, on and after  
3 the commencement day, to have been engaged by the Information  
4 Commissioner as a consultant under section 24 of the new law.
- 5 (2) The person is taken to have been engaged on the same terms and  
6 conditions as applied to the person immediately before the  
7 commencement day.
- 8 (3) This item does not prevent those terms and conditions being varied after  
9 the commencement day.

1

2

## **Part 3—Things done by, or in relation to, the Privacy Commissioner**

3

4

### **5 Things done by, or in relation to, Privacy Commissioner**

5

(1) If a thing was done by, or in relation to, the Privacy Commissioner before the commencement day, for a purpose, then the thing is taken, on and after the commencement day, to have been done by, or in relation to, the Information Commissioner for the same purpose.

6

7

8

9

(2) In this item, doing a thing includes making an instrument.

10

11

12

(3) The Minister may, by written instrument, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, the Privacy Commissioner.

13

(4) A determination under subitem (3) is not a legislative instrument.

14

### **6 Consultations by, and with, Privacy Commissioner**

15

16

17

18

19

(1) A consultation being undertaken for the purposes of a provision of an Act (or an instrument under an Act) that was started by the Privacy Commissioner before the commencement day may be continued by the Information Commissioner in accordance with that provision on or after the commencement day.

20

21

22

23

24

(2) If, after undertaking consultation in accordance with a provision covered by subitem (1), the Privacy Commissioner would have been required or permitted to make a decision (or take another specified action), the Information Commissioner may make the decision (or take the specified action) after completing the consultation.

25

### **7 Comments sought, but not received, by Privacy Commissioner**

26

27

(1) This item applies if:

28

29

30

31

32

(a) the Privacy Commissioner gave a notice in accordance with a provision of an Act to a person for the purpose of:

(i) seeking the person's views before making a decision; or

(ii) giving the person an opportunity to be heard before making a decision; and

1 (b) the person did not respond to the Privacy Commissioner  
2 before the commencement day.

3 (2) The person may respond to the Information Commissioner in  
4 accordance with the provision of the Act on or after the commencement  
5 day.

## 6 **8 Approval sought from, but not given by, Privacy** 7 **Commissioner**

8 (1) This item applies if:

9 (a) the approval of the Privacy Commissioner was sought under  
10 a provision of an Act (or an instrument under an Act) for a  
11 program protocol, guidelines, code or other instrument, or for  
12 the variation or revocation of such a protocol, guidelines,  
13 code or instrument; and

14 (b) the Privacy Commissioner did not give approval before the  
15 commencement day.

16 (2) On or after the commencement day, the Information Commissioner may  
17 give approval in accordance with the provision in accordance with  
18 which the approval was sought.

## 19 **9 Decisions made, but not implemented, by Privacy** 20 **Commissioner**

21 (1) This item applies if:

22 (a) the Privacy Commissioner made a decision in accordance  
23 with a provision of the *Privacy Act 1988*; and

24 (b) having made the decision, the Privacy Commissioner was  
25 required to take a step to implement it; and

26 (c) the Privacy Commissioner did not take the step before the  
27 commencement day.

28 (2) The Information Commissioner may take the step in accordance with  
29 the provision to implement the decision on or after the commencement  
30 day.

31 (3) In this item, *make a decision* includes forming a view or being satisfied  
32 of a matter.

## 33 **10 Privacy Advisory Committee giving advice to Privacy** 34 **Commissioner**

---

**Schedule 7** Privacy Commissioner transition

**Part 3** Things done by, or in relation to, the Privacy Commissioner

---

- 1 (1) This item applies if:
- 2 (a) the Privacy Advisory Committee was requested to advise the
- 3 Privacy Commissioner in accordance with the functions
- 4 conferred on the Committee by section 83 of the *Privacy Act*
- 5 *1988*; and
- 6 (b) the Committee did not advise the Privacy Commissioner
- 7 before the commencement day.
- 8 (2) The Committee may advise the Information Commissioner in
- 9 accordance with the functions conferred by section 83 of the *Privacy*
- 10 *Act 1988* on or after the commencement day.

1

2 **Part 4—Investigations**

3 **11 Investigations**

4 (1) An investigation for the purposes of a provision of an Act (or an  
5 instrument under an Act) that was started by the Privacy Commissioner  
6 before the commencement day may be completed by the Information  
7 Commissioner in accordance with that provision on or after the  
8 commencement day.

9 (2) Subitem (1) applies whether the investigation was initiated by a  
10 complaint or at the initiative of the Privacy Commissioner.

11 **12 Requirement to give evidence or hold conference etc.**

12 (1) Subitem (2) applies if:

13 (a) the Privacy Commissioner required a person to provide  
14 evidence, information or any document; and

15 (b) the evidence, information or document was not provided to  
16 the Privacy Commissioner before the commencement day.

17 (2) The person must provide the evidence, information or document to the  
18 Information Commissioner, on the same basis on which it was required  
19 to be provided to the Privacy Commissioner.

20 (3) Subitem (4) applies if:

21 (a) the Privacy Commissioner directed a person to attend a  
22 conference under section 46 of the *Privacy Act 1988*; and

23 (b) the conference was not held before the commencement day.

24 (4) The person must attend the conference if the conference is:

25 (a) presided over by the Information Commissioner; and

26 (b) held on or after the commencement day; and

27 (c) held in accordance with section 46 of the *Privacy Act 1988*.

28 **13 Applications on foot as part of investigation proceeding**

29 (1) This item applies if:

- 1 (a) an application was made to the Privacy Commissioner as part  
2 of an investigation under section 38A or 38B of the *Privacy*  
3 *Act 1988* (as in force before the commencement day); and  
4 (b) the Privacy Commissioner did not determine the application  
5 before the commencement day.
- 6 (2) The Information Commissioner may determine the application in  
7 accordance with the provision in accordance with which the application  
8 was made on or after the commencement day.

9 **14 Conference convened, but not held**

- 10 (1) This item applies if:  
11 (a) the Privacy Commissioner convened a conference in  
12 accordance with section 47 of the *Privacy Act 1988*; and  
13 (b) the conference was not held before the commencement day.
- 14 (2) The Information Commissioner may hold the conference in accordance  
15 with section 47 of the *Privacy Act 1988* on or after the commencement  
16 day.

17 **15 Submissions invited, but not received, by Privacy**  
18 **Commissioner**

- 19 (1) This item applies if:  
20 (a) the Privacy Commissioner, under subsection 43(5) or 53B(3)  
21 of the *Privacy Act 1988*, afforded a complainant or  
22 respondent an opportunity to appear before the  
23 Commissioner and make submissions, orally, in writing or  
24 both, in relation to a matter to which an investigation relates;  
25 and  
26 (b) the submissions were not made before the commencement  
27 day.
- 28 (2) The Information Commissioner may, in accordance with the subsection,  
29 receive the submissions on or after the commencement day.



1

2

## **Part 5—Written instruments and reporting requirements**

3

4

### **16 References in instruments**

5

(1) This item applies if:

6

(a) an instrument is in force immediately before the commencement day; and

7

8

(b) the instrument contains a reference to the Privacy Commissioner.

9

10

(2) The instrument has effect on and after the commencement day as if the reference to the Privacy Commissioner were a reference to the Information Commissioner.

11

12

13

(3) The Minister may, by written instrument, determine that subitem (1) does not apply in relation to a specified reference.

14

15

(4) A determination under subitem (3) is not a legislative instrument.

16

### **17 Reporting requirements**

17

#### *Reports for periods ending after the commencement day*

18

(1) Subitem (2) applies if:

19

(a) immediately before the commencement day, a law required the Privacy Commissioner to provide a report in relation to a period; and

20

21

22

(b) the period ends on or after the commencement day.

23

(2) The Information Commissioner must provide the report, as required, in relation to so much of the period as occurs before the commencement day.

24

25

26

#### *Reports for periods ending before the commencement day*

27

(3) Subitem (4) applies if:

28

(a) a law required the Privacy Commissioner to provide a report in relation to a period that ended before the commencement day; and

29

30

31

(b) the report was not provided before the commencement day.

**Schedule 7** Privacy Commissioner transition  
**Part 5** Written instruments and reporting requirements

---

- 1 (4) The Information Commissioner must provide the report as required.

1

2 **Part 6—Legal and other proceedings**

3 **18 Substitution of Information Commissioner as a party to**  
4 **pending proceedings**

5 If any proceedings to which the Privacy Commissioner was a party  
6 were pending in any court or tribunal immediately before the  
7 commencement day, the Information Commissioner is substituted for  
8 the Privacy Commissioner as a party to the proceedings on and after the  
9 commencement day.

10 **19 Reviews, examinations etc. by Privacy Commissioner**

- 11 (1) This item applies if the Privacy Commissioner was doing any of the  
12 following things under the *Privacy Act 1988* (but had not finished doing  
13 that thing) before the commencement day:
- 14 (a) conducting a review of an approved privacy code under  
15 section 18BH;
  - 16 (b) examining proposed enactments in accordance with the  
17 function set out in paragraph 27(1)(b);
  - 18 (c) undertaking a conciliation process for the purposes of  
19 paragraph 28A(1)(b);
  - 20 (d) undertaking research and monitoring developments in  
21 accordance with the function set out in paragraph 27(1)(c);
  - 22 (e) examining records for the purposes of subsection 27(3);
  - 23 (f) examining records for the purposes of paragraph 28(1)(d).
- 24 (2) The Information Commissioner may finish doing the thing in  
25 accordance with the provision on and after the commencement day.

26 **20 Review of adjudicator's decisions**

- 27 (1) This item applies if:
- 28 (a) a person applied under section 18BI of the *Privacy Act 1988*  
29 to the Privacy Commissioner for review of a determination  
30 made by an adjudicator; and
  - 31 (b) the Privacy Commissioner did not complete the review  
32 before the commencement day.

- 1 (2) The Information Commissioner may complete the review in accordance  
2 with section 18BI of the *Privacy Act 1988* on and after the  
3 commencement day.

4 **21 Conference convened, but not held**

- 5 (1) This item applies if:  
6 (a) the Privacy Commissioner convened a conference in  
7 accordance with section 76 of the *Privacy Act 1988*; and  
8 (b) the conference was not held before the commencement day.
- 9 (2) The Information Commissioner may hold the conference in accordance  
10 with sections 76 and 77 of the *Privacy Act 1988* on or after the  
11 commencement day.

12 **22 Conference held, but determination not made, by Privacy  
13 Commissioner**

- 14 (1) This item applies if:  
15 (a) the Privacy Commissioner held a conference in accordance  
16 with section 76 of the *Privacy Act 1988*; and  
17 (b) before the commencement day, the Privacy Commissioner  
18 did not make a determination in accordance with section 79  
19 of that Act in relation to the matters raised at the conference.
- 20 (2) The Information Commissioner may make a determination in relation to  
21 those matters in accordance with section 79 of the *Privacy Act 1988* on  
22 or after the commencement day.

1

2

## **Part 7—Miscellaneous**

3

### **23 Records etc. of Office of the Privacy Commissioner**

4

All records or documents held, immediately before the commencement day, for the purposes of the performance of the functions, or the exercise of the powers, of the Privacy Commissioner, are, on and after the commencement day, taken to be held for the purposes of the performance of the functions, or the exercise of the powers, of the Information Commissioner.

5

6

7

8

9

10

### **24 Disclosure of private information**

11

Despite the repeal of section 96 of the *Privacy Act 1988* by this Act, that section (as in force immediately before the commencement day) continues to apply, in relation to conduct engaged in before the commencement day, as if that section had not been repealed.

12

13

14

15

### **25 Failure to appear before, or give information to, the Privacy Commissioner**

16

17

(1) Subitem (2) applies if:

18

(a) section 65 or 66 of the *Privacy Act 1988* applied to a person before the commencement day in relation to conduct engaged in by the person; and

19

20

21

(b) that provision would not (but for this item) apply to the person on or after the commencement day.

22

23

(2) That section applies to the person in relation to the conduct on and after the commencement day.

24

25

### **26 Saving of existing delegations**

26

A delegation in force under section 99 of the *Privacy Act 1988* immediately before the commencement day continues to have effect, subject to the new law, as if it were a delegation under section 25 of the new law on and after the commencement day.

27

28

29

30

### **27 Regulations**

31

(1) The Governor-General may make regulations prescribing matters:

32

(a) required or permitted by this Schedule to be prescribed; or

**Schedule 7** Privacy Commissioner transition  
**Part 7** Miscellaneous

---

1 (b) necessary or convenient to be prescribed for carrying out or  
2 giving effect to this Schedule.

3 (2) The Governor-General may make regulations prescribing matters of a  
4 transitional nature (including prescribing any saving or application  
5 provisions) relating to the amendments or repeals made by this Act.